

File No. 150408

Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date May 6, 2015

Board of Supervisors Meeting

Date _____

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
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<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
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OTHER

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Completed by: Linda Wong

Date May 1, 2015

Completed by: Linda Wong

Date

[Purchase and Sale of Electricity and Related Products and Services - Public Utilities Commission]

Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for renewable and greenhouse-gas-free power and related products and services.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds:

(a) For decades, the City and County of San Francisco (City), through its Public Utilities Commission (PUC), has operated a municipal electric utility that supplies clean greenhouse-gas-free electricity to San Francisco's municipal facilities, services, and customers.

1 (b) The PUC supplements electricity from its Hetch Hetchy hydroelectric facilities
2 with 11 megawatts of renewable energy from City-owned facilities and with purchases of
3 electricity from other sources. PUC makes many of these purchases using industry-standard
4 pro forma contracts that the Board of Supervisors has authorized in advance. See Ordinance
5 Nos. 54-92 and 39-01.

6 (c) The City has adopted aggressive goals for greenhouse gas reduction and use of
7 renewable energy. In Ordinance No. 81-08, the Board of Supervisors articulated the goal of
8 having a greenhouse-gas-free electric system by 2030, and meeting all City electricity needs
9 with renewable and greenhouse-gas-free sources.

10 (d) State law allows cities and counties to develop Community Choice Aggregation
11 (CCA) programs, through which local governments may choose to supply electricity to serve
12 the needs of participating customers within their jurisdictions while the existing utility continues
13 to provide services such as customer billing, transmission and distribution.

14 (e) For many years, the City has considered developing a CCA program to allow
15 San Francisco residents and businesses the option to receive cleaner, more sustainable
16 electricity at rates comparable to the incumbent utility. See Ordinance Nos. 86-04, 147-07,
17 232-09, 45-10, 200-12 and 78-14; and Resolution Nos. 348-12 and 331-13.

18 (f) In 2012, the Board of Supervisors approved a contract with Shell Energy North
19 America that required Shell to procure all power needed for the early phases of the City's
20 CCA program, called CleanPowerSF. See Resolution 348-12. The Shell contract was never
21 executed.

22 (g) In response to interest from City leaders and community members, PUC is
23 developing a new CCA program that would offer participating customers a choice of two levels
24 of renewable energy service: a 100% renewable option and a 33%-50% renewable option.
25 These options would be offered to groups of customers in phases, and over time would be

1 offered to all customers within San Francisco. PUC expects to implement this program
2 expeditiously by purchasing energy using its in-house expertise and staff resources. At the
3 same time, PUC would immediately begin the process of developing new local renewable
4 energy resources that would over time replace purchased energy, if such projects are
5 approved following any necessary environmental review.

6 (h) PUC anticipates that it will need to procure no less than 30 megawatts of
7 renewable energy for the first phase of CCA service. To meet aggressive implementation date
8 targets and secure the best possible prices and terms, PUC staff will need to negotiate a mix
9 of electricity contracts with multiple renewable energy projects simultaneously in an expedited
10 time frame.

11 (i) PUC already uses some standardized contracting methods to streamline its
12 procurement practices. Increased ability to purchase power and related products and services
13 using pro forma contracts that meet specified criteria will enable PUC to implement CCA
14 expeditiously and capture maximum price benefits for CCA customers and customers of the
15 City's municipal utility.

16 (j) Most utilities and the existing CCA programs, Marin Clean Energy and Sonoma
17 Clean Power, use standardized contracts for their procurement practices.

18 (k) City law requires standard contract provisions to protect the City's interests,
19 ensure accountability, and promote important social values. The Board of Supervisors may
20 waive certain contract provisions by ordinance. When the PUC uses pro forma contracts for
21 the purchase and sale of power and related products and services, it may be appropriate to
22 waive some of the City's standard contract provisions, if the General Manager finds and
23 documents in writing that doing so is in the best interest of the City.
24
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1 **Section 2. Approval of Pro Forma Contracts and Related Waivers of Certain**
2 **Requirements of City Law.**

3 (a) Background.

4 Utilities and energy suppliers use industry-standard pro forma contracts to ensure the
5 availability of essential services in a timely and cost-effective manner. Using these
6 agreements can help facilitate negotiations by focusing the parties on the elements that are
7 most likely to differ from one transaction to another: e.g., price, quantity, location, and
8 duration. These contracts provide standard terms and conditions that address common
9 issues, but allow parties to determine which provisions to include in a particular contract.
10 These contracts do not contain all contractual provisions required by local law.

11
12 (b) Specific Pro Forma Contracts.

13 (1) Western System Power Pool Agreement.

14 (A) The Western System Power Pool ("WSPP") is a group of more than 300
15 publicly-owned and private utilities, including Alameda Municipal Power, the City of Palo Alto,
16 the City of Roseville, the Sacramento Municipal Utility District, and Silicon Valley Power, all of
17 which operate publicly-owned utilities. The City, through PUC, is a member of the WSPP.
18 The WSPP has developed an agreement that sets forth standard terms and conditions for the
19 purchase and sale of power and related products and services. A copy of the current WSPP
20 agreement is on file with the Clerk of the Board of Supervisors in File No. 150408
21 and available on the Board's website, and is incorporated herein by reference as though fully
22 set forth. The WSPP agreement has been approved by the Federal Energy Regulatory
23 Commission ("FERC"). The WSPP agreement is periodically updated and modified subject
24 to the approval of FERC.

1 (B) The Board of Supervisors has previously authorized the General
2 Manager to use the WSPP agreement for transactions with a duration of up to five years and
3 waived for those transactions the requirements of section 12.F of the Administrative Code and
4 Chapter 8 of the Environment Code (formerly Administrative Code Section 12I.5(b)). See
5 Ordinance 54-92 and Ordinance 39-01, which are on file with the Clerk of the Board of
6 Supervisors in File No. _____.

7 (C) Using the WSPP Agreement, PUC routinely engages in short term
8 transactions of five years or less in order to supplement power generated by Hetch Hetchy or
9 sell excess power. These purchases are subject to the PUC's risk management procedures
10 and policies, while sales of Hetch Hetchy energy are subject to the City's "water first" policy
11 and requirements of the Raker Act. See Raker Act of 1913, ch. 4, 38 Stat. 242.

12 (2) The Edison Electric Institute Master Agreement.

13 (A) The Edison Electric Institute (EEI) in collaboration with more than 80
14 member utilities, affiliated and independent power marketers, merchant power, and end-use
15 representatives, developed an agreement that sets forth standard terms and conditions for the
16 purchase and sale of power and related products and services. The EEI agreement is
17 updated as needed to reflect market changes. A copy of the current EEI agreement is on file
18 with the Clerk of the Board of Supervisors in File No. 150408 and available on the
19 Board's website, and is incorporated herein by reference as though fully set forth

20 (B) In Resolution 348-12, the Board of Supervisors authorized the General
21 Manager to execute an agreement based on the EEI agreement with Shell Energy North
22 America to provide services require to launch a CCA.

23 (3) Other Pro Forma Agreements.

24 (A) Feed-in-Tariff (FIT).
25

1 A FIT Program is a standard tariff for purchases of electricity from distributed
2 generation facilities, such as a roof-top solar photovoltaic systems. The FIT establishes
3 uniform rules for participation, standard-offer prices, and a form contract. Because the term of
4 the contract is typically 10-20 years, a FIT can incentivize the development of local renewable
5 resources by assuring project owners of a stable long-term revenue stream.

6 (B) City Standard Contracts.

7 PUC may find it beneficial and efficient to develop City-specific standard contracts for
8 the purchase and sale of power and related products and services.

9
10 (c) Authorization to Use Pro Forma Contracts.

11 (1) The Board of Supervisors authorizes the use of the WSPP agreement and the
12 EEI agreement, as those agreements may be modified over time, for the PUC's purchase and
13 sale of power and related products and services, notwithstanding that the terms of those
14 agreements may deviate from the City's standard contract forms; provided that if those
15 agreements are modified in a manner that, in the judgment of the General Manager and the
16 City Attorney, materially decreases the City's rights or materially increases its liabilities, then
17 the General Manager shall seek approval from the Board of Supervisors to enter into any
18 agreement that would be subject to such approval absent the authorization granted in this
19 subsection 2(c).

20 (2) The Board of Supervisors authorizes the use of one or more pro forma contracts
21 developed by PUC for the purchase and sale of power and related products and services;
22 provided that if those agreements, in the judgment of the General Manager and the City
23 Attorney, materially decrease the City's rights or materially increase its liabilities as compared
24 to the forms of the WSPP agreement and EEI agreement authorized for use by this ordinance,
25 then the General Manager shall seek approval from the Board of Supervisors to enter into any

1 agreement that would be subject to such approval absent the authorization granted in this
2 subsection 2(c).

3 (3) The Board of Supervisors authorizes the use of a pro forma contract to support
4 a FIT or similar mechanism to purchase electricity from distributed generation facilities that is
5 consistent with industry standards; provided that if the contract contains terms that in the
6 judgment of the General Manager and the City Attorney materially decrease the City's rights
7 or materially increase its liabilities as compared to the forms of the WSPP agreement and EEI
8 agreement authorized for use by this ordinance, then the General Manager shall seek
9 approval from the Board of Supervisors to enter into any agreement that would be subject to
10 such approval absent the authorization granted in this subsection 2(c).

11 (4) The authority granted in this subsection 2(c) shall be limited to agreements that
12 do not exceed ten years or require expenditures by the City of ten million dollars or more.

13 (5) For purposes of the authorizations and waivers in this section, power and
14 related products and services shall include power supplies, the conveyance or transmission of
15 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as
16 required for assuring reliable services in accordance with good utility practice and applicable
17 laws.

18 (d) Waivers of Required City Contract Provisions.

19 (1) For purchase or sale of power and related products and services, where the
20 General Manager finds and documents in writing both that the transaction represents the best
21 opportunity available to the City to obtain essential services and products or dispose of
22 excess power in a manner beneficial to the City, and that it is not feasible to add all standard
23 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of
24 the following standard contract provisions to the extent found necessary by the General
25

1 Manager, and finds such waivers to be reasonable and in the public interest, for purchases
2 made using the pro forma contracts identified in subsection 2(c) above:

3 (A) Review of the City's support of the MacBride Principles (Admin. Code
4 Chapter 12F);

5 (B) Increased participation by small and micro local businesses in City
6 contracts (Admin. Code Chapter 14B);

7 (C) The competitive bidding requirement (Admin. Code Section 21.1);

8 (D) First source hiring requirements (Admin. Code Chapter 83); and

9 (E) The tropical hardwood and virgin redwood ban (Environ. Code Chapter
10 8).

11 (2) For purchase or sale of power and related products and services, where the
12 General Manager finds and documents in writing both that the agreement represents the best
13 opportunity available to the City to obtain essential services and products or dispose of
14 excess power in a manner beneficial to the City, and that it is not feasible to add all standard
15 City contract provisions to the agreement, the Board of Supervisors waives the requirement
16 to include in the agreement references to the following City Code provisions to the extent
17 found necessary by the General Manager and finds such waivers to be reasonable and in the
18 public interest for transactions using the pro forma contracts identified in subsection 2(c)
19 above:

20 (A) Public access to meeting and records for non-profit organizations (Admin.
21 Code Section 12L.2);

22 (B) Sweatfree Contracting (Admin. Code Section 12U.4);

23 (C) Food service waste reduction (Environ. Code Section 1605).
24
25

1 (3) The waivers specified in subsection 2(d) shall apply only to procurement
2 contracts using the pro forma contracts referenced in subsection 2(c) above, which include
3 language requiring compliance with all applicable federal, state, and local laws.
4

5 **Section 3. Authorization Pursuant to Charter Section 9.118(b) for Purchases of**
6 **Renewable and Greenhouse-Gas-Free Energy.**

7 (a) Background.

8 (1) PUC anticipates it will need at least 30 megawatts of renewable energy for the
9 first phase of CCA service. Under the new program design, PUC will manage the supply
10 portfolio for CCA customers, rather than contracting with a third party to purchase the energy
11 needed for the program. This approach will be more cost-effective than paying a third party to
12 enter into and manage contracts, but it will require PUC to negotiate and manage many
13 contracts.

14 (2) PUC anticipates issuing competitive solicitations for renewable energy supplies
15 and related services. It expects to enter into contracts of varying terms (up to 25 years) with
16 multiple sellers for a variety of resource types including solar, wind, and geothermal. This
17 approach will facilitate diversity of sellers and resource types while also reducing the risk of
18 failure that would be present in relying on a single entity for all energy supply. Long term
19 contracts of up to 25 years also encourage the development of local resources by limiting
20 development risk and providing revenue certainty.

21 (3) This new approach requires negotiating a number of contracts in a short time
22 period in order to meet the aggressive implementation schedule established for the program.
23 The ability to enter into agreements quickly will also allow PUC to capture attractive pricing
24 and finalize important terms in a time frame that is expected in commercial transactions.
25

1 (4) PUC's energy needs for serving the customers of its municipal utility are met
2 almost entirely by Hetch Hetchy supplies. But there may be limited circumstances where
3 purchases of renewable or greenhouse-gas-free supplies will be needed to ensure operations
4 consistent with good utility practices or to comply with legal requirements. The ability to make
5 these purchases in a timely manner will enable PUC to ensure the best prices and terms for
6 its municipal utility energy supply.

7
8 (b) Authorizations.

9 (1) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
10 authorizes the General Manager to purchase renewable and greenhouse-gas-free energy
11 supplies from facilities in California using contracts with terms in excess of ten years or
12 requiring expenditures of ten million dollars or more including amendments to such
13 agreements with an impact of greater than \$500,000, so long as the contract term, including
14 any amendments, does not exceed 25 years or require expenditures in excess of five million
15 per year or \$125 million over the life of the contract, and further provided that such contracts
16 are procured through a competitive process and approved by the PUC acting through its
17 Commission at a public meeting.

18 (2) Waivers. For such purchases of renewable and greenhouse-gas-free energy
19 supplies and capacity pursuant to the authority delegated in subsection 3(b)(1) that use the
20 pro forma standard agreements described in subsection 2(c) above, the Board of Supervisors
21 authorizes the waivers set forth in section 2(d) above.

22 (3) Contracts authorized under this subsection 3(b) for CCA shall be subject to a
23 maximum aggregate limit of \$500 million. PUC shall annually report to the Board of
24 Supervisors the duration, product purchased and cost of contracts entered into pursuant to
25 this section 3(b).

1 (4) The cost of procurement contracts entered into under this section 3(b) for the
2 City's municipal electric utility and CCA program shall be subject to the PUC's existing budget
3 and appropriation process.

4 (5) For purposes of the authorizations and waivers in this section 3(b), power and
5 related products and services shall include power supplies, the conveyance or transmission of
6 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as
7 required for assuring reliable services in accordance with good utility practice and applicable
8 laws.


9
10 **Section 4. Severability.**

11 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
12 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
13 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
14 remaining portions or applications of the ordinance. The Board of Supervisors hereby
15 declares that it would have passed this ordinance and each and every section, subsection,
16 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
17 whether any other portion of this ordinance or application thereof would be subsequently
18 declared invalid or unconstitutional.

19
20 **Section 5. Effective Date.** This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

1
2 APPROVED AS TO FORM:
3 DENNIS J. HERRERA, City Attorney

4 By:


5 THERESA L. MUELLER
6 Deputy City Attorney

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LEGISLATIVE DIGEST

[Purchase and Sale of Electricity and Related Products and Services - Public Utilities Commission]

Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for renewable and greenhouse-gas-free power and related products and services.

Existing Law

Section 9.118(b) of the Charter requires approval by the Board of Supervisors for agreements with an expected term longer than ten years or requiring expenditures of 10 million dollars or more.

The San Francisco municipal code contains many contracting requirements for the procurement of goods and services. In certain instances, the Board of Supervisors may exempt contracts from these requirements via ordinance.

Amendments to Current Law

This ordinance will not amend any current law.

Authorizations

To support the City and County of San Francisco's (City) municipal electric utility and new Community Choice Aggregation (CCA) program, both operated by the Public Utilities Commission (PUC), this ordinance: (1) authorizes the PUC to use certain pro forma contracts, (2) exempts purchases using those contracts from certain requirements in the municipal codes, and (3) delegates to the General Manager the authority to enter into contracts for power from renewable and/or greenhouse-gas-free resources for periods longer than 10 years and with expenditures of 10 million dollars or more.

Pro Forma Contracts

This ordinance authorizes PUC to use two industry standardized contracts - the Western Systems Power Pool Agreement and the Edison Electric Institute Master Agreement – for the purchase and sale of power and related products and services.

This ordinance also authorizes the PUC to develop one or more standard agreements for the purchase and sale of power and related products and services that are substantially similar to the WSPP and EEI contracts. It also authorizes the PUC to develop a standard power purchase agreement that could be used to support a Feed in Tariff. The authorizations to use pro forma contracts under this section can be used for purchases and sales up to the limits in Charter Section 9.118.

Waivers of Contracting Requirements in Municipal Code

This ordinance exempts contracts using the specified pro forma agreements from some contracting provisions of the Administrative Code and the Environment Code. Some of the exemptions waive the applicability of the specified ordinances and some of the exemptions waive only the requirement that the contract refer explicitly to the specified ordinance. The ordinance does not waive contracting provisions required by the Charter or those required by voter initiative. All contracts will contain a provision that states the contractor must comply with all applicable federal, state and local laws.

Delegation to the General Manager

This ordinance authorizes the General Manager to purchase renewable and greenhouse-gas-free power using contracts with terms in excess of ten years or requiring expenditures of 10 million dollars or more. This authority is limited to purchases of renewable and greenhouse-gas-free power and is subject to certain fiscal limitations, including that no contract may exceed total costs of \$5 million per year or \$125 million over the life of the contract. Contracts pursuant to this delegation must still go through a competitive bidding process and be approved by the Public Utilities Commission in a public meeting.

It is possible that PUC may execute an agreement using one of the pro forma agreements for renewable and greenhouse-gas-free power. In that event, both the authorizations and waivers applicable to the pro forma contracts and the additional authorizations in section 3 would apply.

Background Information

PUC operates a power utility, which supplies clean greenhouse-gas-free energy to San Francisco's municipal facilities, services and customers. Under the Raker Act, PUC may not sell Hetch Hetchy power to private entities who intend to resell the power. (Raker Act of 1913, ch. 4, 38 Stat. 242). In addition, PUC's operations adhere to the City's "water first" policy. (Cal. Water Code 73504(b) and Charter Section 8B.122).

PUC is also implementing a CCA program that will require it to purchase energy using its in-house expertise and staff resources. State law allows cities and counties to develop CCA programs, through which local governments may choose to supply electricity to serve the needs of participating customers within their jurisdictions while the existing utility continues to provide many services including billing, transmission and distribution. (See AB 117 (2002) implementing Cal. Pub. Util. § 366 *et seq.*).

San Francisco has already taken many steps towards implementing a CCA program. In 2012, the PUC negotiated a contract with Shell Energy North America to procure the necessary power for the CCA. Although the contract was approved by the Board of Supervisors, the contract was never executed. In 2015, the Local Agency Formation Commission sponsored a report from EnerNex describing the local build out of energy resources to support a CCA program.¹ One of the primary recommendations in that report was for PUC staff to perform necessary power procurement on behalf of the CCA program on an on-going and as-needed basis. The report states that this will provide benefits of cost-efficiency, mitigate risks of contract failure, and leverage efficiencies by using staff's in-house knowledge.

PUC anticipates that in order to perform these additional responsibilities and secure the best possible prices and terms for this new program, PUC will need to negotiate a mix of electricity contracts with multiple renewable energy projects simultaneously in an expedited time frame.

In order to take advantage of this pricing, PUC believes that it may need to make contractual commitments of greater than 10 years and/or greater than 10 million dollars for certain purchases of renewable and greenhouse-gas-free power.

¹ The EnerNex Report is available on the Board of Supervisors' website: <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=50676> (last checked April 21, 2015).

Item 3 File 15-0408	Department: Public Utilities Commission (PUC)
EXECUTIVE SUMMARY	
Legislative Objectives	
<ul style="list-style-type: none"> The proposed ordinance authorizes SFPUC to use pro forma contracts to purchase and sell electricity and related products and services for electricity supplied by (1) Hetch Hetchy to municipal facilities, services and customers, and (2) the Community Choice Aggregation (CCA) program to supply electricity to City businesses and residents. 	
Key Points	
<ul style="list-style-type: none"> The goal of CCA is to provide San Francisco electricity customers with renewable energy service options at rates comparable to those currently being offered by PG&E. The program will be executed in phases. During the first phase, customers located within a select geographic region will be automatically enrolled in the program and will have four months to opt-out of participating. These customers will be offered a standard energy product that will consist of between 33 and 50 percent renewable energy. Customers citywide will also be able to opt into a premium product consisting of 100 percent renewable energy during this first phase. SFPUC staff will solicit offers from and enter into contracts with renewable energy providers for up to 25 years and \$125 million. The proposed ordinance authorizes the SFPUC to use industry-standard pro forma contracts for purchases of electricity from renewable energy providers. Because these contracts do not contain many of the City's standard contracting requirements, the proposed ordinance waives these requirements. The proposed ordinance would allow SFPUC to enter into contracts with renewable energy providers for up to 25 years and \$125 million without Board of Supervisors approval. According to SFPUC, these contracts need to be negotiated in a short time period to achieve competitive pricing under market conditions. The longer term contracts are necessary because suppliers of new renewable generation typically require a contract for the sale of the energy generation of the facility's output for 20-25 years in order to finance the construction of the facility. 	
Fiscal Impact	
<ul style="list-style-type: none"> SFPUC staff proposes setting initial CCA rates to be comparable to rates currently charged by PG&E for renewable energy products, which based on SFPUC's initial estimates will recover program costs. After being approved by the Commission, the Board of Supervisors will have a 30-day window to approve the rates. 	
Recommendations	
<ul style="list-style-type: none"> Amend the proposed ordinance to require that the annual reports submitted to the Board of Supervisors include program costs, the rates charged by SFPUC to CCA customers to recover costs, and the comparison of SFPUC rates to PG&E rates. Amend the proposed ordinance to state that the "SFPUC will issue competitive solicitations for the renewable energy supplies and related services." Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors. 	

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

Section 9.118(b) of the City's Charter requires approval by the Board of Supervisors for contracts with an expected term longer than ten years or requiring expenditures of 10 million dollars or more. The San Francisco municipal code contains numerous contracting requirements for the procurement of goods and services. In certain instances, the Board of Supervisors may exempt contracts from these requirements via ordinance.

Background

The San Francisco Public Utilities Commission (SFPUC) operates a power utility, which supplies clean, greenhouse-gas-free energy to San Francisco's municipal facilities, services and customers. The SFPUC may not sell Hetch Hetchy power to private entities who intend to resell the power under the Raker Act of 1913.

The City has adopted aggressive goals for greenhouse gas reduction and use of renewable energy. In Ordinance 81-08, the Board of Supervisors articulated the goal of having a greenhouse-gas-free electric system by 2030, and meeting all City electricity needs with renewable and greenhouse-gas-free sources.

State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, through which local governments may choose to supply electricity to serve the needs of participating customers within their jurisdictions while the existing private utility (PG&E in San Francisco) continues to provide various services including billing, transmission and distribution.

San Francisco has already taken various steps towards implementing a CCA program. In 2012, the SFPUC negotiated a contract with Shell Energy North America to procure the necessary power for the CCA. Although the contract was approved by the Board of Supervisors, the contract was never executed because the SFPUC did not approve the CleanPowerSF program rates. Approval of program rates (which were also "not-to-exceed" rates) was a required step in the process.

In 2015, the Local Agency Formation Commission (LAFCo) retained EnerNex to produce a report describing the local build out of energy resources to support a CCA program. The report recommended that SFPUC staff obtain the necessary power on behalf of the CCA program on an on-going and as-needed basis. The report states that this will provide the benefits of cost-efficiency, while also mitigating the risks of contract failure and leveraging the in-house knowledge of SFPUC staff.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance authorizes SFPUC to use pro forma contracts to purchase and sell electricity and related products and services for electricity supplied by (1) Hetch Hetchy to municipal facilities, services and customers, and (2) the Community Choice Aggregation (CCA) program to supply electricity to City businesses and residents. Under the proposed ordinance,

- The pro forma contracts could deviate from certain City contracting requirements, as discussed below; and
- SFPUC could enter into future contracts without obtaining Board of Supervisors approval for the purchase of electricity generated by renewable and greenhouse-gas-free sources from facilities in California for up to 25 years and up to a total of \$125 million, exceeding the City Charter requirement for Board of Supervisors approval for contracts over 10 years and \$10 million, as required by City Charter Section 9.118(b).

SFPUC's Implementation of Community Choice Aggregation

The goal of Community Choice Aggregation is to provide San Francisco electricity customers with renewable energy service options from California generators at comparable rates to those currently being offered by PG&E.

SFPUC will execute the CCA program in phases. During the first phase, customers located within a select geographic region¹ will be automatically enrolled in the program and will have four months from their enrollment date to opt-out of participating in the program. These customers will be offered a standard energy product that will consist of between 33 and 50 percent renewable energy. Customers citywide will also be able to opt into a premium product consisting of 100 percent renewable energy during this first phase. Customers will submit payments to PG&E, as required under State law. SFPUC will pay PG&E a fee for billing and payment services.

According to Ms. Barbara Hale, SFPUC Assistant General, it is currently unknown which areas of the city will be selected to participate in the first phase. It is also uncertain how many customers will select the premium product in the San Francisco market. The second phase of the program will not be started until a sufficient number of customers participate in the program, and a competitive renewable energy rate is made available for purchasing electricity.

The City's Rate Fairness Board² approved proposed not-to-exceed rates on April 17, 2015, and SFPUC staff will present the proposed not-to-exceed rates for the standard and premium renewable energy to the SFPUC Commission on May 12, 2015. After being approved by the Commission, the Board of Supervisors will have a 30-day window to approve the rates. SFPUC staff recommends adopting not-to-exceed rates for the standard renewable energy product based on comparable current PG&E rates, less the Power Charge Indifference Adjustment (PCIA)³. The premium renewable energy product not-to-exceed rate is based on the projected PG&E Green Tariff⁴ premium.

¹ The first phase will be 30 megawatts of customer load.

² The City's Rate Fairness Board was established by Proposition E, approved by San Francisco voters in November 2002, to advise the SFPUC on water, power and sewer rates. RFB members include the Director of Public Finance, two members appointed by the Mayor and two members appointed by the Board of Supervisors representing commercial and residential rate payers, one member appointed by the Controller, and one member appointed by the City Administrator.

³ The Power Charge Indifference Adjustment (PCIA) is a charge assessed by PG&E to cover generation costs acquired prior to a customer's change in service provider. The rate charged by PG&E to residential customers who change providers in FY 2014-15 is \$0.01101/kWh and the rate for businesses is \$.01160/kWh.

⁴ The PG&E Green Option is a clean energy program that offers customers a 100 percent renewable energy option.

Table 1 below illustrates the proposed Community Choice Aggregation Program not-to-exceed rates for the standard and premium renewable energy products that will be offered to residential and commercial customers.

Table 1: SFPUC Staff Recommendation to the SFPUC for the Proposed CCA Rates

Standard Product	Rate
<i>Residential</i>	\$.086 / kWh
<i>Small Commercial</i>	\$.092 / kWh
Premium Product	
<i>Residential</i>	\$.107 / kWh
<i>Small Commercial</i>	\$.112 / kWh

Source: Public Utilities Commission

In the future, the rates for the CCA program will be set to recover program costs.⁵

Power Procurement

SFPUC anticipates that it will need to procure approximately 30 megawatts of renewable energy for the first phase of CCA service. To meet aggressive implementation targets and secure the best possible prices and terms, SFPUC staff will need to negotiate a mix of electricity contracts with existing multiple renewable energy providers. The SFPUC anticipates being able to execute such contracts with existing staff.

SFPUC expects to enter into contracts of varying term lengths (up to 25 years) with multiple providers for a variety of renewable energy sources including solar, wind and geothermal. The amount of renewable energy to be included in the standard product, between 33 and 50 percent, will depend on the price and availability of energy on the market. At the same time that the SFPUC is entering into contracts for this phase of the project, it will also begin the process of developing local renewable energy resources that would over time replace purchased renewable energy, if these projects can obtain the necessary environmental review.

Projects being considered for local build out include solar projects in Hunters Point, University Mound-North Basin, Sutro Reservoir, and at Port piers 90-94, as well as the Oceanside wind project. Potential regional projects include solar project sites at San Francisco International Airport parking lot, Pulgas Reservoir, Sunol Valley, Tesla Portal, the Geysers geothermal site, and wind projects at Sunol, Tesla Portal, Montezuma Hills, Altamonte Pass and Walnut Grove.

Authorization to Purchase Energy with Pro-Forma Contracts

The proposed ordinance authorizes SFPUC to utilize industry-standard pro forma contracts, as well as a city-specific contract to be developed by the SFPUC for purchases of electricity from distributed generation facilities, to ensure the availability of essential services in a timely and cost-effective manner. The industry-standard pro forma contracts, the Western System Power

⁵ According to SFPUC staff, CCA program costs will be known once contracts with renewable electricity providers are signed. Based on SFPUC's preliminary estimates of renewable electricity pricing and administrative costs, the CCA program will recover costs based on rates comparable to PG&E's current rates.

Pool agreement, the Edison Electric Institute (EEI) agreement, and the Feed-in-Tariff Program, are described further below.

Western System Power Pool Agreement

The Western System Power Pool (WSPP) is a group of more than 300 publicly-owned and private utilities, including Alameda Municipal Power, the City of Palo Alto, the City of Roseville, the Sacramento Municipal Utility District, and Silicon Valley Power. The City of San Francisco is a member of the WSPP. The WSPP agreement form has been approved by the Federal Energy Regulatory Commission (FERC). The Board of Supervisors previously authorized the General Manager of the SFPUC to use the WSPP agreement for transactions lasting up to five years and waived for those transactions certain sections of the City's Environment and Administrative Codes.

Edison Electric Institute Master Agreement

The Edison Electric Institute (EEI), in collaboration with more than 80 member utilities, affiliated and independent power marketers, merchant power, and end-use representatives, developed an agreement form that sets forth standard terms and conditions for the purchase and sale of power and related products and services. The Board of Supervisors previously authorized the General Manager to enter into an agreement based on the EEI agreement with Shell Energy North America to provide services required to launch the CCA. However, that agreement was never executed.

Feed-in-Tariff (FIT) Program

A feed-in-tariff (FIT) program is a standard tariff for purchases of electricity from distributed generation facilities, such as roof-top solar photovoltaic systems. The FIT program establishes uniform rules for participation, standard-offer prices, and an agreement form. As the FIT contract typically lasts for 10-20 years, a FIT program creates an incentive for the development of local renewable resources by assuring project owners of a stable long-term revenue stream.

Authorization to Waive Standard Contract Provisions

The City requires that various contracts contain standard provisions to protect the City's interests and ensure accountability. The proposed ordinance authorizes SFPUC to award pro-forma contracts that may not contain the City's standard contract provisions; however, contract modifications, which in the judgment of the General Manager of the SFPUC and the City Attorney materially decrease the City's rights or materially increase the City's liabilities, are subject to Board of Supervisors approval.

The proposed ordinance specifically authorizes the waiver of the following standard City contract provisions, provided that the General Manager finds and documents in writing both that the transaction represents the best opportunity available to the City to obtain essential services and products or dispose of excess power in a manner that is beneficial to the City:

- 1) Review of the City's support of the MacBride Principles (Administrative Code 12F);
- 2) Increased participation by small and micro loan businesses in City contracts (Admin Code Chapter 14B);

- 3) The competitive bidding requirement (Admin. Code Section 21.1);
- 4) First source hiring requirements (Admin. Code Chapter 83);
- 5) The tropical hardwood and virgin redwood ban (Environ. Code Chapter 8);
- 6) Public access to meeting and records for non-profit organizations (Admin. Code Section 12L.2);
- 7) Sweatfree contracting (Admin. Code Section 12U.4); and
- 8) Food service waste reduction (Environ. Code Section 1605).

FISCAL IMPACT

The proposed ordinance authorizes the SFPUC General Manager to enter into pro forma contracts to purchase renewable energy with terms up to 25 years and amounts up to \$5 million per year or \$125 million over the term of the contract without Board of Supervisors approval, as shown in Table 2 below. Under the proposed ordinance, the maximum aggregate amount of all such contracts is \$500 million. SFPUC is required to report annually to the Board of Supervisors as to the duration, as products purchased and to cost of the contracts entered into.

Table 2: Proposed CCA Contracts Not Requiring Board of Supervisors Approval

Contract length	Not-to-exceed 25 years
Total expenditures	Not-to-exceed \$5 million per year or \$125 million over agreement term
Total allowable amendments	\$500,000

Source: Proposed legislation

According to the proposed ordinance, "SFPUC anticipates issuing competitive solicitations for renewable energy supplies and related services". According to SFPUC staff, SFPUC will issue "Request for Offers" to renewable energy providers, which is expected to solicit more than one bid.⁶

SUMMARY

The proposed ordinance authorizes SFPUC to use pro forma contracts to purchase and sell electricity and related products and services for electricity supplied by (1) Hetch Hetchy to municipal buildings, and (2) the Community Choice Aggregation (CCA) program to supply electricity to City businesses and residents.

SFPUC plans to implement the CCA program to allow customers to choose between (1) purchase of electricity generated by 33 percent to 50 percent renewable energy resources, and

⁶ According to SFPUC staff, SFPUC may also consider using the competitive solicitation process of other CCA programs to select and contract with renewable electricity providers, in accordance with Administrative Code Section 21.16.

(2) 100 percent renewable energy resources. The 33-50 percent option will be implemented in an undetermined geographic section of the City, with customers having the right to opt out within four months of being enrolled.

SFPUC plans to set rates for the 33-50 percent option at an amount equal to PG&E's current rates. The 100 percent option will be implemented Citywide, and customers can choose to opt in. SFPUC plans to set rates for the 100 percent option at an amount equal to PG&E's Green Tariff Premium.

SFPUC could enter into contracts for the purchase of electricity generated by renewable and greenhouse-gas-free sources up to 25 years and \$125 million, exceeding the City Charter requirement for Board of Supervisors approval for contracts exceeding 10 years and \$10 million.

The proposed ordinance specifically authorizes the waiver of the following contract provisions, provided that the General Manager finds and documents in writing both that the transaction represents the best opportunity available to the City to obtain essential services and products or dispose of excess power in a manner that is beneficial to the City:

- 1) Review of the City's support of the MacBride Principles (Administrative Code 12F);
- 2) Increased participation by small and micro loan businesses in City contracts (Admin Code Chapter 14B);
- 3) The competitive bidding requirement (Admin. Code Section 21.1);
- 4) First source hiring requirements (Admin. Code Chapter 83);
- 5) The tropical hardwood and virgin redwood ban (Environ. Code Chapter 8);
- 6) Public access to meeting and records for non-profit organizations (Admin. Code Section 12L.2);
- 7) Sweatfree contracting (Admin. Code Section 12U.4); and
- 8) Food service waste reduction (Environ. Code Section 1605).

According to Ms. Barbara Hale, SFPUC Assistant General Manager, waiving Board of Supervisors approval of contracts up to 25 years and \$125 million to purchase electricity for CCA is necessary because suppliers of new renewable generation typically require a contract for the sale of the energy generation of the facility's output for 20-25 years in order to finance the construction of the facility. Using longer-term pro forma contracts will better position the SFPUC to compete for attractive, new renewable generation supply. Further, the SFPUC needs to develop a cost-effective supply portfolio with varying durations to ensure competitive program offerings and sustained program participation.

The proposed ordinance requires the SFPUC to annually report to the Board of Supervisors on the duration of energy power purchase contracts entered into by SFPUC, the type of product(s) purchased, and the costs of the contracts. The Budget and Legislative Analyst recommends

amending the ordinance to require an annual report on CCA program costs, the rates charged by SFPUC to CCA customers to recover costs, and the comparison of SFPUC rates to PG&E rates.

Although the proposed ordinance waives competitive bidding requirements under Administrative Code Section 21.1, the proposed ordinance also states that the "SFPUC anticipates issuing competitive solicitations for renewable energy supplies and related services." According to SFPUC staff and as noted above, SFPUC will issue "Request for Offers" to renewable energy providers, which is expected to solicit more than one bid. The Budget and Legislative Analyst recommends amending the proposed ordinance to state that the "SFPUC *will issue* competitive solicitations for the renewable energy supplies and related services."

The Budget and Legislative Analyst considers approval of the proposed ordinance to be a policy matter for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed ordinance to require that the annual reports submitted to the Board of Supervisors pertaining to the CCA program include program costs, the rates charged by SFPUC to CCA customers to recover costs, and the comparison of SFPUC rates to PG&E rates.
2. Amend the proposed ordinance to state that the "SFPUC will issue competitive solicitations for the renewable energy supplies and related services."
3. Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors.

OFFICE OF THE MAYOR
SAN FRANCISCO



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

EDWIN M. LEE
MAYOR

2015 APR 21 PM 3:21

TO: Angela Calvillo, Clerk of the Board of Supervisors *BJ*
FROM: *EW* Mayor Edwin M. Lee *EW*
RE: Purchase and Sale of Electricity and Related Products and Services by
the Public Utilities Commission
DATE: April 21, 2015

Attached for introduction to the Board of Supervisors is an ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of ten million dollars or more for renewable and greenhouse-gas-free power and related products and services.

Please note that this item is co-sponsored by Supervisors Breed and Avalos.

I respectfully request that this item be calendared in Budget & Finance Committee.

I respectfully request a waiver of the 30-day hold on this legislation.

Should you have any questions, please contact Nicole Elliott (415) 554-7940.

WSPP Agreement Effective April 11, 2015

This version includes all revisions approved by FERC in orders issued through April 10, 2015. The most recent changes have an effective date of April 11, 2015, including the addition of Service Schedules D and E. This version includes a ministerial revision to a citation in each of Service Schedules D and E filed April 20, 2015, and which, once accepted, will also be effective of April 11, 2015.

This version of the WSPP Agreement is prepared for convenience of WSPP Members. The WSPP Agreement as filed via e-Tariff with the FERC is available at www.FERC.gov and specifically <http://etariff.ferc.gov/TariffList.aspx>.

This explanatory page is not part of the WSPP Agreement as filed with the FERC.

WSPP AGREEMENT

WSPP INC.
FIRST REVISED RATE SCHEDULE FERC NO. 6
Superseding
Rate Schedule FERC No. 6

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LIST OF MEMBERS

1. PARTIES:

The Parties to this WSPP Agreement (hereinafter referred to as "Agreement") are those entities that have executed this Agreement, hereinafter sometimes referred to individually as "Party" and collectively as "Parties," but excluding any such entity that withdraws its participation in the Agreement. An entity shall become a Party on the date specified in Section 16.6.

2. RECITALS

- 2.1 Through this Agreement, the WSPP administers a multi-lateral, standardized agreement applicable to capacity and/or energy transactions between members and is available to entities (which qualify for membership under Section 16) throughout the entire continental United States, Canada, and Mexico.
- 2.2 This Agreement serves two functions. First, it sets out the rules applicable to the operation of the WSPP. Second, it sets out the terms for the standardized agreement used for capacity and/or energy transactions between members.
- 2.3 This Agreement facilitates physical transactions in capacity and/or energy under a FERC accepted or approved rate schedule (this Rate Schedule FERC No. 6).
- 2.4 Through the standardization of terms for transactions in capacity and/or energy which facilitates such transactions, the public interest has been and will continue to be served.

3. AGREEMENT:

In consideration of the mutual covenants and promises herein set forth, the Parties agree as follows:

4. **DEFINITIONS:**

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified:

Agreement: This WSPP Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation(s) are not included within this definition.

Administrative Committee: A sub-committee of the Executive Committee in accordance with Section 8.1.2.

Broker: An entity or person that arranges trades or brings together Purchasers and Sellers without taking title to the power.

Business Day(s): Any day other than a Saturday or Sunday or a national (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where both the Seller and the Purchaser have their principal place of business in the United States, Canadian holidays shall not apply. Similarly, where both the Seller and the Purchaser have their principal places of business in Canada, Canadian holidays shall apply and United States holidays shall not apply. In situations where one Party has its principal place of business within the United States and the other Party's principal place of business is within Canada, both United States and Canadian holidays shall apply.

California ISO: The California Independent System Operator Corporation or any successor organization.

Confirmation(s): The confirmations for transactions developed and made effective in accordance with Section 32 or Electronic Platform Confirmations.

Contract Price: The price agreed to between the Seller and the Purchaser for a transaction under the Agreement and Confirmation.

Contract Quantity: The amount of capacity and/or energy to be supplied for a transaction under the Agreement.

Control Area: An electric system capable of regulating its generation in order to maintain its interchange schedule with other electric systems and to contribute its frequency bias obligation to the interconnection as specified in the North American Electric Reliability Council (NERC) Operating Guidelines.

Costs: As defined in Section 22.3 of this Agreement.

Damages Settlement Transaction: A transaction where, after non-performance under a Confirmation, the Parties enter into a second transaction for the purpose of finally settling damages incurred by the Performing Party due to non-performance of such Confirmation.

Dealer: An entity or person that buys or sells power and takes title to the power at some point.

Defaulting Party: As defined in Section 22.1 of this Agreement.

Determination Period: As defined in Section 38.2 of this Agreement.

Documentary Writing: A document which is physically delivered by courier or U.S. mail, or a copy of which is transmitted by telefacsimile or other electronic means.

Economy Energy Service: Non-firm energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange energy that is

subject to immediate interruption upon notification, in accordance with the Agreement, including Service Schedule A, and any applicable Confirmation.

Electric Utility: An entity or lawful association which (i) is a public utility, Independent Power Producer, or Power Marketer regulated under applicable state law or the Federal Power Act, or (ii) is exempted from such regulation under the Federal Power Act because it is the United States, a State or any political subdivision thereof or an agency of any of the foregoing, or a Rural Utilities Service cooperative, or (iii) is a public utility, Independent Power Producer, or Power Marketer located in Canada or Mexico that is similarly regulated.

Electronic Platform Confirmation: agreed terms and conditions of a transaction, which agreement (a) was made through electronic entry of information and terms on, and in a manner that complies with the procedures of, the applicable electronic trading platform or exchange, (b) includes, at a minimum, the Standard Confirmation Provisions, and (c) is available to either Party for retrieval from the applicable electronic trading platform or exchange in printable or electronic form.

Electronic Writing:

- (1) Recorded oral conversation; or
- (2) electronic communications, including but not limited to e-mail, if the Parties to the transaction use such method to create an electronic writing for the Confirmation for such transaction and, except with respect to e-mail, specifically agree to the method of electronic communication.

Electronic Writings shall not include the transmittal of a copy of a document by electronic means, which is considered a Documentary Writing.

ERCOT: Electric Reliability Council of Texas, Inc., and any successor organization.

Event of Default: As defined in Section 22.1 of this Agreement.

Executive Committee: The committee established pursuant to Section 8 of this Agreement.

FERC: The Federal Energy Regulatory Commission or its regulatory successor.

Firm Capacity/Energy Sale or Exchange Service: Firm capacity and/or energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange for a specified period available capacity with or without associated energy which may include a Physically-Settled Option and a capacity transaction in accordance with the Agreement, including Service Schedule C, and any applicable Confirmation.

First Party: As defined in Section 27 of this Agreement.

Floating Price: As defined in Section 38.1 of this Agreement.

Gains: As defined in Section 22.3 of this Agreement.

Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for obligations arising under this Agreement and Confirmation. A sample form of Guarantee Agreement is provided in Exhibit B.

Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

Hub: An electronic communication center that functions as a central point to electronically receive and assemble data for offers to buy or sell power or transmission service from each Party and make that data electronically available concurrently to all Parties.

Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.

Independent Power Producer: An entity which is a non-traditional public utility that produces and sells electricity but which does not have a retail service franchise.

Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.

Losses: As defined in Section 22.3 of this Agreement.

Market Disruption Event: As defined in Section 38.2 of this Agreement.

NERC: North American Electric Reliability Council or any successor organization.

Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.

Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

Non-Standard Confirmation Provisions: Provisions other than Standard Confirmation Provisions.

NYMEX: New York Mercantile Exchange and any successor organization.

Operating Agent: An agent of the WSPP as may be designated by the Executive Committee from time to time.

Operating Committee: That committee established pursuant to Section 8 of this Agreement.

Party or Parties: As defined in Section 1 of this Agreement.

Performing Party: As defined in Section 21.3(a) of this Agreement.

Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.

Physically-Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation.

Premium: The amount paid by the Purchaser of a Physically-Settled Option to the Seller of such option by the date agreed to by the Parties in the Confirmation.

Present Value Rate: As defined in Section 22.3(b) of this Agreement.

Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement and any applicable Confirmation.

Qualifying Facility: A facility which is a qualifying small power production facility or a qualifying cogeneration facility as these terms are defined in Federal Power Act Sections 3(17)(A), 3(17)(C), 3(18)(A), and 3(18)(B); which meets the requirements set forth in 18 C.F.R. §§ 292.203-292.209; or a facility in Canada or Mexico that complies with similar requirements.

Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute capacity and/or energy in place of the capacity and/or energy not delivered (for energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for

such quantity of capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point specified for the transaction in the Confirmation.

Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of capacity and/or energy, as determined by the Seller in a commercially reasonable manner at the delivery point specified for the transaction in a Confirmation.

Retail Entity: A retail aggregator or supplier or retail customer; provided, however, only those Retail Entities eligible for transmission service under the FERC's pro forma open access transmission tariff are eligible to become members of the WSPP.

Second Party: As defined in Section 27 of this Agreement.

Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement and the applicable Confirmation.

Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement on file with FERC as part of this Agreement.

Standard Confirmation Provisions: Provisions setting forth: Seller, Purchaser, period of delivery, schedule, delivery rate, delivery points, type of service (e.g. Service Schedule A, B, C or other), contract quantity, price, transmission path (if any), date, and certain additional information for physically settled options (option type, option style, exercise date or period, premium, premium payout date, and method for providing notice of exercise).

Successor in Operation: The successor entity which takes over the wholesale electric trading operations of the first entity either through a merger or restructuring. A Successor in Operation shall not include an entity which merely acquires power sales contracts from the first entity either through a purchase or other means without taking over the wholesale electric trading operations of the first entity.

Terminated Transaction: As defined in Section 22.2 of this Agreement.

Termination Payment: As defined in Section 22.2 of this Agreement.

Trading Day: As defined in Section 38.2 of this Agreement.

Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation.

Unit Commitment Service: A capacity and/or associated scheduled energy transaction or a Physically-Settled Option under which the Seller has agreed to sell and the Purchaser has agreed to buy from a specified unit(s) for a specified period, in accordance with the Agreement, including Service Schedule B, and any applicable Confirmation.

WSPP: WSPP Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

WSPP Default Transmission Tariff: The transmission tariff filed on behalf of WSPP members with FERC as it may be amended from time to time.

WSPP Homepage: WSPP's internet web site, www.wspp.org.

5. TERM, TERMINATION AND WITHDRAWAL:

- 5.1 This Agreement shall remain in effect until the Executive Committee, consistent with the voting provisions of Section 8.3, votes to terminate this Agreement and FERC accepts that termination, or FERC otherwise terminates the Agreement.
- 5.2 Any Party may withdraw its participation as a member of the WSPP and as a Party to this Agreement by providing thirty (30) days prior written notice to the Operating Agent and to the WSPP Homepage, and to all of its counterparties to outstanding transactions. As of the effective date of any withdrawal, the withdrawing Party shall have no further rights or obligations under this Agreement or as a member of the WSPP, except with respect to each outstanding Confirmation, all outstanding rights and obligations arising under any such Confirmation and this Agreement shall remain in full force and effect as if the withdrawal had not occurred. No Party shall oppose, before any court or regulatory agencies having jurisdiction, any other Party's withdrawal as provided in this Section.
- 5.3 Except as provided for in Section 5.2, after termination, or withdrawal with respect to the withdrawing Party, all rights to services provided under this Agreement shall cease, and no Party shall claim or assert any continuing right to such services thereunder. Except as provided in Section 5.2, no Party shall be required to provide services based in whole or in part on the existence of this Agreement or on the provision of services under this Agreement beyond the termination date, or date of withdrawal with respect to the withdrawing Party. If the Parties have entered into a master confirmation agreement only for WSPP

transactions as that term is defined in Section 32.10, the withdrawing Party shall have no further rights under that master confirmation agreement except for transactions that were outstanding at the time of the withdrawal.

- 5.4 The Parties subject to FERC jurisdiction under the Federal Power Act shall have the right to terminate their participation as a Member of the WSPP and as Party to this Agreement and any Confirmation without the necessity of filing with or approval by FERC, provided that such Parties comply with the requirements of Section 5.2.

6. SERVICE SCHEDULES AND WSPP DEFAULT TRANSMISSION TARIFF:

6.1 The Parties contemplate that they may, from time to time, add or remove Service Schedules under this Agreement. The attached Service Schedules A through E for Economy Energy Service, Unit Commitment Service, Firm Capacity/Energy Sale or Exchange Service, Operating Reserve – Spinning and Operating Reserve – Supplemental, and Energy Imbalance and Generator Imbalance Power, and Service Schedule R for Renewable Energy Certificate Transactions With And Without Energy, are incorporated into and made a part of this Agreement. Nothing contained herein shall be construed as affecting in any way the right of the Parties to jointly make application to FERC for a change in the rates and charges, classification, service, terms, or conditions affecting WSPP transactions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. Additional Service Schedules or amendments to existing Service Schedules, if any, shall be adopted only by amendment of this Agreement approved by the Executive Committee pursuant to Section 8.3 and shall become effective on the effective date allowed or accepted by FERC consistent with Section 39.

6.2 **[RESERVED]**

6.3 When the WSPP Default Transmission Tariff applies as specified in the preamble to such Default Transmission Tariff, Transmission Service under it shall be available both to Parties and non-Parties under this Agreement; provided, however, each Party or non-Party must be an eligible customer under the WSPP Default Transmission Tariff in order to receive service.

7. ADMINISTRATION:

- 7.1 The WSPP shall perform the administrative tasks necessary and appropriate to implement this Agreement. All authority to direct, manage and administer the WSPP shall reside in the Executive Committee. All duties assigned under this Agreement, or otherwise, to the Operating Committee, sub-committees, officers, Administrative Committee, or Operating Agent, are delegated powers of the Executive Committee and are subject to the Executive Committee's direction and control. The WSPP may engage the services of an Operating Agent, from time to time, to perform tasks in furtherance of this Agreement.
- 7.2 At least sixty (60) days prior to each calendar year that this Agreement is in effect, the Administrative Committee shall submit a budget for said year of operation to the Operating Committee for review. The proposed budget shall then be submitted, with the Operating Committee's recommendations, to the Executive Committee. The Executive Committee may approve the budget as submitted or with revisions. The Administrative Committee, Operating Committee, and Executive Committee shall address any appropriate revisions of the budget in the same manner.
- 7.3 The WSPP shall, as necessary, bill the Parties for costs incurred under this Agreement on an estimated basis reasonably in advance of when due, and such billings shall be paid by the Parties when due. Such billings shall be adjusted in the following month(s) to reflect recorded costs. Billing and payment of WSPP costs shall otherwise be implemented in accordance with the provisions of Section 9.

- 7.4 The WSPP shall maintain the WSPP Homepage and, as it deems appropriate, may engage a contractor for this purpose.
- 7.5 Each Party shall maintain a link to the WSPP Homepage and shall be responsible for expenses related thereto.
- 7.6 The WSPP, at reasonable times and places, shall make available its books of account, and records and documentation supporting expenditures under this Agreement, for the inspection of any Party for a period of time not to exceed two (2) years from the time such expenditures were incurred. A Party requesting review of the WSPP's records shall give the WSPP sufficient notice of its intent, but in no event less than thirty (30) days. The requesting Party may perform this review using personnel from its own staff or designate a certified public accounting firm for the purpose of this review. All costs incurred to perform this review shall be at the requesting Party's own expense. The Party performing the review shall not voluntarily release the WSPP's records or disclose any information contained therein to any third party unless the written consent of the WSPP and the Executive Committee has been obtained, except as required by law.
- 7.7 Upon the termination of this Agreement, in accordance with applicable law, the WSPP shall dispose of any and all of its assets and wind up its affairs as the Executive Committee may direct.

8. EXECUTIVE AND OPERATING COMMITTEES:

As a means of securing effective and timely cooperation within the activities hereunder and as a means of dealing on a prompt and orderly basis with various problems which may arise in connection with system coordination and operation under changing conditions, the Parties hereby establish an Executive Committee and an Operating Committee.

8.1 Executive Committee:

The Executive Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5 herein. The responsibilities of the Executive Committee are as follows:

- 8.1.1 To establish and amend bylaws of the WSPP consistent with this Agreement and to serve as the Board of Directors of the WSPP in accordance with applicable law.
- 8.1.2 To establish standing or ad hoc sub-committees as it may from time to time deem necessary or appropriate and appoint or elect members thereto. Such sub-committees shall include an Administrative Committee, as a standing committee, to administer the affairs of the WSPP as the Executive Committee may direct or approve. The Administrative Committee shall be comprised of the Chairman, Vice-Chairman, Secretary and Treasurer of the WSPP and the Chairman, and Vice-Chairman, and Secretary of the Operating Committee.
- 8.1.3 To review at least annually the service activities hereunder to ensure that such activities are consistent with the spirit and intent of this Agreement.

- 8.1.4 To review any unresolved issues which may arise hereunder and endeavor to resolve the issues.
- 8.1.5 To review and approve the WSPP's annual budget under this Agreement, and any revision thereto, in accordance with Section 7.2 of this Agreement or otherwise as the Executive Committee deems necessary or appropriate.
- 8.1.6 To amend this Agreement, from time to time, provided that no such amendment or restatement shall be effective unless approved or accepted by the FERC and subject to terms and conditions of such approval or acceptance. The effectiveness of any amendment also shall be consistent with Section 39.
- 8.1.7 To review and act on the application of an entity to become a Party to this Agreement, or to delegate such authority as the Executive Committee deems appropriate.
- 8.1.8 To do such other things and carry out such duties as specifically required or authorized by this Agreement.
- 8.1.9 To notify any Party of the rescission of its interest in this Agreement due to its failure to continue to meet the requirements of Section 16.1, or to delegate such authority to the Chairman of the Executive Committee, the Chairman of the Operating Committee, or the Administrative Committee.
- 8.1.10 To arrange for legal representation of the WSPP.

8.2 Operating Committee:

The Operating Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5. The responsibilities of the Operating Committee are as follows:

- 8.2.1 To establish, review, approve, or modify procedures and standard practices, consistent with the provisions hereof, for the guidance of operating employees in the Parties' electric systems as to matters affecting transactions under this Agreement.
- 8.2.2 To submit to the Executive Committee any proposed revisions to the Service Schedules or proposed additional Service Schedules.
- 8.2.3 To submit to the Executive Committee proposed amendments to this Agreement, provided that the Operating Committee shall have no authority to amend this Agreement, and further provided that the Executive Committee may amend this Agreement under Section 8.1.6 without having first received recommendations from the Operating Committee.
- 8.2.4 To establish, review, approve, or modify any scheduling or operating procedures required in connection with transactions under this Agreement.
- 8.2.5 To review and make recommendations to the Executive Committee for approval of the annual budget of the WSPP under this Agreement, including any proposed revisions thereto.
- 8.2.6 To review and recommend as necessary the types and arrangement of equipment for intersystem communication facilities to enhance transactions and benefits under this Agreement.
- 8.2.7 To monitor the administration and costs of the WSPP Homepage.
- 8.2.8 If the Executive Committee so directs, to review new member applications for membership in the WSPP under this Agreement and make

recommendations on said applications to the Executive Committee, or to delegate such authority as the Operating Committee deems appropriate.

8.2.9 To establish standing or ad hoc sub-committees and appoint or elect members of the Operating Committee thereto, provided that such sub-committees shall make recommendations to the Operating Committee and shall not be authorized to take any action or exercise any power reserved to the Operating Committee. Each sub-committee may elect a chairman, vice chairman, and secretary as it deems appropriate.

8.2.10 To do such other things and carry out such duties as specifically required or authorized by this Agreement or as directed by the Executive Committee; provided, however, that the Operating Committee shall have no authority to amend this Agreement.

8.3 All matters which require Operating Committee or Executive Committee approval as provided in this Agreement shall be by no less than ninety percent (90%) affirmative agreement of the committee members present or voting by proxy.

8.4 Unless otherwise agreed by all committee members of the Executive Committee or Operating Committee, as applicable, the Chairman of the Executive Committee and the Chairman of the Operating Committee shall cause all members of the applicable committee to receive notice of a committee meeting at least ten (10) Business Days prior to the date of the meeting. Such notice shall include an agenda of matters to be discussed and voted on at the meeting. All material issues to be submitted to a vote of the committee shall appear on the agenda.

- 8.5 In accordance with Section 16.5.1, each Party shall give notice to the WSPP of the name of its designated representative and alternate representative (to act in the absence of the designated representative) on each of the Executive Committee and Operating Committee, and of any changes thereto, and WSPP shall publish a listing of all such representatives on the WSPP Homepage. Each Party's designated representatives shall be authorized to act on its behalf with respect to votes taken of members of each committee and other activities of the committee.
- 8.6 The Executive Committee shall meet no less than once annually and otherwise as determined by its Chairman in his discretion. The Operating Committee shall meet as necessary, as determined by its Chairman in his discretion. A Chairman shall call a meeting of such committee upon the written request of not less than ten (10) members of the applicable committee.
- 8.7 The Executive Committee shall elect a Chairman, Vice-Chairman, Secretary and Treasurer. The Operating Committee shall elect a Chairman, Vice-Chairman, and Secretary. These officers shall serve terms of two-years duration, which terms shall commence on January 1 of the year following the election and expire on December 31 of the subsequent year, provided, that despite the expiration of an officer's term, the officer shall continue to serve until the officer's successor is elected and commences to serve, and further provided that with or without cause, the Executive Committee or Operating Committee, as applicable, may elect a substitute officer prior to the expiration of a term.
- 8.7.1 The Chairman of the Executive Committee shall be the Chairman of the WSPP. The Chairman shall preside over meetings of the Executive

Committee and, when the Executive Committee is not in session, exercise day to day management and control of the business and affairs of the WSPP, subject at all times to this Agreement and the direction of the Executive Committee.

8.7.2 The Vice-Chairman of the Executive Committee shall be the Vice-Chairman of the WSPP. The Vice-Chairman, in the absence or disability of the Chairman, shall exercise the powers and perform the duties of the Chairman and such other duties as the Executive Committee or the Chairman may prescribe, subject at all times to this Agreement and the direction of the Executive Committee.

8.7.3 The Secretary of the Executive Committee shall be the Secretary of the WSPP. The Secretary, or his designee, shall record minutes of meetings and actions of the Executive Committee, perform the customary duties of a secretary of a non-profit corporation, and attend to the giving and serving of all notices required by law or under this Agreement as the Chairman may direct.

8.7.4 The Treasurer of the Executive Committee shall be the Treasurer of the WSPP. The Treasurer shall have custody of all funds, securities, and evidences of indebtedness of the Corporation. The Treasurer shall receive and give receipts for moneys paid in on account of the Corporation and shall pay out of the funds on hand any bills, payrolls and other just debts of the Corporation of whatever nature upon maturity. The Treasurer shall maintain full and accurate accounts of all moneys received and paid out on account of

the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Executive Committee. The Treasurer shall adhere to budgets determined by the Executive Committee, including the annual budget under section 8.1.4 of this Agreement, and shall perform such other duties as are customary for a treasurer of a non-profit corporation.

- 8.7.5. The Chairman of the Operating Committee shall preside over Operating Committee meetings. The Vice Chairman of the Operating Committee shall serve in the absence of the Chairman and perform such other duties as the Operating Committee may assign. The Secretary of the Operating Committee, or his designee, shall record minutes of meetings and actions of the Operating Committee, and shall give notice of meetings as the Chairman may direct.

9. PAYMENTS:

- 9.1 The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to any Party shall be sent to the appropriate billing address as set forth on the WSPP homepage or as otherwise specified by such Party.
- 9.2 Payments for amounts billed under this Agreement and any Confirmation shall be received by the Party to be paid on the 20th day of the month in which the invoice was received or the tenth (10) day after receipt of the bill, whichever is later. Notwithstanding the foregoing, Premiums shall be paid within three (3) Business Days of receipt of the invoice. Payment shall be made at the location designated by the Party to which payment is due. Payment shall be considered received when payment is received by the Party to which Payment is due at the location designated by that Party. If the due date falls on a non-Business Day of either Party, then the payment shall be due on the next following Business Day.
- 9.3 Amounts not paid on or before the due date shall be payable with interest calculated daily, at a rate equal to 200 basis points above the per annum Prime Rate reported daily in the Wall Street Journal for the period beginning on the day after the due date and ending on the day of payment, provided that such interest shall not exceed the amount permitted by law.
- 9.4 In order to dispute a bill in whole or in part, a Party must provide written notice of the dispute to the other Party to the transaction. Such written notice shall specify the amount in dispute and state the basis for the dispute. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount

of bills which, through inadvertent errors or as a result of a dispute, may have been overpaid shall be returned by the owing Party upon determination of the correct amount, with interest calculated in the manner set forth in Section 9.3. A Party shall have the right to dispute the accuracy of any bill or payment only for a period of two (2) years from the date on which the bill was initially delivered.

9.5 If a Party's records reveal that a bill was not delivered, then the Party may deliver to the appropriate Party a bill within two (2) years from the date on which the bill would have been delivered under Section 9.1 of this Agreement. The right to payment is waived with respect to any amounts not billed within such two (2) year period.

9.6 Each Party, or any third party representative of a Party, shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements of charges submitted hereunder for a period of two (2) years from the date the bill was delivered under this Agreement and/or Confirmation.

Within a two (2) year period from the date on which the bill was initially delivered, any Party to the applicable transaction may request in writing copies of the records of the other Party for that transaction to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall provide all reasonably requested documents and data within a reasonable time period.

10. UNCONTROLLABLE FORCES:

No Party shall be considered to be in breach of this Agreement or any applicable Confirmation to the extent that a failure to perform its obligations under this Agreement or any such Confirmation is due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, an "Uncontrollable Force" may include and is not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority.

The following shall not be considered "Uncontrollable Forces": (i) Seller's cost of obtaining capacity and/or energy; or (ii) Purchaser's inability due to the price of the capacity and/or energy, to use or resell such capacity and/or energy. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall

exercise due diligence, as provided above, to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice.

Where the entity providing transmission services for transactions under this Agreement and Confirmation interrupts such transmission service, the interruption in transmission service shall be considered an Uncontrollable Force under this Section 10 only in the following two sets of circumstances:

- (1) An interruption in transmission service shall be considered an Uncontrollable Force if (a) the Parties agreed on a transmission path for that transaction in the Confirmation (b) firm transmission involving that transmission path was obtained pursuant to a transmission tariff or contract to effectuate the transaction under this Agreement and Confirmation, and (c) the entity providing transmission service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract. There shall be no due diligence obligation associated with interruptions under this subparagraph (1).
- (2) If the Parties did not agree on the transmission path for a transaction in the Confirmation, an interruption in transmission service shall be considered an Uncontrollable Force only if (a) the Party contracting for transmission services shall have made arrangements with the entity providing transmission service for firm transmission to effectuate the transaction under the Agreement and Confirmation, (b) the entity providing transmission service curtailed or interrupted such transmission service, and (c) the Party which contracted for such firm transmission services could not obtain alternate energy at the delivery point,

alternate transmission services, or alternate means of delivering energy after exercising due diligence.

No Party shall be relieved by operation of this Section 10 of any liability to pay for power delivered to the Purchaser or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

11. WAIVERS:

Any waiver at any time by any Party of its rights with respect to a default under this Agreement or any Confirmation, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

12. NOTICES:

12.1 Except for the oral notice provided for in Section 10 of this Agreement, any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail (postage prepaid), prepaid telegram, fax, or overnight delivery (with record of receipt).

12.2 Notices and requests of a routine nature applicable to delivery or receipt of capacity and/or energy shall be given in such manner as the Parties to a transaction shall prescribe in a Confirmation or otherwise; provided, however, if the Parties have not prescribed a method of providing such routine notices, then the procedures in Section 12.1 shall apply.

13. EFFECT OF APPROVALS:

- 13.1 This Agreement and all Confirmations are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. Nothing contained in this Agreement or any Confirmation shall give FERC jurisdiction over those Parties not otherwise subject to such jurisdiction or be construed as a grant of jurisdiction over any Party by any state or federal agency not otherwise having jurisdiction by law.
- 13.2 Nothing in this Agreement or any Confirmation is intended to restrict the authority of the Bonneville Power Administration (BPA) pursuant to applicable statutory authority to use its existing wholesale power and transmission rates or to adopt new rates, rate schedules, or general rate schedule provisions for application under this Agreement and obtain interim or final approval of those rates from FERC pursuant to Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. Sec. 839e, provided such rates do not exceed the maximum rates in the applicable Service Schedule and are consistent with the terms and conditions of said Service Schedule.
- 13.3 Nothing contained in this Agreement or any Confirmation shall be construed to establish any precedent for any other agreement or to grant any rights to or impose any obligations on any Party beyond the scope and term of this Agreement or any Confirmation.

14. TRANSFER OF INTEREST IN AGREEMENT:

No Party shall voluntarily transfer its membership in the WSPP under this Agreement without the written consent and approval of all other Parties except to a Successor in Operation of such Party. With regard to the transfer of the rights and obligations of any Party associated with transactions under this Agreement and Confirmation(s), neither Party to such transactions may assign such rights or obligations unless (a) the other Party provides its prior written consent which shall not be unreasonably withheld; or (b) the assignment is to a Successor in Operation which provides reasonable creditworthiness assurances (see Section 27 for examples of such assurances) if required by the non-assigning Party based upon its reasonably exercised discretion. Any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement and Confirmation(s) (where applicable) to the same extent as though such successor or assignee were the original Party under this Agreement or the Confirmation(s), and no assignment or transfer of any rights under this Agreement or any Confirmation(s) shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement and any Confirmation(s) (where applicable). The execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 14.

15. SEVERABILITY:

In the event that any of the terms, covenants or conditions of this Agreement or any Confirmation, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and the Confirmation and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement or such Confirmation(s).

16. MEMBERSHIP:

- 16.1 Any Electric Utility, Retail Entity or Qualifying Facility may become a Party to this Agreement. The Executive Committee shall notify such Electric Utility, Retail Entity or Qualifying Facility of its decision within sixty (60) days of a request to become a Party to this Agreement, and any acceptable entity shall become a Party hereto by the execution of this Agreement or a counterpart hereof, payment of costs pursuant to Section 16.4, and concluding any necessary acceptance or approval referred to in Section 13. Any such Party, if it is subject to the ratemaking jurisdiction of FERC, shall be responsible for any FERC filing necessary for it to implement its performance under this Agreement.
- 16.2 Each Party shall continue to meet the requirements of Section 16.1 in order to remain a Party to this Agreement
- 16.3 Being a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Party which operates a Control Area and any other Party which operates within that Control Area.
- 16.4 Any entity that becomes a Party to this Agreement which was not a party to the experimental Western Systems Power Pool Agreement shall pay a one time fee of \$25,000 under this Agreement in recognition of prior efforts and costs incurred by the parties to the experimental Western Systems Power Pool Agreement, which efforts greatly facilitated development of this Agreement. Such fee shall be credited to future costs of the WSPP incurred hereunder.

16.5 In addition to requirements set forth elsewhere in this Agreement imposed on Parties as part of their membership in the WSPP, each Party shall abide by the following requirements:

16.5.1 Each Party shall maintain updated information regarding its Executive Committee and Operating Committee representatives on the WSPP Homepage and shall submit changes within a reasonable time period.

16.5.2 With regard to disputes involving transactions under this Agreement or other agreements, no Party shall seek to conduct discovery of the WSPP or issue or seek to obtain the issuance of any subpoena to the WSPP or WSPP officers acting in their capacities as officers of the WSPP or of the WSPP's attorneys or consultants with regard to their work for the WSPP or their opinions regarding the construction or interpretation of any clause of the Agreement, provided that the foregoing prohibition shall not apply in proceedings brought against the WSPP. In the event a Party seeks to compel discovery or testimony in violation of this Section, that Party shall be deemed to have consented to the quashing of the subpoena or other process providing therefor. Notwithstanding any other provision in this Agreement, a Party that seeks to conduct discovery or issue or seek to obtain the issuance of any subpoena in breach of this provision shall compensate the WSPP and its officers, attorneys, and consultants, as applicable, for all out-of-pocket costs incurred.

16.6 An entity shall become a Party to this Agreement and a member of the WSPP upon satisfaction of the requirements in this Section 16 and on the date allowed

by FERC if it is a FERC public utility or upon the date of satisfaction of the requirements in this Section 16 if it is not a FERC public utility.

17. RELATIONSHIP OF PARTIES:

17.1 Nothing contained in this Agreement or in any Confirmation shall be construed to create an association, joint venture, trust, or partnership, or agency relationship between or among the Parties, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and under any applicable Confirmation.

17.2 All rights and obligations of the Parties under this Agreement are several and are not joint.

18. NO DEDICATION OF FACILITIES:

Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

19. NO RETAIL SERVICES:

Nothing contained in this Agreement shall grant any rights to or obligate any Party to provide any services hereunder directly to or for retail customers of any Party.

20. THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create rights, in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 14.

21. LIABILITY AND DAMAGES:

21.1 This Agreement contains express remedies and measures of damages in Sections 21.3 and 22 for non-performance or default. This Agreement also contains additional remedies to enforce payment of monies due and to enforce terms of the Agreement and applicable Confirmations in Section 21.2.

ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED.

Therefore, except as provided in Sections 21.3 and 22, no Party or its directors, members of its governing bodies, officers or employees shall be liable to any other Party or Parties for any loss or damage to property, loss of earnings, or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement (including any applicable Confirmation), including any negligence arising hereunder. Any liability or damages incurred by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

21.2 Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to seek payment of such monies in any forum having competent jurisdiction and (ii) shall possess the right to seek relief directly from that forum without first utilizing the mediation or arbitration provisions of this Agreement and without exercising termination and liquidation rights under Section 22.

In addition, each Party shall possess the right to seek specific performance (injunctive relief) of the non-delivery related terms of this Agreement and any Confirmation in any forum having competent jurisdiction. In seeking to enforce the terms of this Agreement, however, consistent with Section 21.1, no Party is entitled to receive or recover monetary damages except as provided in Sections 21.3 and 22.

21.3 The following damages provision shall apply to all transactions under this Agreement. For transactions under Service Schedule A, however, this damages provision or some other damages provision will apply only if such a damages provision is agreed to through a Confirmation. The damages under this Section 21.3 apply to a Party's failure to deliver or receive (or make available in the case of capacity) capacity and/or energy in violation of the terms of the Agreement and any Confirmation. The Contract Quantity and Contract Price referred to in this Section 21.3 are part of the agreement between the Parties for which damages are being calculated under this Section.

(a) If either Party fails to deliver or receive (or make available in the case of capacity), as the case may be, the quantities of capacity and/or energy due under the Agreement and any Confirmation (thereby becoming a "Non-Performing Party" for the purposes of this Section 21.3), the other party (the "Performing Party") shall be entitled to receive from the Non-Performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces as provided in Section 10, the applicable Service Schedule, or by the Performing Party):

- (1) If the amount the Purchaser scheduled or received in any hour is less than the applicable hourly Contract Quantity, then the Purchaser shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Contract Price differed from the Resale Price (Contract Price - Resale Price) and the amount by which the quantity provided to the Purchaser was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which the Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Purchaser's schedule or receipt of electric energy (based on Seller's reasonable commercial efforts to achieve such reduction). If the total amounts for all hours calculated under this paragraph (1) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(1).
- (2) If the amount the Seller scheduled or delivered (or made available in the case of capacity) in any hour is less than the applicable hourly Contract Quantity, then the Seller shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Replacement Price differed from the Contract Price (Replacement Price - Contract Price) and the amount by which the quantity provided by the Seller was less than the hourly Contract

Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which the Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Seller's schedule or delivery (based on Purchaser's reasonable commercial effort to achieve such reduction). If the total amounts for all hours calculated under this paragraph (2) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(2).

- (3) The Non-Performing Party also shall reimburse the Performing Party for any charges imposed on the Performing Party under open access transmission or FERC accepted or approved tariffs for regional organizations due to the non-performance.
- (4) The Non-Performing Party shall pay any amount due from it under this section within the billing period as specified in Section 9 of this Agreement or agreed to in the applicable Confirmation if the Parties agreed to revise the billing period in Section 9.
- (5) In the event (a) two Parties entered into two or more Confirmations in which the same Party is the Purchaser and the other Party is the Seller, (b) deliveries under two or more of such Confirmations are to occur, in whole or in part, on the same date and hour, and at the same delivery point, and (c) as to such date, hour, and delivery point, and with respect to one or more of such Confirmations, a

Party is a Non-Performing Party (for purposes of this Section 21.3(a)(5), each such instance of non-performance, a “non-performed transaction”), then, as set out in this Section 21.3(a)(5), each non-performed transaction shall be identified to a Confirmation, and the Contract Price of the Confirmation to which the non-performed transaction is identified, and the Contract Quantity of the non-performed transaction, shall be applied to the calculation of amounts due under Section 21.3(a)(1) through (3), as applicable.

The Parties in good faith shall seek to agree to the identification of each non-performed transaction to a Confirmation.

Each non-performed transaction not identified to a Confirmation by agreement, and any megawatt hours that are not fully accounted for by such identification, shall be identified to Confirmation(s) as follows:

- (i) The Performing Party in good faith shall determine whether each Confirmation is real-time, day-ahead, or forward; all Confirmations that are not real-time or day-ahead shall be deemed forward Confirmations.
- (ii) The Performing Party in good faith shall determine whether each non-performed transaction is real-time, day-ahead, or forward; all non-performed transactions that are not real-time or day-ahead shall be deemed forward non-performed transactions.

(iii) The Performing Party shall:

(x) identify real-time non-performed transactions to real-time Confirmations, provided, that if the megawatt hours of real-time non-performed transactions exceed the megawatt hours of real-time Confirmations, then such excess megawatt hours shall be identified to day-ahead Confirmations and any excess megawatt hours remaining after such identification to day-ahead Confirmations shall be identified to forward Confirmations.

(y) identify day-ahead non-performed transactions to day-ahead Confirmations, provided, that if the megawatt hours of day-ahead non-performed transactions exceed the megawatt hours of day-ahead Confirmations, then such excess megawatt hours shall be identified to forward Confirmations.

(z) identify all remaining non-performed transactions to forward Confirmations.

The Performing Party, in its billing for amounts due under Section 21.3(a)(1) through (3), shall set out a detailed explanation of each applicable determination under parts (i), (ii), and (iii) of this Section 21.3(a)(5), and state the resulting Contract Quantity and Contract Price, and any amounts associated with each such determination under Section 21.3(a)(3).

- (b) The Parties agree that the amounts recoverable under this Section 21.3 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the Performing Party. Such amounts are payable for the loss of bargain and the loss of protection against future risks.
- (c) Each Party agrees that it has a duty to mitigate damages in a commercially reasonable manner to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.
- (d) In the event the Non-Performing Party disputes the calculation of the damages under this Section 21.3, the Non-Performing Party shall pay the full amount of the damages as required by Section 9 of this Agreement to the Performing Party. After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement. If resolution or agreement results in refunds or the need for refunds to the Non-Performing Party, such refunds shall be calculated in accordance with Section 9.4 of this Agreement.
- (e) In the event non-performance of a transaction is accounted for by means of a Damages Settlement Transaction and the Damages Settlement Transaction is performed, then no damages shall be calculated or due under § 21.3(a) with respect to the non-performed transaction. Neither Party shall be required to enter into a Damages Settlement Transaction.

**22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND
CONFIRMATIONS:**

22.1 EVENTS OF DEFAULT

An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

- (a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement or Confirmation if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("the Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) the failure by the Defaulting Party to provide clear and good title as required by Section 33.3, or to have made accurate representations and warranties as required by Section 37 and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-

Defaulting Party under the Agreement or any Confirmation pursuant to Section 27 of this Agreement or any substitute or modified provision in any Confirmation.

- (e) With respect to its Guarantor, if any:
 - (i) if a material representation or warranty made by a Guarantor in connection with this Agreement, or any transaction entered into hereunder, is false or misleading in any material respect when made or when deemed made or repeated; or
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement, including any transaction entered into hereunder, and such failure shall not be remedied within three (3) Business Days after written notice; or
 - (iii) the institution, with respect to the Guarantor, by the Guarantor or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
 - (iv) the failure, without written consent of the other Party, of a Guarantor's guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to

the satisfaction of all obligations of such Party under each transaction to which such guarantee shall relate; or

- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, any guarantee.

22.2 REMEDIES FOR EVENTS OF DEFAULT

22.2(a) If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance of transactions under this Agreement; provided, however, (i) in no event shall any such suspension continue for longer than ten (10) Business Days; (ii) such suspension must include all transactions under this Agreement in effect as of the date of the suspension between the Defaulting Party and the Non-Defaulting Party; and (iii) such suspension is available only once for each default. This ten (10) day suspension period shall not affect in any way the thirty (30) day period for exercising a right of termination under Section 22.2(b). The Non-Defaulting Party shall have the unilateral right to exercise its rights under this Agreement including its termination rights at any time within the suspension period. The Defaulting Party shall have no suspension rights. In no event shall the suspension continue beyond the cure of or waiver by the Non-Defaulting Party of the applicable Event of Default. If the Non-Defaulting Party seeks to terminate the suspension period such that the suspension shall be terminated prior to the end of the ten (10) Business Day period specified above, it may do so only by providing at least

twenty-four (24) hours written notice to the Defaulting Party before the suspension may be terminated.

22.2(b) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate all transactions between the Parties under this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. If the Non-Defaulting Party fails to exercise this right of termination within thirty (30) days following the time when the Event of Default becomes known (or more than thirty days if the Non-Defaulting and Defaulting Parties agree to an extension), then such right of termination shall no longer be available to the Non-Defaulting Party as a remedy for the Event(s) of Default; provided, however, this thirty day requirement for exercising termination rights shall not apply to defaults pursuant to Sections 22.1(c) and 22.1(e)(iii). The Non-Defaulting Party terminating transaction(s) under this Section 22.2 may do so without making a filing at FERC.

If the Non-Defaulting Party elects to terminate under this Section, it shall be required to terminate all transactions between the Parties under the Agreement at the same time. Upon termination, the Non-Defaulting Party shall liquidate all transactions as soon as practicable, provided that in no event will the Non-Defaulting Party be allowed to liquidate Service Schedule A transactions. The payment associated with termination ("Termination Payment") shall be calculated in accordance with this

Section 22.2 and Section 22.3. The Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for each terminated transaction ("Terminated Transaction") for the time period beginning at the time notice of termination under this Section 22 is received. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it under Section 21.3 of this Agreement or Confirmation(s), and any other remedies available to it at law or otherwise.

Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement or Confirmation(s) until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party. The Non-Defaulting Party shall possess the right to set-off the amount due it under this Section 22 by any such payments due the Defaulting Party as provided in Section 22.3(d).

22.3 LIQUIDATION CALCULATION OPTIONS

The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) The Gains and Losses shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each Terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each Terminated

Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from Dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts (or NYMEX power options contracts in the case of Physically-Settled Options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.

- (b) The Gains and Losses calculated under paragraph (a) shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of the Terminated Transactions; and
- (c) The Non-Defaulting Party shall set off or aggregate, as appropriate, the Gains and Losses (as calculated in Section 22.3(a)) and Costs and notify

the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, which amount shall bear interest at the Present Value rate from the time notice of termination was received until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party, after any set-off as provided in paragraph (d), shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received including interest at the Present Value from the time notice of termination was received until the Defaulting Party receives payment.

(d) The Non-Defaulting Party shall aggregate or set off, as appropriate, at its election, any or all other amounts owing between the Parties (discounted at the Present Value Rate) under this Agreement and any Confirmation against the Termination Payment so that all such amounts are aggregated and/or netted to a single liquidated amount. The net amount due from any such liquidation shall be paid within three (3) Business Days following the date notice of termination is received.

(e) (i) If the Non-Defaulting Party owes the Defaulting Party monies under this Section 22.3, then notwithstanding the three Business Day payment requirement detailed above, the Non-Defaulting Party may elect to pay the Defaulting Party the monies owed under this Section 22.3 over the remaining life of the contract(s) being

terminated. The Non-Defaulting Party may make this election by providing written notice to the Defaulting Party within three Business Days of the notice being provided to terminate and liquidate under this Section 22.3. The Non-Defaulting Party shall provide the Defaulting Party with the details on the method for recovering the monies owed over the remaining life of the contract(s). That method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each contract which allows it to receive the monies which would have been due it under Sections 22.3(c) and (d) in total (to be recovered over the term of the contract(s) to replicate as closely as possible the payment streams under such contract(s)) provided that the discounting using the Present Value Rate referenced in Section 22.3 (b) shall not be reflected in determining the amounts to be recovered under this provision. Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful.

- (ii) This Section 22.3(e) and the rights and obligations under it shall survive termination of any applicable transactions or agreements.
- (iii) The Party owed monies under this Section 22.3(e) shall have the right to request credit assurances consistent with Section 27 even

after termination of any contract or transaction.

- (iv) If the Party owing money defaults on its payment obligations consistent with Section 22.1(a) or defaults with regard to providing credit assurances consistent with Section 22.1(d), then the other Party shall have the right (by written notice) at any time after the Party owing money defaults to require that Party to pay all monies owed under all of the contracts subject to this Section 22.3(e) within three Business Days of receipt of the written notice. The monies to be paid under this accelerated payment provision shall be the remaining amounts to be paid under the contract(s) reflecting a discount using the Present Value Rate from the date of the written notice.
- (f) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal dispute resolution as provided in Section 34.1 of this Agreement and thereafter binding dispute resolution pursuant to Section 34.2 if the informal dispute resolution does not succeed in resolving the dispute. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within three (3) Business Days (except if the option under 22.3(e) has been invoked in which case the payment times in that provision would apply) of receipt of notice as set forth in Sections 22.3(c) and (d) subject to the Non-Defaulting Party

refunding, with interest, pursuant to Section 9.4, any amounts determined to have been overpaid.

(g) For purposes of this Section 22.3:

- (i) "Gains" means the economic benefit (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (ii) "Losses" means the economic loss (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (iii) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements which replace a Terminated Transaction, transmission and ancillary service costs associated with Terminated Transactions, and reasonable attorneys' fees, if any, incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the Terminated Transactions. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.
- (iv) In no event, however, shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

22A. DEFAULT IN PAYMENT OF WSPP OPERATING COSTS:

22A.1 A Party shall be deemed to be in default in payment of its share of WSPP operating costs pursuant to Section 7 of this Agreement, if any, when payment is not received within ten (10) days after receipt of written notice. A default by any Party in such payment obligations shall be cured by payment of all overdue amounts together with interest accrued at the rate of one percent (1%) per month, or the maximum interest rate permitted by law, if any, whichever is less, prorated by days from the due date to the date the payment curing the default is made unless and until the Executive Committee shall determine another rate.

22A.2 A defaulting Party, which is in default under Section 22.A1, shall be liable for all costs, including costs of collection and reasonable attorney fees, plus interest as provided in Section 22.A1 hereof.

22A.3 The rights under this Agreement of a Party which is in default of its obligation to pay operating costs under this Agreement for a period of three (3) months or more may be revoked by a vote of the non-defaulting Parties' representatives on the Executive Committee consistent with Section 8.3. The defaulting Party's rights shall not be revoked, however, unless said Party has received at least thirty (30) days written notice of the non-defaulting Parties' intent to revoke such rights. Said notice shall state the date on which the revocation of rights shall become effective if the default is not cured and shall state all actions which must be taken or amounts which must be paid to cure the default. This provision allowing the non-defaulting Parties to revoke such rights is in addition to any other remedies provided in this Agreement or at law and shall in no way limit the non-defaulting

Parties' ability to seek judicial enforcement of the defaulting Party's obligations to pay its share of the operating costs under this Agreement. Upon the effective date of such revocation of rights, the defaulting party shall not be allowed to enter into any new transactions under this Agreement. The defaulting party under the Agreement and Confirmation(s) shall be required to carry out all obligations that existed prior to the effective date of such revocation. If a defaulting Party's rights under this Agreement have been revoked, the Executive Committee may restore that Party's rights upon the defaulting Party paying all amounts due and owing under this Agreement.

22A.4 Upon revocation of the rights of a defaulting Party under this Agreement, costs of the WSPP hereunder shall be equally shared among the remaining Parties. Cost allocation adjustments shall be retroactive to the date of the default.

23. OTHER AGREEMENTS:

No provision of this Agreement shall preclude any Party from entering into other agreements or conducting transactions under existing agreements with other Parties or third parties. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Parties.

24. GOVERNING LAW:

This Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of Utah, without regard to the conflicts of laws rules thereof. The foregoing notwithstanding, (1) if both the Seller and Purchaser are organized under the laws of Canada, then the laws of the province of the Seller shall govern, or (2) if the Seller or Purchaser is an agency of or part of the United States Government, then the laws of the United States of America shall govern.

25. JUDGMENTS AND DETERMINATIONS:

Whenever it is provided in this Agreement that a Party shall be the sole judge of whether, to what extent, or under what conditions it will provide a given service, its exercise of its judgment shall be final and not subject to challenge. Whenever it is provided that (i) a service under a given transaction may be curtailed under certain conditions or circumstances, the existence of which are determined by or in the judgment of a Party, or (ii) the existence of qualifications for membership shall be determined by the Executive Committee pursuant to Section 16, that Party's or the Executive Committee's determination or exercise of judgment shall be final and not subject to challenge if it is made in good faith and not made arbitrarily or capriciously.

26. COMPLETE AGREEMENT:

This Agreement and the Confirmation(s), shall constitute the full and complete agreement of the Parties with respect to a transaction, except as provided under Section 32.4.

27. CREDITWORTHINESS:

Should a Party's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the other Party in such other Party's reasonably exercised discretion with regard to any transaction pursuant to this Agreement and any Confirmation, the dissatisfied Party (the "First Party") may require the other Party (the "Second Party") to provide, at the Second Party's option (but subject to the First Party's acceptance based upon reasonably exercised discretion), either (1) the posting of a Letter of Credit, (2) a cash prepayment, (3) the posting of other acceptable collateral or security by the Second Party, (4) a Guarantee Agreement executed by a creditworthy entity; or (5) some other mutually agreeable method of satisfying the First Party. The Second Party's obligations under this Section 27 shall be limited to a reasonable estimate of the damages to the First Party (consistent with Section 22.3 of this Agreement) if the Second Party were to fail to perform its obligations. Events which may trigger the First Party questioning the Second Party's creditworthiness, financial responsibility, or performance viability include, but are not limited to, the following:

- (1) The First Party has knowledge that the Second Party (or its Guarantor if applicable) are failing to perform or defaulting under other contracts.
- (2) The Second Party has exceeded any credit or trading limit set out in any Confirmation or other agreement between the Parties.
- (3) The Second Party or its Guarantor has debt which is rated as investment grade and that debt falls below the investment grade rating by at least one rating agency or is below investment grade and the rating of that debt is downgraded further by at least one rating agency.

- (4) Other material adverse changes in the Second Party's financial condition occur.
- (5) Substantial changes in market prices which materially and adversely impact the Second Party's ability to perform under this Agreement or any Confirmation occur.

If the Second Party fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within three (3) Business Days of demand therefore, that will be considered an Event of Default under Section 22 of this Agreement and the First Party shall have the right to exercise any of the remedies provided for under that Section 22. Nothing contained in this Section 27 shall affect any credit agreement or arrangement, if any, between the Parties.

28. NETTING:

- 28.1 Parties shall net payments (associated with transactions under this Agreement and Confirmation(s)) in accordance with Exhibit A, if such Parties have executed the form attached as Exhibit A. The Parties' obligations to net shall include the netting of all payments received by the Parties in the same calendar month. Parties that have executed Exhibit A shall provide a signed copy of Exhibit A to a representative of the WSPP and to any Party that requests a copy and indicate on the WSPP Homepage that they have executed Exhibit A. If a Party indicated its election to net payments on the WSPP Homepage and that Party desires to withdraw its agreement to net, that Party shall provide at least 30 days notice on the WSPP Homepage of the change in its election to net and also shall provide, concurrent with its withdrawal notice, written notice to all Parties with which it has ongoing transactions or with which it has committed to future transactions under the Agreement at the time of the notice. Any such changes in netting status shall apply beginning at least 30 days after notice required by this Section 28.2 is provided and only shall apply to transactions agreed to beginning on or after the date the change in netting status becomes effective.
- 28.2 The Parties may by separate agreement either through a Confirmation or some other agreement set out specific terms relating to the implementation of the netting in addition to or in lieu of Exhibit A.
- 28.3 Each Party reserves to itself all rights, set offs, counterclaims, and other remedies and defenses (to the extent not expressly herein waived or denied) which such

Party has or may be entitled to arising from or out of this Agreement and any applicable Confirmation.

29. TAXES:

The Contract Price for all transactions under this Agreement shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Purchaser for if the Purchaser has paid, all taxes applicable to a transaction that arise prior to the delivery point. If the Purchaser is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Seller shall indemnify, defend, and hold harmless the Purchaser from any claims for such taxes. The Contract Price does not include reimbursement for, and the Purchaser is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to a transaction arising at and from the delivery point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Purchaser. The Purchaser shall indemnify, defend, and hold harmless the Seller from any claims for such taxes. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either 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. Taxes are any amounts imposed by a taxing authority associated with the transaction.

30. CONFIDENTIALITY:

30.1 The terms of any transaction under this Agreement or any other information exchanged by the Purchaser and Seller relating to the transaction shall not be disclosed to any person not employed or retained by the Purchaser or the Seller or their affiliates, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, regional reliability council, or successor organization requirements; (6) necessary to obtain transmission service; or (7) to a developer of an index of electric power prices in accordance with Section 30.2. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

30.2 A Party may disclose the terms of transactions under this Agreement, excluding the identities of parties, to any developer of any index of electric power prices without violation of the confidentiality obligations under Section 30.1 if: (1) the disclosing Party and the index developer have entered into a written agreement, prior to the disclosure, under which the developer has agreed to use the information solely for the development of an index of electric power prices for publication and not for any other purpose; and (2) the index with respect to which disclosure is made is an aggregation of terms of transactions and does not identify terms of single transactions or the identities of parties to transactions.

31. TRANSMISSION TARIFF:

Pursuant to FERC Order No. 888, issued on April 24, 1996, and FERC orders where applicable, the WSPP Default Transmission Tariff has been filed and has become effective. The Parties agree to be bound by the terms of that Tariff for so long as they are WSPP members.

32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS:

32.1 General

32.1.1 A Confirmation shall include, at a minimum, the Standard Confirmation Provisions. (See Exhibit C for a sample). Subject to the limitations in Section 32.2 (Standard Confirmation Provisions) and Section 32.3 (Non-Standard Confirmation Provisions), the Confirmation shall be made in writing by a Documentary Writing or an Electronic Writing, or shall be an Electronic Platform Confirmation.

32.1.2 Pursuant to the provisions of this Section 32, the Parties to a transaction under this Agreement may agree to modify any term of this Agreement (other than provisions regarding the operation of the WSPP as an organization including Sections 7 and 8) which applies to such transaction, such agreement to be stated in a Confirmation or Confirmations.

32.1.3 Sections 32.2 and 32.3 shall not apply to an Electronic Platform Confirmation. Parties may amend an Electronic Platform Confirmation in accordance with the procedures, if any, of the applicable platform or exchange or in any other manner this Agreement permits. Each Electronic Platform Confirmation between WSPP members shall be subject to this Agreement, unless the transaction specified in the Electronic Platform Confirmation is subject to another agreement between the Parties other than a master Confirmation applicable to the Parties' WSPP Confirmations.

32.2 Process For Confirming Standard Confirmation Provisions.

32.2.1 Confirmation of Standard Confirmation Provisions For Transactions of Less Than One Week in Duration.

Confirmation for Standard Confirmation Provisions applicable to transactions of less than one week in duration may be through:

- (i) a Documentary Writing (including a Confirmation which is not executed by both Parties but which is binding under Section 32.2.3) or
- (ii) an Electronic Writing.

Notwithstanding the foregoing sentence, with respect to a transaction of less than one week in duration as agreed in an Electronic Writing and that is to commence within one week of that agreement, a subsequent proposed confirming Documentary Writing under Section 32.2.3 shall not vary the terms of the Electronic Writing unless the Documentary Writing is executed by both Parties.

32.2.2 Standard Confirmation Provisions For Transactions of One Week or More in Duration.

Written confirmation shall be required for all Standard Confirmation Provisions for transactions of one week or more in duration. Such written confirmation may be made by a Documentary Writing executed by both Parties or a Documentary Writing not executed by both Parties but which is binding under Section 32.2.3.

32.2.3 Written Confirmation Process for Standard Confirmation Provisions.

The Seller shall provide a proposed Documentary Writing containing the proposed Standard Confirmation Provisions which must be received by the Purchaser within five Business Days of the date of the agreement to the transaction. The Purchaser shall have five Business Days from date of receipt to accept or propose modifications to the proposed Documentary Writing. If the Purchaser does not respond within that time period, the Seller's proposed Documentary Writing shall be considered as accepted and shall be the final Confirmation. If the Seller fails to provide a proposed Documentary Writing within the five Business Days period, then, within the immediately subsequent five Business Days, the Purchaser may submit a proposed Documentary Writing to the Seller. The Seller shall then have five Business Days from date of receipt to accept or propose modifications to the proposed Documentary Writing. If the Seller does not respond within that time period, the Purchaser's proposed Documentary Writing shall be considered as accepted and shall be the final Confirmation.

32.3 Process for Confirming Non-Standard Confirmation Provisions.

32.3.1 Non-Standard Confirmation Provisions for Transactions of Less Than One Week in Duration. Confirmation for Non-Standard Confirmation Provisions for a transaction of less than one week in duration only may be through: (i) an Electronic Writing; or (ii) in a Documentary Writing executed by both Parties.

32.3.2 Non-Standard Confirmation Provisions for Transactions of One Week or More in Duration. Confirmation for Non-Standard Confirmation Provisions for transactions of one week or more only shall be through a Documentary Writing executed by both Parties.

32.3.3 WSPP Agreement is a Default Agreement.

If the Parties to a transaction (i) do not reach agreement on any proposed Non-Standard Confirmation Provision and (ii) do not confirm it under Section 32.3.1 or 32.3.2, as applicable, then the term or terms of the Agreement, which the Parties could not reach agreement to modify or change or which are not considered modified pursuant to this Section 32.3, shall apply to the transaction.

32.4 Prior Discussions And Statements

32.4.1 A Confirmation under Section 32.2 and/or 32.3, shall, together with this Agreement, be an integrated contract with respect to the transaction, shall supersede all discussions and negotiations with respect thereto, and are intended by the Parties as a final expression of their agreement with respect to such terms as are included therein and may not be contradicted by evidence of any prior agreement unless there is clear and convincing evidence of a mutual mistake in the Confirmation.

32.4.2 Notwithstanding any provision in this Agreement (including Sections 32.3.2 and 32.4.1), until the Confirmation has become final in accordance with Sections 32.2 and/or 32.3 for a transaction, any oral agreement or

electronic communication establishing agreement of the Parties relating to such transaction shall remain valid and binding.

- 32.5 The Parties agree not to contest, or assert any defense with respect to, the validity or enforceability of any agreement to the terms concerning a specific transaction, on the basis that documentation of such terms fails to comply with the requirements of any statute that agreements be written or signed. Each Party consents to the recording by the other Party, without any further notice, of telephone conversations between representatives of the Parties, which contain agreements to or discussion concerning the terms of a specific transaction. All such recordings may be introduced and admitted into evidence for the purpose of proving agreements to terms, and any objection to such introduction or admission for such purpose is hereby expressly waived.
- 32.6 In the event of a conflict between a binding and effective Confirmation and this Agreement, the Confirmation shall govern.
- 32.7 The Seller shall not be required to file any Confirmation with FERC except as provided in the Service Schedules.
- 32.8 Other Products and Service Levels: The Parties may apply this Agreement and make a Confirmation with respect to a product/service level defined under any other document or form of agreement (e.g., the California ISO tariff, the ERCOT agreement or the EEI agreement). The confirmation process set forth in Section 32.3 shall apply to any such Confirmation. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such transaction consistent with Section 32.3, the transaction shall be subject to

all the terms of this Agreement, except that (1) all service level/product definitions, (2) force majeure/uncontrollable force definitions, and (3) other terms as mutually agreed shall have the meaning ascribed to them in the different agreement or in the applicable Confirmation.

32.9 Reserved.

32.10 The Parties may agree to modify terms of this Agreement for more than one transaction pursuant to a separate written agreement (a “master confirmation agreement”), which agreement shall be considered part of each Confirmation between the Parties and shall apply to all transactions entered into between the two Parties unless the Parties specifically agree to override such changes for a particular transaction consistent with the procedure in Section 32.2 or 32.3, whichever is applicable.

33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES:

33.1 Performance

33.1.1 The Seller shall deliver to the delivery point(s) as agreed to in the applicable Confirmation and sell to the Purchaser in accordance with the terms of the Agreement and such Confirmation.

33.1.2 The Purchaser shall receive and purchase the Contract Quantity, as agreed to by the Parties in the applicable Confirmation, at the delivery point(s) and purchase from the Seller in accordance with the terms of the Agreement and such Confirmation.

33.2 Title and Risk of Loss

Title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser at the delivery point agreed to in the Confirmation; provided, however, with regard to federal agencies or parts of the United States Government, title to and risk of loss shall pass to Purchaser to the extent permitted by and consistent with applicable law.

33.3 Warranties

The Seller warrants that it will transfer to the Purchaser good title to the electric energy sold under the Agreement and any Confirmation, free and clear of all liens, claims, and encumbrances arising or attaching prior to the delivery point and that Seller's sale is in compliance with all applicable laws and regulations.

THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES,

**EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF
MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

34. DISPUTE RESOLUTION:

34.1 INFORMAL DISPUTE RESOLUTION

Before binding dispute resolution or any other form of litigation may proceed, any dispute between the Parties to a transaction under this Agreement first shall be referred to nonbinding mediation except for actions taken pursuant to Section 21.2. The Parties shall attempt to agree upon a mediator from a list of ten (10) candidates provided by the Chairman of the WSPP Operating Committee or his or her designee. If the Parties are unable to agree, then the Chairman or the designee shall appoint a mediator for the dispute. Neither the mediator nor the person involved on behalf of the WSPP in developing a list of mediators for the Parties to choose from or in selecting the mediator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the mediation. The WSPP shall establish procedures for the appointment of mediators and the conduct of mediation and those procedures shall apply to the mediation.

34.2 BINDING DISPUTE RESOLUTION

The Parties to a dispute may elect binding dispute resolution using the following process unless binding arbitration of certain disputes is required under this Agreement in which event the Parties shall use the process set forth in this Section 34.2 to resolve such disputes, unless the Parties otherwise agree:

- (a) WSPP Dispute Resolution: A Party to a dispute (if binding dispute resolution is required) or all Parties to a dispute (if agreement of the Parties is required for binding dispute resolution) may initiate binding

dispute resolution under WSPP procedures by notifying the Chairman of the WSPP Operating Committee or his or her designee. The Chairman or his or her designee shall provide the Parties with a list of ten (10) eligible arbitrators. Within ten (10) days of receiving the list, the Parties shall agree on a single arbitrator from the list to conduct the arbitration, or notify the Chairman of the Operating Committee or the designee of their inability to reach agreement. If notified of the Parties inability to reach agreement, then the Chairman or the designee shall choose the arbitrator from the list within five (5) days. Neither the arbitrator nor the person involved on behalf of the WSPP in developing a list of arbitrators for the Parties to choose from or in selecting the arbitrator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the arbitration. The Procedures to be used for this arbitration shall follow the arbitration procedures which shall be developed and maintained by the WSPP and the procedures will be generally consistent with the commercial arbitration rules of the American Arbitration Association though not involving the Association.

If the Parties agree to binding dispute resolution under this Section 34.2, each Party understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by this arbitration provision. Notwithstanding the foregoing, nothing herein is intended to waive any provision of the Federal Arbitration Act, 9 U.S.C. § 1, et. seq., or any right under state

statute or common law to challenge an arbitration award or to prevent any action to enforce any arbitration award.

A Party's liability and damages under any arbitration award resulting from the process set forth in this Section 34.2 shall be limited as provided in this Agreement or in any Confirmation.

34.3 COSTS

Each Party shall be responsible for its own costs and those of its counsel and representatives. The Parties shall equally divide the costs of the arbitrator or mediator and the hearing.

34.4 CONFIDENTIALITY

Any arbitration or mediation under this Section 34 shall be conducted on a confidential basis and not disclosed, including any documents or results which shall be considered confidential, unless the Parties otherwise agree or such disclosure is required by law.

35. FORWARD CONTRACTS:

The Parties acknowledge and agree that all transactions under the Agreement and Confirmation(s) are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The Parties acknowledge and agree that all of their transactions, together with this Agreement and the related Confirmation(s) form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

36. TRADE OPTION EXEMPTION

The Parties intend that any Physically Settled Option under this Agreement shall qualify under the trade option exemption, 17 C.F.R. § 32.3. Accordingly, each Party buying or selling a Physically Settled Option agrees and warrants that any such option shall be offered only to a provider, user, or merchant and that the entities entering into the options are doing so solely for purposes related to their business.

37. ADDITIONAL REPRESENTATIONS AND WARRANTIES:

Each Party warrants and represents to the other(s) that it possesses the necessary corporate, governmental and legal authority, right and power to enter into and agree to the applicable Confirmation for a transaction or transactions and to perform each and every duty imposed, and that the Parties' agreement to buy and sell power under this Agreement and the Confirmation represents a contract. Each Party also warrants and represents to the other(s) that each of its representatives executing or agreeing through a Confirmation to a transaction under this Agreement is authorized to act on its behalf.

Each Party further warrants and represents that entering into this Agreement and any applicable Confirmation does not violate or conflict with its Charter, By-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and applicable Confirmation, constitute a legal, valid and binding obligation enforceable against such Party in accordance with the terms of such agreements.

Each Party also represents that it is solvent and that on each delivery this representation shall be deemed renewed unless notice to the contrary is given in writing by the Purchaser to the Seller before delivery.

38. FLOATING PRICES:

38.1 In the event the Parties intend that the price for a transaction is to be based on an index, exchange or any other kind of variable reference price (such price being a "Floating Price"), the Parties shall specify the "Floating Price" to be used to calculate the amounts in a Confirmation due Seller for that transaction.

38.2 Market Disruption. If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined as follows. The Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price) for the affected Trading Day. If the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by the Parties based upon (1) quotes from Dealers in energy contracts; and/or (2) quotes from Brokers in energy contracts. Each Party may obtain up to a maximum of four quotes which must be provided to the other Party no later than twenty-two Business Days following the first Business Day on which the Market Disruption Event occurred or existed. These quotes shall reflect transacted prices. The Floating Price for the affected Trading Day shall equal a simple average of the quotes obtained and provided by the Parties consistent with the provisions of this Section 38. Each Party providing quote(s) to the other Party also shall identify to that other Party the Dealer(s) and/or the Broker(s) who provided each of the quotes to allow verification.

“Determination Period” means each calendar month during the term of the relevant transaction; provided that if the term of the transaction is less than one calendar month the Determination Period shall be the term of the transaction.

“Market Disruption Event” means, with respect to an index, any of the following events (the existence of which shall be determined in good faith by the Parties):

(a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

“Trading Day” means a day in respect of which the relevant price source published the relevant price or would have published the relevant price but for the Market Disruption Event.

38.3 Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

38.4 Corrections. For the purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to

determine the relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will pay such amount consistent with the provisions of this Section 38.4. The amount that is payable as a result of the correction shall be included in the billing cycle in which the notice of the correction is provided.

39. AMENDMENT:

- 39.1 This Agreement may be amended upon the submission to FERC and acceptance by FERC of that amendment. The effective date of the amendment shall be the date on which FERC allows the amendment to become effective; provided, however, if the FERC orders a hearing on a filing under Section 205 of the Federal Power Act proposing an amendment to this Agreement, the amendment as it may be revised by the FERC shall not become effective until the FERC issues its final order (i.e. its order on rehearing before any judicial review) on the amendment. The Parties through the Executive Committee shall direct the filing of any amendments. The Parties to this Agreement agree to bound by this Agreement as it may be amended, provided that the Parties possess the right to challenge any amendments at FERC and to exercise any applicable withdrawal rights under this Agreement.
- 39.2 Unless otherwise stated in the amendment, all amendments shall apply only to new transactions entered into or agreed to on or after the effective date of the amendment. Preexisting agreements and transactions shall operate under the version of the WSPP Agreement effective at the time of the agreement for the transaction unless the Parties to a transaction or transactions mutually agree otherwise.
- 39.3 An agreement modifying this Agreement or a Confirmation for a transaction needs no consideration to be binding.

40. EXECUTION BY COUNTERPARTS:

This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

41. WITNESS:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the 27th day of July, 1991 (or as of the date of execution of this Agreement by each Party's duly authorized representation, in the case of any Party that becomes a signatory to this Agreement subsequent to July 27, 1991).

By: _____

Name of signing official:

Title:

Name of Member:

Date:

EXHIBIT A

NETTING

Each Party that executes this Exhibit A to the Agreement agrees to net payments for transactions under the WSPP Agreement and the applicable Confirmation(s) with any other Party or Parties which also have agreed to net payments by executing a copy of this Exhibit A. The Party executing this Exhibit A shall indicate below when it desires that its agreement to net becomes effective. A Party agreeing to net under this Exhibit A shall comply with the provisions of Section 28.2 of the Agreement. Defined terms used herein are as defined in the WSPP Agreement. Netting shall be done in accordance with the following provision:

If the Purchaser and Seller are each required to pay an amount on the payment due date in the same month for transactions under the Agreement and Confirmation(s), then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other party the difference between the amounts owed consistent with the payment times in Section 9.2 of the Agreement, unless the Parties have otherwise agreed to a different payment time as allowed by the Agreement. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the Agreement. All outstanding payments between the Parties which are to be netted pursuant to this Exhibit A for transactions under WSPP Agreement and the applicable Confirmation(s) shall be offset against each other or set off or recouped therefrom.

Name of Authorized Representative

Effective Date for Netting

Name of WSPP Member

Signature of Authorized
Representative

Date of Execution

[WSPP SAMPLE FORM – PARTIES ARE FREE TO USE THIS OR DISREGARD IT.]

EXHIBIT B

FORM OF COUNTERPARTY GUARANTEE AGREEMENT

This Guarantee Agreement (this "Guarantee"), dated, as of [____], 199[____], is made and entered into by [____], a [____] corporation ("Guarantor").

WITNESSETH:

WHEREAS, [____] (the "Company") may enter into transactions involving power sales under the WSPP Agreement ("WSPP Agreement") and related Confirmation(s)¹ (collectively "Agreements") with [Company Name] ("Guaranteed Party"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreements.

NOW THEREFORE, in consideration of the Guaranteed Party agreeing to conduct business with Company, Guarantor hereby covenants and agrees as follows:

1. **GUARANTY.** Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company (the "Obligations") to the Guaranteed Party in accordance with the Agreements. If Company fails to pay any Obligations, Guarantor shall promptly pay to the Guaranteed Party no later than the next Business Day (as defined in the WSPP Agreement), after notification, the amount due in the same currency and manner provided for in the Agreements. This Guarantee shall constitute a guarantee of payment and not of collection. Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Company to the Guaranteed Party are paid in full. The liability of Guarantor under the Guarantee shall be subject to the following:

(a) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreements (even if such payments are deemed to be damages) and, except to the extent specifically provided in the Agreements, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort, or any other even if such fees together with the payments exceed the cap in Section 1(b), damages, costs, except that Guarantor shall be required to pay reasonable attorney fees.

(b) The aggregate liability of the Guarantor shall not exceed [____] Million U.S. Dollars [____].

2. **DEMANDS AND NOTICE.** If Company fails or refuses to pay any Obligations, the Guaranteed Party may make a demand upon Guarantor (hereinafter referred to as a "Payment

Demand"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Company has failed to pay and an explanation of why such payment is due, with a specific statement that the Guaranteed Party is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until Company or Guarantor has cured such default, and additional Payment Demands concerning such default shall not be required until such default is cured.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of [] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guarantee; and

(c) this Guarantee constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. EFFECT OF BANKRUPTCY BY COMPANY. The Guarantor's obligation to pay under this Guarantee shall not be affected in any way by the institution with respect to the Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition for the Company's winding-up or liquidation.

5. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and Guaranteed Party hereto.

6. WAIVERS. Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that the Guaranteed Party seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of the Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreements.

Guarantor may terminate this Guarantee by providing written notice of such termination to the Guaranteed Party and upon the effectiveness of such termination, Guarantor shall have no further liability hereunder, except as provided in the last sentence of this paragraph. No such termination shall be effective until fifteen (15) Business Days after receipt by the Guaranteed Party of such termination notice. No such termination shall affect Guarantor's liability with respect to any obligations arising under any transaction entered into prior to the time the termination is effective, which transaction shall remain guaranteed pursuant to the terms of this Guarantee.

7. ASSIGNMENT. The Guarantor shall not assign this Guarantee without the express written consent of the Guaranteed Party. The Guaranteed Party shall be entitled to assign its rights under this Agreement in its sole discretion.

8. NOTICE. Any Payment Demand, to the Guaranteed Party or the Guarantor notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To [Name of Guaranteed Party] _____

Attn: _____

Fax No.: () _____

To Guarantor: _____

Attn: _____

Fax No.: () _____

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF [State], WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. This Guarantee shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by the Guaranteed Party, its successors and assigns. The Guarantee embodies the entire agreement and understanding between Guarantor and the Guaranteed Party and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT C
SAMPLE FORM FOR CONFIRMATION

1. Transaction Specific Agreements

The undersigned Parties agree to sell and purchase electric energy, or a Physically-Settled Option, pursuant to the WSPP Agreement as it is supplemented and modified below:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Period of Delivery: From ______ To ______
- (d) Schedule (Days and Hours): _____
- (e) Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Service (Check as Applicable)
 - Service Schedule A _____
 - Service Schedule B _____
 - Service Schedule C _____
 - Physically-Settled Option Service Schedule B _____
 - Physically-Settled Option Service Schedule C _____
 - Other products per Section 32.6 _____ **[Describe Product]**
- (h) Contract Quantity: _____ Total MWhrs.
- (i) Contract or Strike Price: _____
- (j) Transmission Path for the Transaction (If Applicable): _____
- (k) Date of Agreement if different: _____
- (l) Additional Information for Physically-Settled Options
 - (i) Option Type: *Put* _____ *Call* _____
 - (ii) Option Style: _____
 - (iii) Exercise Date or Period: _____
 - (iv) Premium: _____
 - (v) Premium Payment Date: _____
 - (vi) Method for providing notice of exercise _____
- (m) Special Terms and Exceptions:
See Attachment A

[Special Terms and Exceptions shall be shown on an Attachment to this Confirmation.]

Name of Trader for Purchaser

Name of Trader for Seller

Authorized Signature
for Purchaser

Authorized Signature
for Seller

Date

Date

EXHIBIT D

WSPP MEDIATION AND ARBITRATION PROCEDURES

I. MEDIATION

- A. **Informal Mediation.** WSPP members with a dispute or a potential dispute involving transactions under the WSPP Agreement may request non-binding, informal mediation by contacting the WSPP's General Counsel and by providing a brief explanation in writing of the dispute and the remedy being sought. All parties to the dispute must request this Informal Mediation for it to become effective. After this contact, a telephonic conference call will be arranged among the affected WSPP members and the WSPP's General Counsel, the Chairman of the Operating Committee, and/or some other independent and knowledgeable person requested by the Chairman of the Operating Committee to participate. The purpose of the conference call will be to discuss the issues and to have an independent person or persons state their views. Best efforts will be made to set up this conference call within five Business Days after the WSPP's General Counsel is contacted subject to accommodating the schedules of all involved. This Informal Mediation shall be considered as satisfying the Mediation requirements of Section 34.1 of the WSPP Agreement.
- B. **Initiating Formal Mediation.** A WSPP member which believes that it possesses a claim against another WSPP member relating to a WSPP transaction, which is unable to resolve the dispute through agreement with the other member to the transaction, and which desires to pursue that claim shall initiate non-binding formal mediation pursuant to Section 34.1 of the WSPP Agreement. The member

initiating such mediation shall do so by Serving written notice to the Chairman of the WSPP Operating Committee, the WSPP's General Counsel, and the other members against which the claim is directed. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.

- C. **Response to Document Initiating Formal Mediation.** Within eight days, the member or members against which the claim is directed may provide a response to the notice which shall be Served on the member which initiated the Mediation, the Chairman of the WSPP's Operating Committee, and the WSPP's General Counsel.
- D. **Choosing the Mediator.** The Mediator shall be chosen in accordance with the procedures set forth in Section 34.1 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Mediators to be presented to the Parties provided that these suggested persons shall be provided to the WSPP Representative together with relevant personal histories within two Business Days of the date by which time the list of Mediators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of Mediators. A brief personal history of each person on the list of potential mediators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Mediators within five days of receipt of notice of the dispute. The Parties then shall have five days in which to reach agreement on a Mediator or inform the WSPP Representative that they were unable to reach agreement in which event the WSPP

Representative shall appoint the Mediator consistent with Section 34.1 of the WSPP Agreement. Upon request of the Parties for expedition, the WSPP Representative shall use best efforts to expedite this process.

- E. **Location for the Formal Mediation.** The Parties shall agree on a location for the Mediation. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Mediator.
- F. **Time for the Formal Mediation.** The Parties shall agree on the time for the Mediation after consultation with the Mediator if one has been appointed. If the Parties fail to reach agreement, then the WSPP Representative shall set the time which shall not be more than twenty-one days after the notice initiating the Mediation is received after consultation with the Parties and any Mediator.
- G. **Conduct of the Formal Mediation.** The Mediator shall have the ability to conduct the Mediation in any manner which the Mediator believes is appropriate to facilitate resolution of the dispute. Each Party shall have at least one representative with the authority to settle the dispute present at the Mediation. The Mediation shall be private and confidential and the Mediator shall have the authority to exclude any person not directly involved unless the Parties agree otherwise in writing. At the Mediation, each Party shall have the right to make a brief presentation of its case and to question the other Party. Each Party also may be represented by counsel.
- H. **Replacement of the Mediator.** If the Mediator resigns, withdraws or is no longer able to serve, then the Parties shall have two Business Days in which to

agree on a new Mediator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Mediator from the list used to select the first Mediator within two Business Days after being notified that the Parties are unable to agree. The dates and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

II. ARBITRATION

- A. **Initiating Arbitration.** A WSPP member which initiates Arbitration pursuant to Section 34.2 of the WSPP Agreement shall do so by Serving the Chairman of the WSPP Operating Committee, the WSPP General Counsel and the members against which the claim is directed with written notice of its demand for arbitration. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.
- B. **Response.** Within ten days of receipt of the notice, any member or members against which the claim is directed may provide a response to the notice. Such response must include any counterclaims which the member believes are appropriate. If a counterclaim is submitted, then the member which submitted the notice may respond to the counterclaim within ten days of receipt. All such responses shall be Served on the Parties, the Chairman of the WSPP Operating Committee, and the WSPP General Counsel.
- C. **Choosing the Arbitrator.** The Arbitrator shall be chosen in accordance with the procedures set forth in Section 34.2 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Arbitrators to be presented to the

Parties provided that these suggested persons are provided to the WSPP Representative together with relevant personal histories within two business days of the date by which time the list of Arbitrators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of potential Arbitrators. A brief personal history of each person on the list of potential Arbitrators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Arbitrators within seven days of receipt of notice of the request for Arbitration. The Parties then shall have ten days in which to reach agreement on the Arbitrator or to inform the WSPP Representative that they were unable to reach agreement in which event the WSPP Representative shall appoint the Arbitrator consistent with Section 34.2 of the Agreement. Upon request of the Parties for expedition, the WSPP Representative shall use best efforts to cause this process to be expedited.

- D. **Location for the Arbitration.** The Parties shall agree on a location for the Arbitration. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Arbitrator.
- E. **Time for the Arbitration.** The Parties shall agree on the time for the Arbitration and coordinate that time with the Arbitrator if one has been agreed to or appointed. If the Parties fail to reach agreement, then the WSPP Representative shall set the time which shall not be more than 60 days after the notice is received.

The WSPP Representative shall set a time after consultation with the Parties and the Arbitrator to check their schedules.

- F. **Discovery.** After appointment of the Arbitrator, each Party shall be entitled to obtain relevant documents from the other Parties and to take depositions. Each Party shall respond to such a document request within seven days of receipt of the request and make its employees or consultants available for depositions to the extent that the employee or consultant possesses knowledge and information relevant to the dispute. Each Party shall disclose documents that are confidential or commercially sensitive subject to a reasonable protective order. Any disputes concerning discovery shall be promptly referred to the Arbitrator who shall have authority to resolve such disputes, including the authority to require attendance of witnesses at depositions. The Federal Rules of Civil Procedure shall apply to discovery under these procedures.
- G. **Conduct of Arbitration if the Parties Agree to Waive an Oral Hearing.** If the Parties agree to waive an oral hearing, then the Parties shall Serve Initial Briefs no later than 35 days after the notice is received or notify the Arbitrator that they do not wish to submit any additional documents. Parties shall Serve any Reply Briefs no later than ten days after the date for Service of Initial Briefs.
- H. **Conduct of the Arbitration Hearing.** No later than fifteen days before any hearing, any Party may Serve an Initial Brief or notify the Arbitrator that they do not wish to submit any additional documents. A Party shall Serve any Reply Brief no later than five Business Days before any hearing. The Arbitrator shall preside over any hearing and rule on all objections including objections as to the

admissibility of evidence or whether the questioning is proper. All testimony shall be submitted under oath. The Arbitrator is not bound to follow any particular rules governing the conduct of the proceeding. The Arbitrator may rely on legal advice provided through the WSPP. The Arbitrator may require any person employed by a Party to attend and testify at the hearing. Each Party shall possess the right to present evidence, including witnesses, and to cross-examine other Parties' witnesses. The Arbitration shall be private and the Arbitrator shall have the authority to exclude any person not directly involved unless the Parties otherwise agree. Each Party may be represented by counsel. A stenographic record of the Arbitration shall be kept.

- I. **Decision.** Within ten Business Days after the end of the Arbitration hearing, the Arbitrator shall issue his award in writing. If the Parties waived the right to an oral hearing, then the Arbitrator shall issue the award within ten Business Days of the last date Briefs were to be submitted. The Arbitrator is not limited in the remedies he may order so long as any arbitration award is consistent with the provisions and limitations of the WSPP Agreement and any applicable Confirmation with respect to the liability and damages of any Party; provided, however, upon agreement of the Parties to the dispute, the Arbitrator's choice of remedies may be limited.
- J. **Replacement of the Arbitrator.** If the Arbitrator resigns, withdraws, or is no longer able to serve then the Parties shall have two Business Days in which to agree on a new Arbitrator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Arbitrator from the list used to

select the first Arbitrator within two Business Days after being notified that the Parties are unable to agree. The dates and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

III. MISCELLANEOUS

- A. **Confidentiality.** Any Arbitration or Mediation shall be confidential as provided in Section 34.4 of the WSPP Agreement.
- B. **Costs.** Costs shall be borne by Parties as provided in Section 34.3 of the WSPP Agreement.
- C. **Restrictions on Lawsuits.** Each Party shall be subject to the restrictions provided in Section 34.2 of the WSPP Agreement.
- D. **Attorney-Client/Attorney Workproduct.** The Arbitrator or Mediator shall not take any action which would result in disclosure of information in violation of the attorney-client privilege or attorney workproduct doctrine.

IV. DEFINITIONS

- A. **Arbitrator or Arbitration.** The Arbitrator appointed pursuant to these procedures and Section 34.2 of the WSPP Agreement and the Arbitration pursuant to these procedures and the WSPP Agreement.
- B. **Initial or Reply Briefs.** Written documents submitted by the Parties to support their positions and respond to each others positions. Such documents shall be limited to 25 pages.
- C. **Business Days.** Defined as in the WSPP Agreement.

- D. **Mediator or Mediation.** The Mediator appointed pursuant to these procedures and Section 34.1 of the WSPP Agreement and the Mediation pursuant to these procedures and the WSPP Agreement.
- E. **Parties.** The WSPP members involved in the Mediation or Arbitration which have a direct interest in the dispute.
- F. **Service, Serving, or Served.** The method of service shall be by fax, unless impracticable because of the size of the document. In all events, the document should be delivered to the Party by overnight mail. Parties also should attempt to send the document out by email if possible. Service will be accomplished to a Party if sent to the Party's contact person for the disputed transaction. If there are multiple contact persons for one Party, service to one such person shall suffice. Service shall be to those individuals or entities specified in this procedures, but must include service to the Parties, the Mediator or Arbitrator (if either has been appointed), and to the WSPP General Counsel.
- G. **WSPP Representative.** The Chairman of the WSPP Operating Committee or his or her designee for the purposes of the Arbitration or Mediation.

SERVICE SCHEDULE A
ECONOMY ENERGY SERVICE

A-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

A-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms and conditions for requesting and providing Economy Energy Service.

A-3 TERMS:

A-3.1 A Party may schedule Economy Energy Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation.

A-3.2 Scheduling of Economy Energy Service hereunder shall be a responsibility of the Parties involved.

A-3.3 Each Seller/Purchaser may prepare a daily estimate of the amount of Economy Energy Service that it is willing and able to sell/buy each hour and the associated hourly sale/purchase price for the next Business Day, plus the weekend and holidays, and communicate this information to all other Parties via the Hub.

A-3.4 Purchasers shall arrange purchases directly with Sellers, and shall be responsible for transmission arrangements.

A-3.5 Unless otherwise mutually agreed between the Purchaser and the Seller, all Economy Energy Service transactions shall be pre-scheduled, and billings shall be

based on amounts and prices agreed to in advance by schedulers, subject to Paragraphs A-3.6 and 3.7 and subject to change by mutual agreement between dispatchers or schedulers due to system changes.

A-3.6 The price for Economy Energy Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section A-3.7 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

A-3.7 Except as provided for in Section A-3.6, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/ month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/ day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. In lieu of payment, such Parties may mutually agree to exchange economy energy at a ratio not to exceed that ratio provided for in Section C-3.6 of Service Schedule C. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any

transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary services charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including the exchange of economy energy. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. Any such transmission services (and ancillary service provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

A-3.8 Unless otherwise agreed, the Purchaser shall be responsible for maintaining operating reserve requirements as back-up for Economy Energy Service purchased and the Seller shall not be required to maintain such operating reserve.

A-3.9 Each Party that is a FERC regulated public utility as defined in A-3.6 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with

FERC under an applicable FERC accepted market based rate schedule.

SERVICE SCHEDULE B
UNIT COMMITMENT SERVICE

B-1 PARTIES:

This Service Schedule is agreed upon as part of this Agreement by the Parties.

B-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Unit Commitment Service.

B-3 TERMS:

B-3.1 A Party may schedule Unit Commitment Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Unit Commitment Service becomes a firm commitment, for both Parties, for the agreed capacity and terms.

B-3.2 Unless otherwise mutually agreed by the Parties involved in a Unit Commitment Service transaction, the terms set forth in this Service Schedule B shall govern such transaction.

B-3.3 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers, for a specified unit for a specified period of time.

B-3.4 Purchasers shall arrange purchases directly with Sellers.

B-3.5 The price for Unit Commitment Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in

Section B-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

B-3.6 Except as provided for in Section B-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has

filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

B-3.7 Start-up costs and no-load costs if included by the Seller shall be stated separately in the price.

B-3.8 Energy schedules for the Purchaser's share of a unit may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the change is to take place, unless otherwise mutually agreed or unforeseen system operating conditions occur.

B-3.9 Unit Commitment Service is intended to have assured availability; however, scheduled energy deliveries may be interrupted or curtailed as follows:

- (a) By the Seller by giving proper recall notice to the Purchaser if the Seller and the Purchaser have mutually agreed to recall provisions,
- (b) By the Seller when all or a portion of the output of the unit is unavailable, by an amount in proportion to the amount of the reduction in the output of the unit, unless otherwise agreed by the schedulers,
- (c) By the Seller to prevent system separation during an emergency, provided the Seller has exercised all prudent operating alternatives prior to the interruption or curtailment,
- (d) Where applicable, by the Seller to meet its public utility or statutory obligations to its customers, or
- (e) By either the Seller or the Purchaser due to the unavailability of transmission

capacity necessary for the delivery of scheduled energy.

B-3.10 Each Party that is a FERC regulated public utility as defined above in B-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

B-4 BILLING AND PAYMENT PROVISIONS:

B-4.1 Except as provided in Sections B-4.2 and B-5, billing for Unit Commitment Service shall be computed based upon the agreed upon prices.

B-4.2 In the event the Seller requests recall of Unit Commitment Service in a shorter time frame than was mutually agreed pursuant to Section B-3.9(a) and the Purchaser agrees to allow such recall, the Purchaser shall be relieved of any obligation to pay start-up costs.

B-5 TERMINATION PROVISION:

In the event Unit Commitment Service is curtailed or interrupted except as provided in Section B-3.9(a), the Purchaser shall have the option to cancel the Unit Commitment Service at any time by paying the Seller for (i) all energy deliveries scheduled up to the notice of termination and (ii) all separately stated start-up and no-load costs.

SERVICE SCHEDULE C
FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE

C-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

C-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Firm Capacity/Energy Sale or Exchange Service.

C-3 TERMS:

C-3.1 A Party may schedule Firm Capacity/Energy Sale or Exchange Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Firm Capacity/Energy Sale or Exchange Service becomes a firm commitment, for both Parties, for the agreed service and terms.

C-3.2 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers.

C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. A firm capacity sale or exchange is a commitment, in accordance with the terms and conditions specified in the Confirmation, of capacity resources.

C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy between Parties in accordance with the terms and conditions specified in the Confirmation.

C-3.5 The price for Firm Capacity/Energy Sale or Exchange Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section C-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

C-3.6 Except as provided for in Section C-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any

transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

C-3.7 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within any recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule, as may be mutually agreed to by the Seller and the Purchaser, (b) due to an Uncontrollable Force as provided in Section 10 of this Agreement; or (c) where applicable, to meet Seller's public utility or statutory obligations to its customers; provided, however, this paragraph (c) shall not be used to allow interruptions for reasons other than

reliability of service to native load. If service under this Service Schedule is interrupted under Section C-3.7(a) or (b), neither Seller nor Purchaser shall be obligated to pay any damages under this Agreement or Confirmation. If service under this Service Schedule is interrupted for any reason other than pursuant to Section C-3.7(a) or (b), the Non-Performing Party shall be responsible for payment of damages as provided in Section 21.3 of this Agreement or in any Confirmation.

C-3.8 Each Party that is a FERC regulated public utility as defined in Section C-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.9 Seller shall be responsible for ensuring that Service Schedule C transactions are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council.

SERVICE SCHEDULE D

OPERATING RESERVE – SPINNING

AND

OPERATING RESERVE – SUPPLEMENTAL

D-1 PURPOSE

This Service Schedule specifies procedures, terms and conditions pursuant to which the Seller provides Operating Reserve – Spinning and/or Operating Reserve – Supplemental, as specified in the Confirmation, to enable the Designated Authority to meet a reserve obligation or to resell as ancillary services under an OATT.

D-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

D-2.1 Terms used in this Service Schedule with initial capitalization which are not defined in the Agreement or this Service Schedule shall have the meanings given to them in the NERC Glossary and Applicable Standards. In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule.

D-2.1.1 “Applicable Standards” means the NERC Reliability Standards and the respective reliability standards and criteria of NERC, and of any Regional Reliability Organization, Balancing Authority, and Reserve Sharing Group applicable to the Seller’s provision and the Designated Authority’s use of Operating Reserve – Spinning or Operating Reserve – Supplemental, in force as of the date of the Confirmation.

D-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

D-2.1.3 “Designated Authority” means the Regional Reliability Organization, Balancing

Authority, Reserve Sharing Group or other entity designated in the Confirmation, which shall have a right to apply the applicable Reserve to the quantity of Reserve it is required to maintain, and to use such Reserve in accordance with the Applicable Standards. The Designated Authority and the Purchaser may be the same entity or two different entities. If the Designated Authority and the Purchaser are the same entity, then the Designated Authority shall also be the Purchaser for all purposes under the Agreement.

D-2.1.4 “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the applicable time period in the applicable region, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was made, could have been expected to accomplish the desired result in a manner that: (a) is consistent with the Applicable Standards; (b) gives due consideration to reliability, safety and protection of equipment and the public welfare; and (c) is consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, or the exclusion of all other practices, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

D-2.1.5 “NERC Glossary” means the NERC Glossary of Terms Used in Reliability Standards.

D-2.1.6 “Non-Performance” with respect to Seller shall have the meaning given in Section D-4.1, and with respect to Purchaser, the meaning given in Section D-

4.2.

D-2.1.7 "OATT" refers to the Open Access Transmission Tariff of the Designated Authority or, if the Designated Authority has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

D-2.1.8 "OATT Schedule" refers to schedule 5 or 6 of the OATT for sale of ancillary services, or any other schedule under an OATT for sale of Operating Reserve – Spinning or Operating Reserve – Supplemental.

D-2.1.9 "Operating Reserve – Spinning" shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 5 or similar schedule under an OATT.

D-2.1.10 "Operating Reserve – Supplemental" shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 6 or similar schedule under an OATT.

D-2.2 The following rules apply to this Service Schedule.

D-2.2.1 In the event of inconsistency between the definition in the NERC Glossary of Terms and the Applicable Standards, the Applicable Standards shall control.

D-2.2.2 No product sold or transferred under this Service Schedule D shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

D-2.2.3 The OATT, OATT Schedules, regulations of the FERC, the NERC Glossary, and Applicable Standards shall be applied in their forms as of the date of the Confirmation.

D-3 TERMS OF SERVICE

D-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Operating Reserve – Spinning and/or Operating Reserve – Supplemental, to which the Confirmation applies;
- (b) Identification of the Designated Authority and if the Designated Authority is not a Regional Reliability Organization, the Regional Reliability Organization within which the Designated Authority is electrically located;
- (c) The Standard Confirmation Provisions, as applicable;
- (d) Any additional attributes of the Operating Reserve – Spinning or Operating Reserve – Supplemental, as the Parties may agree;
- (e) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (f) Any conditions to the effectiveness of the Confirmation, including, for example, the completion of any arrangements or agreements between the Seller and the Designated Authority or among the Seller, Designated Authority, and Purchaser.

D-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

D-3.3 Seller shall provide Operating Reserve – Spinning or Operating Reserve – Supplemental, as applicable, to the Designated Authority in conformity with the Applicable Standards and any additional attributes specified in the Confirmation as are consistent with the Applicable Standards. Seller shall provide such service from one or more generation resources or Demand Response Resources. Such resources must be physically and

operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by, the Applicable Standards for the applicable service, and as required to conform to any additional attributes stated in the Confirmation.

D-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

D-3.4.1 Seller shall provide capacity and deliver energy associated with Operating Reserve – Spinning or Operating Reserve – Supplemental, in quantities up to the applicable capacity(ies) specified in the Confirmation for the applicable hour(s), as and when the Designated Authority requests such delivery in the manner of request specified in the Confirmation and in accordance with Section D-3.4.2.

D-3.4.2 The Designated Authority shall use the capacity and energy provided by Seller under this Service Schedule for the sole purpose of satisfying the Designated Authority's own obligations pertaining to Operating Reserve – Spinning and Operating Reserve – Supplemental, as specified in the Applicable Standards or the Confirmation. Purchaser shall ensure that the Designated Authority shall not require Seller to deliver energy under this Service Schedule except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with Good Utility Practice or such other criteria as may be stated in the Confirmation, that such energy is required to enable it to respond to a contingency or other event for which the service specified in the Confirmation is permitted to be utilized under the Applicable Standards or as otherwise stated in the Confirmation.

D-3.5 Inspection and Audit. The Purchaser and Designated Authority shall have the right, to

conduct such inspections and audits of Seller's records as are reasonable to assure that the Seller's provision of services under this Service Schedule and Confirmation conforms to the Applicable Standards and the Confirmation. The Seller shall have the right to conduct inspections and audits of the Designated Authority's records as reasonably required to assure that any use by the Designated Authority of the services under this Service Schedule and Confirmation conformed to Section D-3.4.2 and the Confirmation. The Parties may state further details and conditions in the Confirmation concerning these rights, including, for example, provisions concerning confidentiality or limiting inspection to an agreed third-party auditor.

D-3.6 Regulatory Matters – Rate Caps

D-3.6.1 The price for Operating Reserve – Spinning or Operating Reserve – Supplemental shall not be subject to the rate caps specified in Section D-3.6.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

D-3.6.2 Except as provided for in Section D-3.6.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted

Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive

Committee).

D-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

D-4.1 Seller Non-Performance. "Non-Performance" with respect to Seller means Seller's failure to provide capacity or deliver energy to the Designated Authority as this Service Schedule and the Confirmation require.

D-4.1.1 Purchaser Entitlement to Damages. In the event of Non-Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

D-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller's Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided, that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.1.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section D-4.1.1, or to avail itself of remedies for other Events of Default.

D-4.2 Purchaser Non-Performance. "Non-Performance" with respect to the Purchaser means the Designated Authority's failure to receive capacity and/or energy, or the Designated Authority's use of capacity and/or energy under this Service Schedule which use does not conform to Section D-3.4.2 (such capacity and/or energy, the "unauthorized energy").

D-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall compensate Seller in an amount equal to the quantity of

unauthorized energy Seller was required to deliver during each hour, multiplied by the energy charge for the applicable hour.

D-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (but not Section 22.2(a)), provided that the right to terminate all transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section D-4.2.1, or to avail itself of remedies for other Events of Default under the Agreement.

D-4.3 Termination under Section D-4.1.2 or D-4.4.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section D-4.1.2 or D-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

D-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE E

ENERGY IMBALANCE AND GENERATOR IMBALANCE POWER

E-1 PURPOSE

This Service Schedule states procedures, terms and conditions pursuant to which the Seller provides Energy Imbalance Power and Generation Imbalance Power to the Purchaser, as specified in the Confirmation, and the Purchaser receives such service to meet a reliability obligation or to resell as ancillary services under an OATT.

E-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

E-2.1 In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule E.

E-2.1.1 "Balancing Power" means a service or product that can be resold as Energy Imbalance Power or Generator Imbalance Power under Schedules 4 and 9, respectively, of the OATT or other schedule under an OATT for sale of imbalance power.

E-2.1.2 "Demand Response Resource(s)" has the meaning given in 18 C.F.R. §35.28(b)(5).

E-2.1.3 "Non-Performance" with respect to Seller shall have the meaning given in Section E-4.1 and with respect to Purchaser the meaning given in Section E-4.2.

E-2.1.4 "OATT" refers to the Purchaser's Open Access Transmission Tariff approved by the FERC or, if the Purchaser has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

E-2.1.5 "OATT Schedule" refers to schedule 4 or 9 of the OATT for sale of ancillary services, or any other schedule for sale of imbalance power under an OATT.

E-2.2 The following rules apply to this Service Schedule.

E-2.2.1 No product sold or transferred under this Service Schedule E shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

E-2.2.2 The OATT and OATT Schedules shall be applied in their forms as of the date of the Confirmation.

E-3 TERMS OF SERVICE

E-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Energy Imbalance and Generator Imbalance Power, to which the Confirmation applies;
- (b) The Standard Confirmation Provisions, as applicable;
- (c) Any additional attributes of the Balancing Power, as the Parties may agree;
- (d) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (e) Any conditions to the effectiveness of the Confirmation.

E-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

E-3.3 Seller shall provide Balancing Power from one or more generation resources or Demand Response Resources. Such resources must be physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, as may be stated in the Confirmation.

E-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

E-3.4.1 Upon the requests of the Purchaser, Seller shall provide capacity and deliver energy associated with Balancing Power to the Purchaser at any rate of flow up to and including the applicable capacity(ies) and at such intervals as are specified in the Confirmation for the applicable hour(s).

E-3.4.2 Transmission must be available intra-hour, and may be arranged and scheduled in any manner that meets the requirements of the Parties.

E-3.5 Regulatory Matters – Rate Caps

E-3.5.1 The price for Balancing Power shall not be subject to the rate caps specified in Section E-3.5.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

E-3.5.2 Except as provided for in Section E-3.5.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange

ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

E-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

E-4.1 Seller Non-Performance. "Non-Performance" with respect to Seller means Seller's

failure to provide capacity or deliver energy to the Purchaser as this Service Schedule and the Confirmation require.

E-4.1.1 Purchaser Entitlement to Damages. In the event of Non- Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller's Non-Performance under Section E-4.1 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.1.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.1.1, or to avail itself of remedies for other Events of Default.

E-4.2 Purchaser Non-Performance. "Non-Performance" with respect to Purchaser means Purchaser's failure to receive energy that it had scheduled for receipt under this Service Schedule and the Confirmation.

E-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section E-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the

Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.2.1, or to avail itself of remedies for other Events of Default.

E-4.3 Termination under Section E-4.1.2 or E-4.2.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section E-4.1.2 or E-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

E-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE R
RENEWABLE ENERGY CERTIFICATE TRANSACTIONS
WITH AND WITHOUT ENERGY

R-1 Introduction; Transaction Documentation; and Rules of Construction. This Service Schedule R states terms and conditions applicable to REC Transactions entered into by Parties under the Agreement.

R-1.1 Documentation. Each REC Transaction shall be documented in a Confirmation.

Annex 2 is a Confirmation template, which the Parties may modify and make subject to any other agreement between them. A Confirmation for a REC Transaction will be given legal effect only if a Documentary Writing.

R-1.2 Contract Documents. The Agreement, Service Schedule R, and the fully executed Confirmation comprise a contract for a REC Transaction. Any conflicts between or among the Agreement, Service Schedule R, and the Confirmation shall be resolved in the following order of control: first, the Confirmation; second, Service Schedule R; and third, the Agreement.

R-1.3 Definitions. Definitions contained in the Agreement and Annex 1 apply to this Service Schedule R. Any conflicts among definitions contained in these documents shall be resolved in accordance with Section R-1.2.

R-1.4 Rules of Construction.

R-1.4.1 The Annexes of Service Schedule R are incorporated into and made a part of this Service Schedule R, as though set forth fully herein.

R-1.4.2 The word “including” shall mean “including but not limited to.” Unless otherwise specified, the word “Section” refers to a section of this Service Schedule R and includes all subparts of the specified section.

R-1.4.3 Subject to any legal restrictions applicable to a Party, the Parties to a REC Transaction may vary any term or condition of this Service Schedule R for that REC Transaction. Provisions in this Service Schedule R concerning such variance of terms, such as “unless otherwise agreed,” shall not prejudice the generality of the preceding sentence, provided, that the Parties shall not vary Section C-3.6 of Service Schedule C, Section B-3.6 of Service Schedule B, and Section A-3.7 of Service Schedule A.

R-1.4.4 An Applicable Program shall be applicable to a REC Transaction only if designated expressly in the Confirmation. No rule of contract construction or interpretation, and no inference or implication, shall cause an Applicable Program that is not designated expressly in the Confirmation to be applicable to a REC Transaction.

R-2 Confirmations; REC Products.

R-2.1 REC Transaction. A “REC Transaction” is a purchase and sale of a REC separately from or bundled with Energy. A REC Transaction may be for the purchase and sale of any REC Product defined in Section R-2.3 or another REC Product the Parties may define.

R-2.2 Confirmations. In addition to other terms and conditions to which the Parties may agree, the Confirmation:

R-2.2.1 must include the following terms: REC Product, Contract Quantity, Contract Price, Vintage, and Transfer Date, and whether the Environmental Attributes covered by the REC are All Attributes, Program Attributes, or other coverage the Parties may specify;

R-2.2.2 for a bundled REC Transaction (Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC), may include a single Contract Price which may be allocated between the REC and the Energy;

R-2.2.3 must identify the Renewable Energy Facility or Renewable Energy Source if the REC Transaction is All Attributes (Section R-2.4.1) or Program Attributes (Section R-2.4.2), if a designated Applicable Program requires such identification, or if the REC Product is Resource Contingent Bundled REC or Facility As-Run Bundled REC;

R-2.2.4 must designate an Applicable Program if the REC Transaction is Program Attributes, the Seller is to assure compliance with an Applicable Program (Sections R-5.2.1, 6.3, and 6.4), or to recover penalties and alternative compliance payments (Section R-9.1), and if the REC Transaction is All Attributes, may designate an Applicable Program (Section 2.4.1).

R-2.3 REC Products. A “REC Product” is any of the following defined products or other product specified in the Confirmation.

R-2.3.1 Firm REC. A “Firm REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of energy. The Seller has a firm obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force.

R-2.3.2 Firm Bundled REC. A “Firm Bundled REC” is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a firm obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force. The terms and conditions of Service Schedule C apply to the purchase and sale of Energy associated with a Firm Bundled REC as the Parties may modify such terms and conditions in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section C-3.6 of Service Schedule C shall apply, except (1) where the Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule C at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price.

R-2.3.3 Resource Contingent REC. A “Resource Contingent REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller has a resource contingent obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-

performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties may have agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

R-2.3.4 Resource Contingent Bundled REC.

- (a) A "Resource Contingent Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a resource contingent obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable

Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery, due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC or Delivery. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

- (b) The terms and conditions of Service Schedule B apply to the purchase and sale of Energy associated with a Resource Contingent Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section B-3.6 of Service Schedule B shall apply, except (1) where the

Seller is a FERC regulated "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule B at market-based rates; or (2) where the Seller is not such a FERC regulated "public utility." When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule B Section B-3.8 is modified to state the following:

Energy schedules for the Purchaser's share of a Renewable Energy Facility may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is

to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions. Seller shall timely notify the Purchaser of Scheduled Maintenance.

The following is added at the end of Section B-3.9:

(f) By the Seller when all or a portion of the unit is unavailable due to Fuel Impediment, unless otherwise agreed by the schedulers.

R-2.3.5 Facility As-Run REC. A "Facility As-Run REC" is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller is obligated to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in

accordance with such purchasers' contract quantities under contracts with Seller.

R-2.3.6 Facility As-Run Bundled REC.

- (a) A "Facility As-Run Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has an obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.
- (b) The terms and conditions of Service Schedule A apply to the purchase and sale of Energy associated with a Facility As-Run

Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section A-3.7 of Service Schedule A shall apply, except (1) where the Seller is a FERC regulated "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule A at market-based rates; or (2) where the Seller is not such a FERC regulated "public utility." When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule A Section A-3.3 is modified to state the following:

Energy schedules may be modified by the Purchaser or Seller with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC

requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions.

R-2.4 Environmental Attributes Contained In The REC. The Confirmation may describe the Environmental Attributes covered by the REC as All Attributes, Program Attributes, or as the Parties otherwise may agree. If the Confirmation does not designate a REC Transaction as Program Attributes or otherwise limit the Environmental Attributes conveyed, and if a Renewable Energy Facility or Renewable Energy Source is specified, the REC Transaction shall be All Attributes. A designation of All Attributes will not be effective unless a Renewable Energy Facility or Renewable Energy Source is designated in the Confirmation.

R-2.4.1 All Attributes. An "All Attributes" REC conveys all of the Environmental Attributes the Renewable Energy Facility or Renewable Energy Source designated in the Confirmation is capable of producing, whether known or unknown on the Effective Date, including, at a minimum, all Environmental Attributes required by any Applicable Program designated in the Confirmation. Seller disclaims any warranty that Environmental Attributes other than those required by an Applicable Program designated in the Confirmation fulfill the requirements of any other Applicable Program. To establish the

Environmental Attributes conveyed, the Confirmation may include a specification thereof.

R-2.4.2 Program Attributes. A “Program Attributes” REC conveys the Environmental Attributes required by an Applicable Program designated in the Confirmation. It conveys no other Environmental Attributes, the rights to which are retained by the Seller. The Parties should verify that a designated Tracking System will recognize a Program Attributes REC. (Note, WREGIS does not recognize a Program Attributes limitation upon conveyed Environmental Attributes.)

R-3 Delivery and Title.

R-3.1 Unbundled REC Transactions. This Section R-3.1 applies if the REC Product is a Firm REC, Resource Contingent REC, or Facility As-Run REC.

R-3.1.1 Delivery. “Deliver(y)(ed)” occurs upon completion of Seller’s transfer of the Contract Quantity to Purchaser. If a Tracking System is designated in the Confirmation, Seller shall cause transfer in accordance with the rules and procedures of the Tracking System. If the Tracking System does not state such rules or procedures, then Delivery shall occur upon the Tracking System’s transfer of the REC into Purchaser’s account. If a Tracking System is not designated in the Confirmation, Delivery is completed upon Seller’s delivery to Purchaser of an Attestation.

R-3.1.2 Acceptance. “Accept(ance)(ed)” means Purchaser’s receipt of Delivery of the REC from Seller, without Purchaser’s rejection. If a

Tracking System is designated in the Confirmation, Purchaser shall receive a transfer in accordance with the rules and procedures of the Tracking System, and Acceptance (or rejection) shall be made within five (5) Business Days following the date the Tracking System gives electronic notice to Purchaser that it has initiated transfer (this deadline applies regardless of any different period stated in the Tracking System's rules and procedures) and if timely rejection is not made, then the Delivery is Accepted. If a Tracking System is not designated in the Confirmation, Acceptance occurs upon Purchaser's Acceptance, without rejection within five (5) Business Days of delivery, of the Attestation delivered by Seller.

R-3.1.3 Passage of Title. Title to the REC shall pass from Seller to Purchaser upon Delivery and Acceptance.

R-3.2 Bundled REC Transactions. This Section R-3.2 applies if the REC Product is a Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC.

R-3.2.1 Delivery. "Delivery(y)(ed)" occurs upon completion of Seller's transfer to Purchaser of the Contract Quantity of the REC and the Contract Quantity of the Energy. Delivery of the REC shall be completed in accordance with Section R-3.1.1. Delivery of Energy shall be completed in accordance with the terms and conditions of the Confirmation and the Agreement.

R-3.2.2 Acceptance. "Acceptance" of the REC occurs in the manner specified in Section R-3.1.2, and of the Energy upon receipt at the delivery point in accordance with the Confirmation.

R-3.2.3 Passage of Title. If the Vintage of the REC is prior to the Effective Date, title to the REC passes from Seller to Purchaser on the Effective Date or other date to which the Parties agree. If the REC is to be generated on or after the Effective Date, title to the REC passes upon the generation of each megawatt hour of energy required for production of the REC, and Seller shall hold the REC in trust for Purchaser until Delivery. Passage of title to Energy occurs pursuant to the Agreement.

R-3.3 Actions Required of Parties to Assure Delivery.

R-3.3.1 Provision of Generation Information; Required Actions. No less than monthly, Seller shall provide Purchaser with a written statement setting forth for applicable periods the quantities of Seller's generation of energy for production of the REC. Seller shall promptly take all actions and do all things necessary and appropriate to cause the designated Tracking System, if any, to transfer the REC to Purchaser, including promptly providing all required information and documents in the required forms, and paying any and all fees the Tracking System imposes on Seller. If the Confirmation provides for a designated Tracking System to expedite issuance of certificates (for example, forward transfer certificates in WREGIS), Seller shall promptly take all actions required to cause such expedition. If no Tracking System is

designated in the Confirmation, then upon creation of the REC Seller shall promptly deliver the Attestation to Purchaser.

R-3.3.2 Failure to Issue REC. Seller is responsible for transfer and issuance of RECs by the Tracking System; Purchaser's sole responsibilities are maintenance of an account with the Tracking System and Acceptance of conforming RECs pursuant to Section R-3.1.2. Without prejudice to the immediately preceding sentence, in the event a Tracking System designated in the Confirmation declines to issue an electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of a REC, each Party will provide the other Party with all documents, communications, and information sent to or received from the Tracking System that pertain thereto. The Parties will cooperate, and each Party will complete any uncompleted items for which it is responsible, each at its own expense. If following such efforts, and due to no failure of Seller to take all required actions, the Tracking System does not issue the electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of the REC, Seller may, upon Purchaser's agreement (which Purchaser may decline in its discretion), provide an Attestation to Purchaser to effect Delivery. The obligations under this Section R-3.3.2 shall not be construed to diminish the Seller or the Purchaser's respective rights and obligations under the Agreement, Service Schedule R, and the Confirmation.

R-3.4 Conveyance and Transfer. As of both Delivery and passage of title, Seller shall transfer and convey to Purchaser all right, title, and interest in and to the REC and all Environmental Attributes underlying the REC pursuant to the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and the Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-4 Charges; Credit. The charge shall be an amount equal to the Contract Price multiplied by the Delivered and Accepted quantity, without prejudice to the right to recover damages owed in accordance with Section R-9. The Parties may state any credit terms and conditions to which they agree in the Confirmation; Section 27 of the Agreement applies unless otherwise agreed.

R-5 Governing Law; Change in Law.

R-5.1 Governing Law. Section 24 of the Agreement applies except as follows. If an Applicable Program is designated in the Confirmation, all performance obligations pursuant to the REC Transaction concerning the creation, issuance, transfer, tracking and retirement of the REC shall be governed as follows:

R-5.1.1 If the Applicable Program was created by the laws of a Governmental Authority, then by the laws, rules, regulations, orders, and judicial precedent of such Governmental Authority;

R-5.1.2 If the Applicable Program was not created by the laws of a Governmental Authority, but is a voluntary program, then Section 24 of the Agreement applies without modification, and the Parties shall be bound contractually to comply with the standards and criteria of the voluntary Applicable Program.

R-5.2 Change in Law.

R-5.2.1 Applicability. Section R-5.2 applies only to REC Transactions for which an Applicable Program is designated in the Confirmation. In a REC Transaction for which no Applicable Program is designated, Seller makes no representation or warranty concerning compliance with any particular Applicable Program and any such representation or warranty is expressly disclaimed.

R-5.2.2 Definitions.

- (a) “Change in Law” means any addition or amendment, by a Governmental Authority, to any laws, rules, regulations, orders, or judicial precedent, that applies to an Applicable Program designated in the Confirmation, that is enacted or issued after the Effective Date and nullifies compliance of the REC with the Applicable Program. An addition or amendment that is enacted or issued before the Effective Date but effective on or after the Effective Date is not a Change in Law.
- (b) “Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date and the Transfer Date, including requirements modified or added by a Change in Law.
- (c) “Not Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the

requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date only, and the REC and Environmental Attributes are not required to conform to requirements modified or added by a Change in Law.

R-5.2.3 Default Designation as Regulatorily Continuing. A REC Transaction as to which an Applicable Program is designated in the Confirmation shall be Regulatorily Continuing unless the Parties specify in the Confirmation that the REC Transaction is Not Regulatorily Continuing.

R-5.2.4 Effect of Change In Law in Regulatorily Continuing REC Transaction.

- (a) If a Change in Law occurs in a Regulatorily Continuing REC Transaction, Seller shall be obligated to make reasonable efforts to attain compliance with the designated Applicable Program, the costs of which shall not be required to exceed any cost cap specified in the Confirmation. If despite such efforts to attain compliance, including reasonable expenditures, Seller cannot obtain compliance and Purchaser refuses to accept Delivery of the REC due to the Change in Law, Seller shall not be liable for damages under Section R-9.
- (b) In the event Purchaser refuses to accept Delivery of the REC under Section 5.2.4(a), and Seller has Delivered energy to Purchaser in the REC Transaction, Purchaser shall not be

relieved of its obligation to pay for such energy, which payment shall be either at the price allocated to energy in the Confirmation, if any, and if no allocation is made, then at an amount equal to the Replacement Price.

R-5.2.5 Amendment to Address Change In Law. Nothing in this Section R-5.2 shall be construed to preclude the Parties from agreeing to amend the Confirmation to permit a Seller to perform its obligations in a REC Transaction as to which a Change in Law has occurred.

R-6 Seller Representations and Warranties. In each REC Transaction, Seller represents and warrants to Purchaser the following:

R-6.1 As of both Delivery and passage of title, Seller has and conveys to Purchaser all right, title, interest in and to the REC and all Environmental Attributes underlying the REC as required by the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-6.2 As of both Delivery and passage of title, the REC and Environmental Attributes conform to the requirements of the REC Transaction.

R-6.3 If the REC Transaction is Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), subject to any limits upon Seller's obligations under Section R-5.2.4, as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date and the Transfer Date.

R-6.4 If the REC Transaction is Not Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date.

R-6.5 With respect to deliveries of Energy in REC Transactions for Firm Bundled REC, Contingent Resource Bundled REC, and Facility As-Run Bundled REC, that Seller has complied with the representations and warranties stated in Section 33 of the Agreement.

SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

R-7 Records; Confidentiality

R-7.1 Correction of Records. If any statement, charge or computation concerning a REC Transaction is inaccurate, the Parties promptly shall make any adjustments to records as reasonably necessary to correct such inaccuracy, and make any adjustment of payments required to correspond to the corrected records, provided, that Purchaser shall not be required to pay a higher Contract Price or accept a lower Contract Quantity than the Confirmation requires.

R-7.2 Exception to Confidentiality. Purchaser has the right to disclose to any Governmental Authority having jurisdiction over Purchaser, or to any voluntary Applicable Program and the person or entity specified by the rules of procedures of the voluntary Applicable Program to perform certification, any information necessary to demonstrate Purchaser's compliance with an Applicable Program

(whether or not designated in the Confirmation); provided, however, that Purchaser shall use reasonable efforts to minimize the scope of any such disclosure and shall require, as may be feasible, that the recipient maintain the confidentiality of any documents or confidential information governed by the provisions of Section 30.1 of the Agreement, including, if permitted under applicable procedures of the Governmental Authority or such administrator, and subject to any applicable public records laws, seeking a protective order or similar protective mechanism in connection with any disclosure. With respect to a REC, Purchaser also has the right to disclose the following to any customer or affiliate of Purchaser that is participating in any voluntary or mandatory Applicable Program: the Renewable Energy Source, the location of any Renewable Energy Facility designated in the Confirmation, and monthly generation quantities of energy underlying the REC.

R-8 Uncontrollable Force. The following is substituted for the first sentence of the second paragraph of Section 10 of the Agreement:

The following shall not be considered “Uncontrollable Forces”: (i) Seller’s cost of producing or obtaining the REC or energy (or ability to sell the REC or energy at a price exceeding the Contract Price); (ii) the loss or failure of Seller’s supply, including materials or equipment; or (iii) Purchaser’s inability economically to use or resell the REC or energy.

The following is added at the end of the second paragraph of Section 10 of the Agreement:

If production of energy at a Renewable Energy Facility designated in the Confirmation is curtailed due to an Uncontrollable Force, any production during

the period of such curtailment shall be allocated as follows: first, among all purchasers of Firm RECs, Firm Bundled RECs, Resource Contingent RECs, Resource Contingent Bundled RECs, and energy purchased under Service Schedules B and C, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation, and second, to all purchasers of Facility As-Run RECs, Facility As-Run Bundled RECs and energy purchased under Service Schedule A, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation.

R-9 Remedies for Non-Performance.

R-9.1 Damages. Section 21.3 of the Agreement, as modified in this Section 9, applies to REC Transactions.

R-9.1.1 Failure to Receive or Deliver in Unbundled REC Transactions.

This Section R-9.1.1 applies to REC Transactions for Firm REC, Resource Contingent REC, and Facility As-Run REC. Section 21.3(a)(3) and (5) of the Agreement are inapplicable. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery of RECs Delivered by Seller in accordance with the Confirmation, then Purchaser shall be liable to Seller for the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price and (ii) is the amount by which the quantity of

RECs Purchaser refused to Accept was less than the Contract Quantity, subject to any limitations stated in the Confirmation.

21.3(a)(2) is modified as follows:

If Seller fails to Deliver RECs to Purchaser in accordance with the Confirmation, then Seller shall be liable to Purchaser for:

(a) the product of (i) and (ii) where (i) is the amount, if any, by which the Replacement Price exceeded the Contract Price and (ii) is the amount by which the quantity of RECs Seller Delivered was less than the Contract Quantity; plus (b) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations stated in the Confirmation.

R-9.1.2 Failure to Receive or Deliver in Bundled REC Transactions.

(a) **Price Not Allocated between REC and Energy.** This Section R-9.1.2(a) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run Bundled REC, and in which the Confirmation does not allocate the Contract Price between the REC and Energy. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery from Seller in accordance with the Confirmation, then Purchaser shall be

liable to Seller for: (a) the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price, and (ii) is the amount by which the quantity of RECs and Energy Purchaser refused to Accept was less than the Contract Quantity, plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Purchaser's schedule or receipt of Energy (based on Seller's commercially reasonable efforts to achieve such reduction), subject to any limitations stated in the Confirmation. If the Purchaser refused to Accept Delivery of RECs but Accepted Delivery of Energy, then Purchaser shall pay Seller for such received Energy at the Resale Price of the Energy; if the Purchaser refused to Accept Delivery of Energy but Accepted Delivery of RECs, the Purchaser shall pay Seller for Accepted RECs at an amount equal to the Contract Price less the Resale Price of the Energy.

Section 21.3(a)(2) of the Agreement is modified as follows:

If Seller fails to Deliver to Purchaser in accordance with the Confirmation, then Seller shall be liable to the Purchaser for: (a) the product of (i) and (ii) where (i) is the amount, if

any, by which the Replacement Price exceeded the Contract Price, and (ii) is the amount by which the quantity of RECs and Energy Delivered was less than the Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Seller's schedule or delivery of Energy (based on Purchaser's commercially reasonable efforts to achieve such reduction), plus (c) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations on such amounts stated in the Confirmation. In the event Seller Delivers Energy but not RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

- (b) **Price Allocated between REC and Energy.** This Section R-9.1.2(b) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run

Bundled REC, in which the Confirmation sets forth an allocation of the Contract Price between the REC and energy.

- (i) If Purchaser refuses to Accept Delivery of RECs in accordance with the Confirmation, then Purchaser shall be liable to Seller as set forth in Section R-9.1.1.
- (ii) Subject to part (v) of this Section, if Seller fails to Deliver RECs in accordance with the Confirmation, then the Seller shall be liable to Purchaser as set forth in Section R-9.1.1.
- (iii) If Purchaser refuses to receive Delivery of Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (iv) If Seller fails to Deliver Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (v) In the event Seller Delivers Energy but fails to Deliver RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

R-10 Other Modifications of the Agreement for REC Transactions.

R-10.1 Revised Agreement Definitions. For purposes of REC Transactions, the following revisions to definitions contained in Section 4 of the Agreement shall apply:

R-10.1.1 Contract Quantity: The amount of RECs and, if applicable, Energy, to be supplied for a transaction under the Agreement.

R-10.1.2 Power Marketer: An entity which buys, sells, and takes title to RECS, electric energy, transmission and/or other services from traditional utilities and other suppliers.

R-10.1.3 Physically Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying REC and/or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying REC or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation.

R-10.1.4 Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute REC(s), capacity and/or energy in place of the REC(s), capacity and/or energy not Delivered (for REC(s) and/or energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, for Energy at the delivery point specified in the Confirmation. Substitute

REC(s) must be similar in all material respects to the REC(s) specified in the Confirmation.

R-10.1.5 Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the REC(s), capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Seller in a commercially reasonable manner, for Energy at the delivery point specified for the transaction in a Confirmation.

R-10.2 Notices. Section 12.2 of the Agreement is revised by inserting "RECs or" before the phrase "capacity and/or energy."

SERVICE SCHEDULE R
ANNEX 1 - DEFINITIONS

“Acceptance” has the meaning given in Sections R-3.1.2 or R-3.2.2, as applicable.

“All Attributes” has the meaning given in Section R-2.4.1.

“Applicable Program” means (a) a program adopted by a Governmental Authority that requires the sale, purchase, or use of energy generated or produced by a facility that converts renewable natural resources such as wind, sunlight, rain, tides, geothermal heat, hydro, or biomass into electric energy, including any Renewable Portfolio Standard (RPS) adopted by a Governmental Authority and all Governing Law that pertains thereto, or (b) a voluntary program for reporting, crediting or attributing RECs and all rules, standards and procedures adopted by the administering organization that pertain thereto.

“Attestation” means (a) the Seller’s written statement, certified as true and correct by an authorized officer of Seller, that the REC is Delivered and title to the REC has been transferred to the Purchaser, and that the Seller has taken all steps to effect transfer of the REC required by any Tracking System designated in the Confirmation, and (b) that satisfies the requirements of any Applicable Program designated in the Confirmation or is a generation information system record of ownership transfer. Annex 2 Exhibit 1 is a template for use of the Parties; an agreed form of Attestation should be included as a part of the Confirmation, and the agreed form will suffice as an Attestation regardless of whether or not it meets the criteria of this definition.

“Change in Law” has the meaning given in Section R-5.2.2(a).

“Deliver” has the meaning given in Sections R-3.1.1 or 3.2.1, as applicable.

“Effective Date” means the date both Parties have executed the Confirmation, or which the Parties otherwise specify in the Confirmation.

“Environmental Attribute” means the following, unless a Tracking System is designated in the Confirmation, and such Tracking System defines “Environmental Attribute,” in which case the Tracking System’s definition of “Environmental Attribute” shall control: a characteristic concerning or affecting the environment created by or resulting from the generation of electric energy by a Renewable Energy Source, and which capable of measurement, verification, or calculation. The term does not include tax credits or other tax benefits under any law or other direct third-party subsidies for generation of electric energy by a Renewable Energy Source. The term includes “non-energy attributes” under Oregon law and “non-power attributes” under Washington law. By way of example, the term may include the following: avoided emissions of CO₂ or other gases, or avoided water use (but not water or other rights or credits required under an Applicable Program to site and develop the Renewable Energy Facility itself).

“Facility As-Run REC” has the meaning given in Section R-2.3.5.

“Facility As-Run Bundled REC” has the meaning given in Section R-2.3.6(a).

“Firm Bundled REC” has the meaning given in Section R-2.3.2.

“Energy” in the case of a Firm Bundled REC refers to Firm Capacity/Energy Sale or Exchange Service under Service Schedule C as may be modified by Service Schedule R, in the case of a Resource Contingent Bundled REC refers to Unit Commitment Service under Service Schedule B as may be modified by Service Schedule R, and in the case of Facility As-Run Bundled REC refers to Economy Energy Service under Service Schedule A as may be modified by Service Schedule R.

“Firm REC” has the meaning given in Section R-2.3.1.

“Fuel Impediment” means the reduction or lack of wind or sunlight, excessive wind, or other insufficiency or excess of a Renewable Energy Source (excluding biomass), that causes a reduction or cessation of generation of electric energy by a Renewable Energy Facility.

“Forced Outage” means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure (such unanticipated failure does not include a Fuel Impediment).

“Governing Law” has the meaning given in Section 24 of the Agreement as that Section may be modified by Section R-5.1.

“Governmental Authority” means the United States, a State thereof, any political subdivision or governmental body thereof, including any department or agency, with jurisdiction over a Party or an Applicable Program.

“Not Regulatorily Continuing” has the meaning given in Section R-5.2.2(b).

“Program Attributes” has the meaning given in Section R-2.4.2.

“Regulatorily Continuing” has the meaning given in Section R-5.2.2(a).

“REC” refers to a renewable energy certificate and means a credit or certificate representing Environmental Attributes created by or resulting from the generation of one (1) megawatt hour of electric energy by a Renewable Energy Source, subject to the terms and conditions stated in the Confirmation.

“REC Product” has the meaning given in Section R-2.2.

“REC Transaction” has the meaning given in Section R-2.1.

“Resource Contingent REC” has the meaning given in Section R-2.3.3.

“Resource Contingent Bundled REC” has the meaning given in Section R-2.3.4(a).

“Renewable Energy Facility” means an electric generation unit or other facility or installation capable of producing or emitting electric energy using a Renewable Energy Source.

“Renewable Energy Source” means (a) a resource that is recognized as a renewable energy source under an Applicable Program designated in the Confirmation, or (b) if no Applicable Program is designated in the Confirmation, a natural resource from or through which electric energy can be generated, including wind, solar, geothermal, landfill gas, wave, tidal, thermal ocean technologies, and hydroelectric power, and excluding fossil carbon-based, non-renewable, or radioactive fuel.

“Reporting Rights” means the right to report and register the exclusive ownership of the REC or Environmental Attributes under Governing Law or any other laws, regulations, orders or judicial precedents of the government of the United States of America or any department or agency thereof, or any State or political subdivision thereof, including mandatory and voluntary reporting, and including reporting under section 1605(b) of the Energy Policy Act of 1992 and any foreign or international emissions trading or reporting program.

“Scheduled Maintenance” means an outage or partial outage scheduled to perform the necessary normal maintenance on a generating unit, transmission line, or other facility to preserve the reliability of the unit or overall system reliability, including scheduled outages for such maintenance.

“Tracking System” means the entity, if any, the Parties designated in the Confirmation that will perform REC tracking and accounting functions, including receiving evidence of generation of the REC and crediting the resulting REC to the Purchaser’s account.

“Transfer Date” means the date specified in the Confirmation, no later than which Seller must make Delivery as defined in Sections R-3.1.1 or R-3.2.1, as applicable.

“Vintage” means the period in which the REC was or will be created.

SERVICE SCHEDULE R ANNEX 2

**FORM OF
REC TRANSACTION CONFIRMATION**

IDENTIFICATION OF PARTIES

Name of Seller:

Name of Purchaser:

Seller Information:

Purchaser Information:

Contact

Contact

Tel (O):

Tel (O):

Tel (Cell):

Tel (Cell):

E-mail:

E-mail:

Fax:

Fax:

Contact information is subject to change by notice.

ADDRESSES FOR FORMAL NOTICES:

Purchaser:

Seller

INCORPORATED DOCUMENTATION (any "long form" or other bilateral agreements between the Parties applicable to this Confirmation and incorporated herein)

REC TRANSACTION TERMS

REC Product (e.g., Firm REC, Firm Bundled REC, etc.) (see Section R-2.3):

Vintage of REC already created or period of generation for REC to be created (mm/yyyy)

Contract Quantity (stated either on a megawatt hour basis or percentage of output of a designated Renewable Energy Facility)

Transfer Date (generally the Effective Date of this Confirmation for REC that already exists, and future date for REC to be generated after Effective Date)

Contract Price:

Allocation, if agreed:

REC:

Energy:

Environmental Attributes (Check One)

☐ All Attributes (this designation is effective only if a Renewable Energy Source or Renewable Energy Facility is designated below)

☐ Program Attributes (this designation is effective only if an Applicable Program is identified below) (Note: WREGIS and possibly other Tracking Systems will not recognize a Program Attributes REC, or may treat it as an All Attributes REC)

Applicable Program (required for Program Attributes; not required for All Attributes, but designation establishes the minimum Environmental Attributes required by a designated Applicable Program). Also required for recovery of penalties and alternative compliance payments (Section R-9.1). Designation should include detailed information, including any applicable legal citations, to assure adequate description of the program.

Designation of Renewable Energy Source or Renewable Energy Facility (required for All Attributes).

Renewable Energy Source: _____

Renewable Energy Facility

Name: _____

Location: _____

Generation Information System number: _____

Tracking System number: _____

Fuel (wind, solar, etc.): _____

Change in Law Provisions (Check One)

☐ Regulatorily Continuing (Section R-5.2.2(b), requiring that Seller make commercial reasonable efforts to obtain compliance with Changes in Law in the designated Applicable Program. If checked, state any agreed maximum costs of such efforts (if no maximum is stated, then no maximum applies):

\$ _____

☐ Not Regulatorily Continuing (Section R-5.2.2(c)).

Tracking System(s) if any: (if none specified, then Delivery occurs by Attestation and not by Tracking System crediting)

Damages. Damages include reimbursement for penalties and alternative compliance payments, subject to any agreed cap on this damages component, which can be zero (Section R-9.1):

\$ _____

Any agreements concerning forward certificates in WREGIS or other Tracking System Expedition) (Section R-3.3.1):

TERMS APPLICABLE TO ENERGY IF INCLUDED IN REC PRODUCT

Period (Schedule) of Delivery: From ______ To ______

Schedule (Days and Hours): _____

Delivery Rate: _____

Delivery Point(s): _____

Contract Quantity (specify all details): _____

Transmission Path for the Transaction (If Applicable): _____

EFFECTIVE DATE AND OTHER PROVISIONS

Effective Date (no earlier than mutual execution of this Confirmation)

Other provisions: _____ [generally
stated in attachment to the Confirmation]

The Parties agree to the REC Transaction set forth herein as of the Effective Date

Seller

Purchaser

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____ Date: _____

ANNEX 2, Exhibit 1
Form of Attestation To Be Included As Exhibit To Confirmation

Attestation Of [Seller] ("REC Generator")
Of Sale, Transfer, and Delivery Of Renewable Energy Certificate to
[Purchaser] "Purchaser"

Party and Contact Information:

[Insert names and addresses of Parties, address, and contact information]

Attestation:

I, [name of attesting officer], the [title] of Seller, declare and certify that Seller sold and delivered

Elect one:

☐ Environmental Attributes Only

☐ Bundled with electricity

to Purchaser, and further, that

1. Was generated by the Renewable Energy Facility ("REF") designated below and sold, transferred and delivered, subject to receipt of payment, to Purchaser.
2. Is associated with electricity delivered into the [insert delivery area] in compliance with applicable energy delivery rules.

REF Generator Name and Number	Technology Type	Fuel Type (Renewable Energy Source)	Generation Period (mm/yy)	Generator First Day of Operation

The above statements are true and correct to the best of my knowledge, and based on my duly diligent inquiry. This Attestation may serve as a Bill of Sale to document, in accordance with the Confirmation, the transfer from Generator to Purchaser of all of Seller's right, title and interest in and to the REC and environmental attributes it represents, as set forth above.

Either Party may disclose this Attestation to others, including a Tracking System, public utility commissions and other regulatory bodies having jurisdiction over Purchaser, and administrators of voluntary green energy programs, to substantiate and verify the accuracy of the Parties' compliance, advertising and public claims.

Signature:

Date _____

Print Name: _____

SCHEDULE Q
FERC ACCEPTED SELLER-SPECIFIC COST-BASED RATE SCHEDULES

Note: Each rate schedule included in this Schedule Q is applicable solely to the Member which submitted that rate schedule to FERC, and not to any other Member.

INDEX

Name of Member	FERC Order Citation
Arizona Public Service Company	Letter Order, Docket No. ER09-1402 (Aug. 11, 2009)
Nevada Power Company	Letter Order, Docket No. ER11-1832 (Nov. 23, 2010)
PacifiCorp	Letter Order, Docket No. ER14-835 (Feb. 21, 2014)
Public Service Company of Colorado	Letter Order, Docket No. ER95-1207 (Oct. 26, 1995)
Sierra Pacific Power Company	Letter Order, Docket No. ER14-1420-000 (April 15, 2014)
Southwestern Public Service Company	Letter Order, Docket No. ER08-857 (Aug. 28, 2008)
Westar Energy, Inc.	Letter Order, Docket No. ER11-3233 (May 26, 2011)

WSPP AGREEMENT SCHEDULE Q FOR ARIZONA PUBLIC SERVICE COMPANY

Determination of Ceiling Rates Applicable to Sales Made by Arizona Public Service Company Under the WSPP Agreement

I. DEFINITIONS

The following terms shall have the specified meaning when used in any Transaction between Arizona Public Service Company ("APS") and any Customer pursuant to this Cost-Based Tariff ("Tariff"):

1. **APS**: Arizona Public Service Company or any successor-in-interest to Arizona Public Service Company.
2. **Commission**: The Federal Energy Regulatory Commission, or any successor federal agency having jurisdiction over this tariff.
3. **Customer**: Any entity entering into a Transaction with APS under this Tariff.
4. **System Incremental Cost**: ("SIC") System Incremental Cost means, with respect to a Transaction, all reasonably forecasted incremental generation, power purchase, and other, related costs that APS would not otherwise incur if such Transaction is not entered into. System Incremental Cost shall include, but not be limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, regulatory commission charges, emission allowance and other environmental compliance costs, transmission losses, wheeling charges, any applicable taxes or assessments based on the revenues received or quantities sold under the Transaction, and with respect to capacity and energy purchased from a third party, the total forecasted amount that would be paid for that capacity and energy by APS. For purchases of energy and capacity by APS, System Incremental Cost will also include, but not be limited to, regulatory commission charges, emission allowances, transmission losses, wheeling charges and taxes.
5. **Tariff**: This Cost-Based Tariff, as it may be amended and/or superseded from time to time.
6. **Transaction**: An individual transaction scheduled pursuant to this Tariff.
7. **Party**: References to a Party shall mean either APS or the Customer, who collectively shall be referred to as "Parties."
8. **Phoenix Valley Load Pocket ("PVL")**: All delivery points at or within Phoenix 230kV loop, including the 230kV substations forming the boundaries of the loop, which include: Westwing 230kV, Pinnacle Peak 230kV, Kyrene 230kV, Rudd 230kV, Knox 230kV, Browning 230kV, Goldfield 230kV, Liberty 230kV, and Rogers 230kV.

II. AVAILABILITY

Service under this Tariff shall be available to Customers for Transactions that have a duration of less than one year, or for Customers purchasing for delivery within the PVL

during the months of June, July, or August without regard to the duration of the agreement to purchase.

III. SALES OF ELECTRIC CAPACITY AND/OR ENERGY

APS and Customers may enter into Transactions under this Tariff from time-to-time. All such Transactions shall be voluntary on the part of APS and the Customer(s). APS at its sole discretion will determine the amounts of and times that electric capacity and/or energy is to be made available under this Tariff prior to entering into a Transaction.

IV. RATES

1. A Transaction will be priced at rates established by agreement between Seller and Buyer, provided that the sum of all charges with respect to each Transaction may be up to but shall not exceed the sum of:
 - a) A demand charge, equal to, as appropriate:
 - i. \$6,985 /MW/month;
 - ii. \$1,612 /MW/week;
 - iii. \$322 /MW/day, provided the total demand charge in any week, pursuant to a sale of daily electric power, shall not exceed the weekly rate times the highest amount in megawatts of purchased electric power in any day during such week; or
 - iv. \$20.15 /MW/hour, provided that the total demand charge in any day, pursuant to a sale of hourly electric power, shall not exceed the daily rate times the highest amount in megawatts of purchased electric power in any hour during such day, and the total demand charges in any week, pursuant to a sale of hourly or daily electric power, shall not exceed the weekly rate times the highest amount in megawatts of purchased electric power in any such week; and
 - b) The System Incremental Cost, forecasted at the time the Transaction is executed, plus 10% of the forecasted System Incremental Cost; and
 - c) The cost of transmission service and any ancillary services purchased by APS and resold to Customer, as known or forecasted at the time the Transaction is executed.

V. EXPANSION OF FACILITIES

APS will have no obligation under this Tariff to plan its system or modify its facilities in order to provide service hereunder.

VI. OTHER TERMS AND CONDITIONS

Except to the extent otherwise specifically agreed to by the Parties, all Transactions under APS's Schedule Q shall be governed by the terms and conditions set forth in the WSPP Agreement.

WSPP AGREEMENT SCHEDULE Q FOR PACIFICORP

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by PacificCorp

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by PacificCorp (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power Company balancing authority area or the Sierra Pacific Power Company balancing authority area, and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by PacificCorp pursuant to the applicable terms and conditions of the WSPP Agreement from PacificCorp's generating resources shall not exceed the following:
 - (i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

<u>Units Most Likely To Participate Methodology</u>	
Monthly	Up to \$11,317/MW
Weekly	Up to \$2,612/MW
Daily	Up to \$522/MW, provided, however, that the Daily rate of \$522/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,612/MW.
Hourly	Up to \$32.64/MW, provided, however, that the hourly rate of \$32.64/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$522/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,612/MW.
 - (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If PacificCorp enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:

- (i) PacifiCorp's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.
- 4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by PacifiCorp including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
- 5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by PacifiCorp in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

WSPP AGREEMENT SCHEDULE Q FOR NEVADA POWER COMPANY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Nevada Power Company

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Nevada Power Company, d/b/a NV Energy ("Nevada Power") (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power balancing authority area, and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by Nevada Power pursuant to the applicable terms and conditions of the WSPP Agreement from Nevada Power's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

Units Most Likely To Participate Methodology

Monthly	Up to \$8,390/MW
Weekly	Up to \$1,940/MW
Daily	Up to \$390/MW, provided, however, that the Daily rate of \$390/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$1,940/MW.
Hourly	Up to \$24.40/MW, provided, however, that the hourly rate of \$24.40/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$390/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$1,940/MW.

- (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Nevada Power enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:
 - (i) Nevada Power's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.

4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Nevada Power including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Nevada Power Company in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

**WSPP AGREEMENT SCHEDULE Q FOR PUBLIC SERVICE COMPANY OF
COLORADO**

**Determination of Ceiling Rates Applicable to Sales Made by Public Service Company of
Colorado under the WSPP Agreement**

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Public Service Company of Colorado ("Public Service") (1) pursuant to the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service) and (2) at a delivery point located within the Public Service balancing authority area.
2. The rates for any cost-based power and/or energy sale made pursuant to the WSPP Agreement from certain Public Service generation resources shall not exceed the following:

Maximum Demand Charge:

The Maximum Demand Charge shall be capped at either of the following methodologies:

Units Most Likely to Participate Methodology

Annual	\$123.73/kW
Monthly	\$10.62/kW
Weekly	\$2.45/kW
Daily	\$0.49/kW, provided, however, that the Daily rate of \$0.49/kW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2.45/kW.
Hourly	\$0.0306/kW, provided, however, that the hourly rate of \$0.0306/kW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$0.49/kW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2.45/kW.

Unit Revenue Constraint Methodology

Annual	\$265.72/kW
Monthly	\$22.14/kW
Weekly	\$5.11/kW
Daily	\$1.02/kW, provided, however, that the Daily rate of \$1.02/kW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$5.11/kW.

Hourly \$0.0639/kW, provided, however, that the hourly rate of \$0.0639/kW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of 1.02/kW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$5.11/kW.

Note: The total amount of Power available for cost-based sales by Public Service based on the costs of Comanche 3 under the WSPP Agreement and under other Public Service tariffs and arrangements, for which the agreed upon demand charge is determined based on Comanche 3, is limited to 500 MWs on an hourly basis.

Plus:

Energy Charge:

- (a) no less than 100% of Public Service's System Incremental Costs (SIC); plus
- (b) up to 10% of SIC, provided, however, that whenever the SIC for an hour is based on purchased power, the 10% mark up shall be limited to one mill/kWh.

Note: The total charges for any sale by Public Service using the Maximum Demand Charge as determined based on the Unit Revenue Constraint Methodology shall not exceed the product of the requested demand (kW) multiplied by the applicable Maximum Demand Charge using the Unit Revenue Constraint Methodology as specified above, plus the variable costs of Comanche 3 (based on the second previous month's cost data), and notwithstanding the foregoing, a floor equal to 100% of Public Service's System Incremental Cost.

3. When a cost-based sale of power and/or energy made by Public Service under the WSPP Agreement is conditioned upon Public Service acquiring purchased power, Purchaser shall pay the following amounts to Public Service for power and energy:
 - (a) Public Service's actual purchased power costs; plus
 - (b) a one mill adder for transactions of less than one year in duration.
4. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Public Service in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which otherwise would not have been incurred, had such service not been provided.
5. For purposes of this Schedule Q, "Purchased Power" means the Power and Energy purchased from a third party by Public Service and shall consist of the total amount paid

therefor by Public Service associated with such purchase, plus any cost which otherwise would not have been incurred, including, but not limited to, regulatory commission charges, transmission losses, third-party transmission charges, and taxes, fees or assessments related to such transactions. Tax expenses shall include the expenses that are incurred as taxes either in connection with the sale or production of such Power and Energy. The term Purchased Power shall not apply to long-term purchases that are secured to supply Public Service's obligation load requirements as a system resource or to meet other regulatory requirements.

6. For purposes of this Schedule Q, System Incremental Costs ("SIC")¹ shall be determined as follows:

SIC are any costs forecasted to be incurred by Public Service solely by reason of its provision of an incremental amount of coordination-type energy to supply to another company, including but not limited to, costs for fuel, reactant, labor, operation, maintenance, start-up, fuel handling, taxes, emission allowances, and services provided by RTOs, ISOs, or other transmission providers such as transmission and ancillary services and losses. Such costs may also include costs paid to third parties where Public Service has an existing contractual entitlement to purchase energy.

- For intraday (real-time) transactions, incremental cost is determined through a review of hourly system characteristics.
- For non-intraday transactions, incremental cost is determined by using a resource optimization model such as, but not limited to ProSym or GenTrader.

The forecasted incremental cost represents the relative increase in total variable cost, in comparison to the previously determined base variable cost. Public Service forecasts incremental costs on a monthly, daily and hourly basis in order to evaluate whether it would be economic to engage in a wholesale sale of coordination energy.² In order for Public Service to transact, and sell power to another entity, the purchaser must be willing to pay no less than the forecasted incremental cost for the period during which the energy is sold. It is necessary to use forecasted costs because transactions are entered into in the market in advance. The forecast incremental costs for Public Service utilize its unique portfolio resources, applicable fuel costs and generation characteristics.

Monthly forecasted incremental variable costs are developed utilizing an optimization and unit commitment model. Generation characteristics such as forecasted fuel prices, effective heat rates, system penalty factors, start-up costs, unit parameters (e.g., minimum run time, dispatch minimum, dispatch maximum), variable O&M, and tolling costs are utilized in the model to establish the base cost to serve a forecasted amount of obligation (load and the net of applicable firm purchase and sales transactions). Planned and forced outages are also considered in the model. Additional obligations are added to the model (consistent with blocks traded in the market), and the optimized costs are returned. The difference in costs between the first and second run, *i.e.*, with and without

an incremental transaction or load addition, will represent the incremental cost to serve the additional obligation. The forecasted incremental cost to serve the additional obligation will establish the minimum price required in order to engage in a sale of similar energy volume.

Daily forecasted incremental costs are developed utilizing a unit commitment and optimization program. The best available generation characteristics are utilized in the model to forecast the base cost to serve the next-day obligation. Additional obligations are applied and system costs evaluated to establish the forecasted cost to serve a potential incremental sale.

On an hourly basis, the system operator forecasts the incremental cost to serve an additional obligation by evaluating current and short-term forecast system conditions and the resources that are not previously allocated to meet established obligations. If additional portfolio resources are available (not allocated for native load requirements), the system operator will evaluate the comprehensive cost to produce the quantity of energy needed for an incremental sale.

If the Parties to a transaction under this WSPP Agreement expressly agree in a transaction agreement, incremental costs may be determined in the same manner as specified above, but on an after-the-fact, actual basis.

Note 1: The Commission previously accepted this incremental rate methodology in *Xcel Energy Services, Inc., et al.*, 117 FERC ¶ 61,180, at PP 45-49 (2006).

Note 2: The Commission has found this approach to be acceptable. *See, e.g., Western Systems Power Pool*, 55 FERC ¶ 61,495, at 62,718 (1991) (noting that incremental cost “may be forecasted hourly, weekly, or monthly”).

WSPP AGREEMENT SCHEDULE Q FOR SIERRA PACIFIC POWER COMPANY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Sierra Pacific Power Company

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Sierra Pacific Power Company, d/b/a NV Energy ("Sierra") (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power Company balancing authority area ("NEVP"), and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by Sierra pursuant to the applicable terms and conditions of the WSPP Agreement from Sierra's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

Units Most Likely To Participate Methodology

Monthly	Up to \$9,810/MW
Weekly	Up to \$2,260/MW
Daily	Up to \$450/MW, provided, however, that the Daily rate of \$450/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,260/MW.
Hourly	Up to \$28.10/MW, provided, however, that the hourly rate of \$28.10/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$450/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,260/MW.

- (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Sierra enters into purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:
 - (i) Sierra's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental

impositions; and

(ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.

4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Sierra including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Nevada Power Company in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

**WSPP AGREEMENT SCHEDULE Q FOR SOUTHWESTERN PUBLIC SERVICE
COMPANY**

**Determination of Ceiling Rates Applicable to Sales Made by Southwestern Public Service
Company under the WSPP Agreement**

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Southwestern Public Service Company ("SPS") (1) pursuant to the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service and (2) at a delivery point located within the SPS balancing authority area.
2. The rates for any cost-based power and/or energy sale made pursuant to the WSPP Agreement from SPS generation resources shall not exceed the following:

Maximum Demand Charge:

Monthly	\$ 7.56/kW
Weekly	\$ 1.745/kW
Daily (On-peak)	\$ 0.349/kW, provided, however, that the Total Weekly charges for a customer paying the Daily rate of \$0.349/kW (on-peak) or \$0.249 (off-peak) shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum Weekly demand charge of \$1.745/kW.
Daily (Off-peak)	\$ 0.249/kW
Hourly	\$ 21.813/MW, provided, however, that the Total Daily charges for a customer paying the Hourly rate of \$21.813/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum Daily (on-peak) demand charge, and total Weekly charges for such a customer shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum Weekly demand charge of \$1.745/kW.

plus

Energy Charge:

- (a) no less than 100% of SPS's System Incremental Costs (SIC); plus
- (b) up to 10% of SIC, provided, however, that whenever the SIC for an hour is based on purchased power, the 10% mark up shall be limited to one mill/kWh.

Note A: The total charges for any cost-based sale under the WSPP Agreement shall not exceed the product of the requested demand (kW) multiplied by the applicable Maximum Demand Charge in this Section 1, plus the variable costs of Lea Power

Partners (based on the second previous month's cost data), and not withstanding the foregoing, a floor equal to 100% of SPS's System Incremental Cost.

Note B: The total amount of Power available for cost-based sales by SPS under the WSPP Agreement and under other SPS tariffs and agreements for which the agreed upon demand charge is determined based on Lea Power Partners is limited to 600 MWs on an hourly basis.

3. When a cost-based sale of power and/or energy made by SPS under the WSPP Agreement is conditioned upon SPS acquiring Purchased Power, Purchaser shall pay the following amounts to SPS for power and energy:

- (a) SPS's actual Purchased Power costs; plus
- (b) a one mill adder for transactions of less than one year in duration.

4. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by SPS in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which otherwise would not have been incurred, had such service not been provided.

5. For purposes of the WSPP Agreement, System Incremental Costs ("SIC") shall be determined as follows:

SIC are any costs forecasted to be incurred by SPS solely by reason of its provision of an incremental amount of coordination-type energy to supply to another company, including but not limited to costs for fuel, reactant, labor, operation, maintenance, start-up, fuel handling, taxes, emission allowances, and services provided by RTOs, ISOs, or other transmission providers such as transmission and ancillary services and losses. Such costs may also include costs paid to third parties where the SPS has an existing contractual entitlement to purchase energy.

- For intraday (real-time) transactions, incremental cost is determined through a review of hourly system characteristics.
- For non-intraday transactions, incremental cost is determined by using a resource optimization model such as, but not limited to ProSym, Cougar or GenTrader.

The forecasted incremental cost represents the relative increase in total variable cost, in comparison to the previously determined base variable cost. SPS forecasts incremental costs on a monthly, daily and hourly basis in order to evaluate whether it would be economic to engage in a wholesale sale of energy.² In order for SPS to transact, and sell power to another entity, the purchaser must be willing to pay no less than the forecasted incremental cost for the period during which the energy is sold. It is necessary to use forecasted costs because

² The Commission has found this approach to be acceptable. *See, e.g., Western Systems Power Pool*, 55 FERC ¶ 61,495 at 62,718 (1991) (noting that incremental cost "may be forecasted hourly, weekly, or monthly").

transactions are entered into in the market in advance. The forecast incremental costs for SPS utilize its unique portfolio resources, applicable fuel costs and generation characteristics.

Monthly forecasted incremental variable costs are developed utilizing an optimization and unit commitment model. Generation characteristics such as forecasted fuel prices, effective heat rates, system penalty factors, start-up costs, unit parameters (e.g., minimum run time, dispatch minimum, dispatch maximum), variable O&M, and tolling costs are utilized in the model to establish the base cost to serve a forecasted amount of obligation (load and the net of applicable firm purchase and sales transactions). Planned and forced outages are also considered in the model. Additional obligations are added to the model (consistent with blocks traded in the market), and the optimized costs are returned. The difference in costs between the first and second run, i.e., with and without an incremental transaction or load addition, will represent the incremental cost to serve the additional obligation. The forecasted incremental cost to serve the additional obligation will establish the minimum price required in order to engage in a sale of similar energy volume.

Daily forecasted incremental costs are developed utilizing a unit commitment and optimization program. The best available generation characteristics are utilized in the model to forecast the base cost to serve the next-day obligation. Additional obligations are applied and system costs evaluated to establish the forecasted cost to serve a potential incremental sale.

On an hourly basis, the system operator forecasts the incremental cost to serve an additional obligation by evaluating current system conditions and the resources that are not previously allocated to meet established obligations. If additional portfolio resources are available (not allocated for native load requirements), the system operator will evaluate the comprehensive cost to produce the quantity of energy needed for an incremental sale.

WSPP AGREEMENT SCHEDULE Q FOR WESTAR ENERGY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Westar Energy under the WSPP Agreement

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Westar Energy ("Westar") (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service) and (2) at a delivery point located within the Westar Energy balancing authority area.
2. The rates for any cost-based power and/or energy sale made by Westar Energy pursuant to the applicable terms and conditions of the WSPP Agreement from Westar Energy's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped at either of the following methodologies:

Units Most Likely To Participate Methodology

Monthly	Up to \$13,520/MW
Weekly	Up to \$3,120/MW
Daily	Up to \$624/MW, provided, however, that the Daily rate of \$624/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$3,120/MW.
Hourly	Up to \$39.00/MW, provided, however, that the hourly rate of \$39.00/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$624/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$3,120/MW.

- (ii) Energy Charge of no less than 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Westar Energy enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:

- (i) Westar Energy's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.
- 4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Westar Energy including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
- 5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Westar Energy in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

LIST OF MEMBERS

3 Phases Renewables, LLC
AEP Energy Partners, Inc.
Alameda Municipal Power
Alcoa Power Marketing LLC
American Electric Power Service Corporation as agent for Indiana Michigan Power Company
American Electric Power Service Corporation as agent for Public Service Company of Oklahoma and
Southwestern Electric Power Company
Anahau Energy, LLC
ArcLight Energy Marketing, LLC
Arizona Electric Power Cooperative, Inc.
Arizona Public Service Company
Arkansas Electric Cooperative Corp.
Associated Electric Cooperative, Inc.
ATCO Power Canada Ltd.
Avista Corporation
Barclays Bank PLC
Basin Electric Power Cooperative
BTG Pactual Commodities (US) LLC
Black Hills/Colorado Electric Utility Company, L.P.
Black Hills Wyoming, Inc.
Black Hills Power Inc.
BNP Paribas Energy Trading GP
Bonneville Power Administration
BP Energy Company
Brookfield Energy Marketing LP
California Department of Water Resources
California Power Holdings, LLC
CalPeak Power LLC
Calpine Energy Services, L.P.
Cargill Power Markets, LLC
Castleton Commodities Merchant Trading L.P.
Central Arizona Water Conservation District
Cheyenne Light, Fuel and Power
Citigroup Energy Inc.
City of Anaheim, Public Utilities Dept.
City of Azusa, California
City of Banning, California
City of Burbank, California
City of Cerritos (Cerritos Electric Utility)
City of Colton, California
City of Farmington, New Mexico
City of Glendale, California
City of Corona Department of Water and Power
City of Independence, Missouri
City of Iola, Kansas
City of Lodi Electric Utility
City of Moreno Valley, California
City of Palo Alto, California
City of Pasadena, California

City of Rancho Cucamonga, California
City of Redding, California
City of Riverside, California
City of Roseville, California
City of Sikeston, Board of Municipal Utilities
City of St. George Energy Service Department
City of Vernon, California
City of Wathena, Kansas
Clatskanie People's Utility District
Cleco Power LLC
Cleco Utility Group, Inc.
Colorado River Commission of Nevada
Colorado Springs Utilities
Columbia Power Corporation
Comision Federal de Electricidad
Commerce Energy, Inc.
ConocoPhillips Company
Constellation NewEnergy, Inc.
Covanta Energy Marketing, LLC
CP Energy Marketing (US) Inc.
Credit Suisse Energy LLC
Deseret G&T
Direct Energy Business, LLC
DTE Energy Trading, Inc.
Dynegy Marketing and Trade, LLC
Dynegy Power Marketing, LLC
East Bay Municipal Utility District
East Texas Electric Cooperative, Inc.
EDF Trading North America, LLC
Elk Hills Power, LLC
El Paso Electric Company
Empire District Electric Company
Energy America , LLC
Energy Keepers, Inc.
Energy Transfer Group, LLC
ENMAX Energy Corporation
ENMAX Energy Marketing Inc.
Entergy Services, Inc. (also Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc.)
Eugene Water & Electric Board
ETC Endure Energy L.L.C.
Exelon Generation Company, LLC
FortisBC Inc.
Freepoint Commodities LLC
Freeport-McMoRan Cooper & Gold Energy Services, LLC
GDF SUEZ Energy Marketing NA, Inc.
GenOn Energy Management, LLC
Gila River Power LLC
Grays Harbor Energy LLC
Great River Energy
Golden Spread Electric Cooperative, Inc.

Golden State Water Company
Grand River Dam Authority
Guzman Energy, LLC
Harquahala Generating Company, LLC
Hetch Hetchy Water & Power
Hinson Power Company, Inc.
Iberdrola Renewables, LLC
Idaho Falls Power
Idaho Power Company
Illinois Power Marketing Company
Imperial Irrigation District
Inland Empire Energy Center LLC
Integrus Energy Services, Inc.
J. Aron & Company
Jonesboro City Water and Light
J.P. Morgan Ventures Energy Corporation
Kansas City Board of Public Utilities
Kansas City Power & Light Company
Kansas Power Pool
KCP&L Greater Missouri Operations Company
La Paloma Generating Company, LLC
Lafayette Utilities System
Las Vegas Power Company, LLC
Lincoln Electric System
Los Alamos County
Los Angeles Department of Water and Power
Louisiana Energy and Power Authority
Louisville Gas & Electric Company
Luminant Energy Company LLC
Macquarie Energy LLC
Manitoba Hydro
Marin Clean Energy
McMinnville Water & Light
Mercuria Energy America, Inc.
Merrill Lynch Commodities, Inc.
Metropolitan Water District of Southern California
MidAmerican Energy Company
Midwest Energy, Inc.
Missouri Joint Municipal Electric Utility Comm.
Modesto Irrigation District
Mohave Electric Cooperative, Inc.
Morgan Stanley Capital Group, Inc.
M-S-R Public Power Agency
Municipal Energy Agency of Nebraska
NaturEner Power Watch, LLC
Navajo Tribal Utility Authority
Nebraska Public Power District
NextEra Energy Power Marketing, LLC
Nevada Power Company
Newmont Nevada Energy Investments
New West Energy

Nexen Energy Marketing U.S.A. Inc.
Noble Americas Energy Solutions LLC
Noble Americas Gas & Power Corp.
Northern California Power Agency
Northern States Power Company
Northern Wasco County People's Utility District
NorthPoint Energy Solutions Inc.
NorthWestern Corporation dba NorthWestern Energy
NRG Power Marketing LLC
Occidental Power Services, Inc.
Oklahoma Gas & Electric Company
Oklahoma Municipal Power Authority
Omaha Public Power District
Ontario Power Generation Inc.
Otter Tail Power Company
Pacific Gas & Electric Company
Pacific Summit Energy LLC
PacifiCorp
Patua Project LLC
PG&E Energy Services
PG&E Energy Trading - Power, L.P.
Pittsburg Power Company
Plains Electric Generation and Transmission Cooperative, Inc.
Platte River Power Authority
PNGC Power
Port of Oakland
Portland General Electric
Power and Water Resources Pooling Authority
Power Company of America, L.P.
Power Resources Cooperative
Powerex Corp.
PPL EnergyPlus, LLC
PPL Montana, LLC
Public Service Company of New Mexico
Public Service Company of Colorado
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grays Harbor County
Public Utility District No. 1 of Klickitat County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Okanogan County
Public Utility District No. 1 of Pend Oreille County
Public Utility District No. 1 of Snohomish County
Public Utility District No. 2 of Grant County
Public Utility District No. 3 of Mason County
Puget Sound Energy
Rainbow Energy Marketing Corporation

Reliant Energy Services, Inc.
Renewable Power Strategies LLC dba RPS Advisors
Royal Bank of Canada
RWE Trading Americas Inc.
Sacramento Municipal Utility District
Safeway Inc.
Saguaro Power Company
Saja Energy LLC
Salt River Project Agricultural Improvement and Power District
San Diego Gas & Electric Co.
San Geronio Farms, Inc.
Seattle City Light
Sempra Generation, LLC
Shell Energy North America (US), L.P.
Sierra Pacific Power Co.
Silicon Valley Power
Silver State Energy Association
Skylar Energy LP
Skylar Resources, LP
Sonoma Clean Power Authority
South Mississippi Electric Power Association
Southern Calif. Edison Co.
Southern California Public Power Authority
Southern Company Services, Inc., as agent for: Alabama Power Company, Georgia Power Company,
Gulf Power Company, Mississippi Power Company and Southern Power Company
Southern Illinois Power Cooperative
Southern Montana Electric Generation & Transmission Cooperative, Inc.
Southern Nevada Water Authority
Southwestern Power Administration
Southwestern Public Service Company
Sulphur Springs Valley Electric Cooperative, Inc.
Sunflower Electric Power Corp.
Tacoma Power
Teck Metals Ltd.
Tenaska Power Services Co.
Tennessee Valley Authority
TGP Energy Management, LLC
The Energy Authority, Inc.
TransAlta Energy Marketing (US) Inc.
TransCanada Energy Sales Ltd.
Trico Electric Cooperative, Inc.
Tri-State Generation and Transmission Association, Inc.
Tucson Electric Power Company
Turlock Irrigation District
Twin Eagle Resource Management, LLC
Union Electric Company d/b/a Ameren Missouri
Union Power Partners, L.P.
UNS Electric Inc.
Utah Associated Municipal Power Systems
Valley Electric Association, Inc.
Vantage Wind Energy LLC

Vitol Inc.
WAPA-Colorado River Storage Project
WAPA-Desert Southwest Region
WAPA – Rocky Mountain Region (LAP)
WAPA-Upper Great Plains Region
WAPA-Sierra Nevada Region
Westar Energy, Inc.
Western Farmers Electric Coop.
Western Power Services, Inc.
Williams Flexible Generation, LLC
WTMPA/City of Lubbock (Lubbock Power & Light)

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("_____" or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____
Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions ☐ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☐ Cross Default for Party A:

☐ Party A: _____ Cross Default Amount \$ _____

☐ Other Entity: _____ Cross Default Amount \$ _____

☐ Cross Default for Party B:

☐ Party B: _____ Cross Default Amount \$ _____

☐ Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

☐ Option A (Applicable if no other selection is made.)

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

☐ Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A

☐ Option B Specify: _____

☐ Option C Specify: _____

(b) Credit Assurances:

☐ Not Applicable

☐ Applicable

(c) Collateral Threshold:

☐ Not Applicable

☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's
- ☐ Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:

- ☐ Not Applicable
☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:
Specify: _____

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

☐ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: _____

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the

Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the

controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from

the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;
 - (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its

terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into

account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES

AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party

B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover

Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted

with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of

the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make

or take delivery of all Products referred to in the Transaction to which it is a Party;

- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close

of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

- A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 -
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS
OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

"Firm (No Force Majeure)" means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____,
between _____ ("Party A") and _____ ("Party B")
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

☐ Into _____, Seller's Daily Choice

☐ Firm (LD)

☐ Firm (No Force Majeure)

☐ System Firm

(Specify System: _____)

☐ Unit Firm

(Specify Unit(s): _____)

☐ Other _____

☐ Transmission Contingency (If not marked, no transmission contingency)

☐ FT-Contract Path Contingency ☐ Seller ☐ Buyer

☐ FT-Delivery Point Contingency ☐ Seller ☐ Buyer

☐ Transmission Contingent ☐ Seller ☐ Buyer

☐ Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter

Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

California AB32 Product Annex to the EEI Master Power Purchase & Sale Agreement

Version 1.0
7/16/12

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INTRODUCTION AND EXPLANATORY NOTES

Introduction. This Introduction and these Explanatory Notes concern the California AB32 Product Annex to the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (the "EEI AB32 Annex" or the "Annex"). The Annex is for use with the EEI Master Power Purchase & Sale Agreement. The following notes explain certain selected concepts. They are intended to educate users, and are not part of the document itself, and do not create legal obligations between the Parties.

Program Implementation. The Annex is intended for use in trading AB32 cap and trade compliance products. Although at the time of publication of the Annex, the AB32 cap and trade program, including the California Air Resources Board ("CARB") accounting system, is not yet fully operational, the body of the Annex contemplates a program that is in full force and effect. Therefore, Exhibit A-1 is a form of transaction confirmation that may be used before the program begins, and it contains provisions relating to change in law and similar concepts that are likely to be applicable before, but not after, the program commences. Once the program is fully underway, Exhibit A-1 should no longer be necessary.

Early Action Offset Credits. The Offset Credits that may be traded under the Annex are intended to be issued by CARB pursuant to the Cap and Trade Regulations. At present, implementation, planning, roles, tracking system, and other issues remain outstanding with respect to changing existing early action offset credits (for example Climate Action Reserve ("CAR") Climate Reserve Tonnes ("CRTs")) into CARB offset credits, even if the path to conversion is indeed set forth in the rules. Consistent with the drafting philosophy of creating an Annex written for the long haul, as opposed to seeking to address issues likely to be present only at the commencement of the program, Exhibit A-2 is a form of offset confirmation that may be useful for Parties wishing simply to trade CAR CRTs.

Change in Law Risks.

Government Action and Program Interim Suspension. "Government Action" is action by a Governmental Authority that renders the mechanism for Delivery in any AB32 Transaction illegal, unconstitutional, unenforceable or impossible, such that neither Party can fulfill its obligations to purchase, sell or transfer AB32 Products. Government Action that is final and non-appealable allows for Cancellation of the applicable AB32 Transaction by either Party to the AB32 Transaction. Government Action that remains subject to likely appeal or further process is a "Program Interim Suspension". A Program Interim Suspension allows for Cancellation by either Party if the appeal or further process of the Government Action is not resolved within a Commercially Reasonable Period. The Parties can define the length of a Commercially Reasonable Period. If the Program Interim Suspension is resolved within a Commercially Reasonable Period, the Parties remain obligated to perform in good faith under the terms of the AB32 Transaction. Parties may also wish to consider the impact of a Program Interim Suspension on their obligations under Article 8 of the Master Agreement.

Regulatorily Continuing. If action by a Governmental Authority renders performance of an AB32 Transaction more difficult, time-consuming or costly, but does not render the mechanism for Delivery in such AB32 Transaction illegal, unconstitutional, unenforceable or

impossible, then the action is not Government Action. Action by a Governmental Authority does not constitute Government Action, does not give either Party to the affected AB32 Transaction a right of Cancellation, and the Parties are obligated to continue to perform the AB32 Transaction. The risks of the action are instead allocated to one Party or the other on the basis of whether the transaction is "Regulatorily Continuing". If the Parties designate the AB32 Transaction as Regulatorily Continuing, the seller has the obligation to ensure that the AB32 Transaction complies with the requirements of AB32 on the Delivery Date, including, if necessary, providing a replacement product. If the Parties do not designate the AB32 Transaction as Regulatorily Continuing, then the risk that the AB32 Product may fail to comply with the requirements of AB32 on the Delivery Date is borne by the Buyer so long as it complied with AB32 as of the Trade Date. If the Parties fail to elect whether the AB32 Transaction is Regulatorily Continuing, it will, by default, be Regulatorily Continuing. This is the opposite of the EEI REC's Annex, where the result of a failure to make an election is that the REC's Transaction is not Regulatorily Continuing. REC's are created by the physical action of a generation station at a point in time, and exist independently of regulation, even if they may have characteristics and uses assigned to them by regulators. By contrast, allowances, which are expected to be the most common AB32 Products, are created and initially distributed by a regulator. In an AB32 Transaction, presence or absence of the "Regulatorily Continuing" designation does not give either Buyer or Seller the right to cancel the Transaction if the program changes and the AB32 Product thus fails to comply on the Delivery Date. Rather, whether the transaction is "Regulatorily Continuing" determines which Party bears the risk of taking measures that are required to ensure that Delivery can be used for compliance with AB32.

Risks. Because the AB32 cap and trade system is the product of an administrative rule, which is subject to judicial review as well as "adjustments" by the California legislature or Congress or a federal agency, Parties should carefully assess their change in law risks.

Usage with Other Annexes.

If parties have both the REC's Annex and the EEI AB32 Annex in place, AB32 will likely prohibit a sale of REC's that is separate from the sale of energy from a resource that is a "Specified Source" within the meaning of AB32, and therefore may wish to include all of the REC's from an energy sale from the Specified Source, as such a sale of electricity would generally not, for example, currently include Allowances or offset credits.

Users of the Annex should also be careful with respect to language and terms of art used in supplemental provisions they may have added to their base EEI Agreement, such as market disruption event language, or provisions respecting options. Even when consistent, the terms can create ambiguities when used in combination with the Annex.

Parties should also refer in their Annex to any provisions of their EEI Master Agreement Cover Sheet and optional provisions that they may wish to not govern AB32 Transactions, for example Mobile-Sierra waivers.

CALIFORNIA AB32 PRODUCT ANNEX
to the
EEI MASTER POWER PURCHASE & SALE AGREEMENT

Name: _____, a _____ organized under the laws of the State of _____ ("Party A") **Name:** _____, a _____ organized under the laws of the State of _____ ("Party B")

Effective Date of EEI Master Agreement between Party A and Party B: _____

Effective Date of this Annex: _____

Annex Cover Sheet Elections:

Party A Holding Account details: _____ Party B Holding Account details: _____

The addresses and contacts for notices, invoices, confirmations, payments, and wire transfer are as set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Additional Notices:

Street: _____
City: _____
Attn: _____
Phone: _____
Facsimile: _____

Additional Notices:

Street: _____
City: _____
Attn: _____
Phone: _____
Facsimile: _____

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Confirmations:

Attn: _____
Phone: _____
Facsimile: _____

Confirmations:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Outstanding AB32 Transactions. This Annex applies to the following pre-existing AB32 Transactions:

- ☐ Option A: All AB32 Transactions outstanding between the parties as of the Effective Date of this Annex. If no options are selected, Option A applies.
- ☐ Option B: The AB32 Transactions listed in Schedule 1 to this Annex only.
- ☐ Option C: None of the AB32 Transactions between the Parties that were executed prior to the Effective Date of this Annex.

Applicability of Articles 8.1, 8.2, and, if applicable, the Collateral Annex

- ☐ Option A: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all AB32 Transactions. – If no options are selected, Option A applies.
- ☐ Option B: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, do not apply to any AB32 Transactions.
- ☐ Option C: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all AB32 Transactions except those AB32 Transactions set forth in Schedule 2 as amended from time to time.

Elections for Paragraph 3.2 Payment Netting

- ☐ Option A (Payment Netting). If neither Option A nor Option B is checked, Option A applies.
- ☐ Option B (No Payment Netting).

Elections for Paragraph 7.1 Government Action

“Commercially Reasonable Period” means a period not to exceed ___ days (thirty days if left blank).

Other Changes:

Specify, if any:

IN WITNESS WHEREOF, the Parties have caused this Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the Effective Date of this Annex. The Parties expressly acknowledge the validity of facsimile counterparts of this Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

Party A: _____

Party B: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

CALIFORNIA AB32 PRODUCT ANNEX
TO THE EEI MASTER POWER
PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B have entered into an EEI Master Power Purchase & Sale Agreement (including any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the "EEI Master Agreement"), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy and other products related thereto; and

WHEREAS, the Parties desire to enter into this California AB32 Product Annex to the EEI Master Agreement (this "Annex") to provide terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of AB32 Products (as hereinafter defined; each such Transaction, an "AB32 Transaction");

NOW, THEREFORE, the Parties agree as follows:

PARAGRAPH ONE: GENERAL TERMS

1.1 Scope of Agreement. The Parties enter into this Annex to provide the terms and conditions pursuant to which they may enter into AB32 Transactions. This Annex and the Annex Cover Sheet Elections ("Annex Cover Sheet") supplement, form a part of, and are incorporated into, the EEI Master Agreement. Capitalized terms used but not defined in this Annex are defined in the EEI Master Agreement.

1.2 Application. The terms set forth in the EEI Master Agreement as supplemented and amended by this Annex apply to AB32 Transactions. Unless otherwise expressly amended by this Annex, all of the terms and conditions set forth in the EEI Master Agreement apply to AB32 Transactions. "Transaction" as used in the EEI Master Agreement includes AB32 Products. Except as otherwise provided in this Annex, the EEI Master Agreement shall apply equally to all Transactions without differentiation. By way of example only, an Event of Default under Section 5.1 of the EEI Master Agreement gives the Non-Defaulting Party the rights under Article Five of the EEI Master Agreement with respect to all Transactions. In the event of any inconsistency among or between the EEI Master Agreement and this Annex, this Annex will govern with respect to AB32 Transactions only.

PARAGRAPH TWO: DEFINITIONS

2.1 Definitions. With respect to AB32 Transactions, the following terms have the meanings below, and if the same term is defined in the EEI Master Agreement, the definition herein supersedes and replaces that in the EEI Master Agreement:

2.1.1 "AB32" means the California Global Warming Solutions Act of 2006 and the Cap and Trade Regulations, and, with respect to any AB32 Transaction that is Regulatorily Continuing, as each may be amended from time to time.

2.1.2 “AB32 Product” means the Allowance, Offset Credit, Early Action Offset Credit or Sector-Based Offset Credit to be delivered in a particular AB32 Transaction.

2.1.3 “AB32 Transaction” is defined in the Preamble.

2.1.4 “Allowance” means California GHG Allowances, as such term is defined in the Cap and Trade Regulations, and excludes Offset Credits and Sector Based Offset Credits.

2.1.5 “Annex Cover Sheet” is defined in Paragraph 1.1.

2.1.6 “Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to AB32 or any one or both of the Parties or the terms hereof.

2.1.7 “Auction” is defined in the Cap and Trade Regulations.

2.1.8 “Cal EPA” means the California Environmental Protection Agency.

2.1.9 “Cancellation” is defined in Paragraph 7.1.1 of this Annex.

2.1.10 “Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (CCR Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by CARB pursuant to the California Global Warming Solutions Act of 2006.

2.1.11 “CAR” means the Climate Action Registry.

2.1.12 “CARB” means the California Air Resources Board.

2.1.13 “Carbon dioxide equivalent” or “CO2e” means the number of metric tons of CO₂ emissions with the same global warming potential as one metric ton of another Greenhouse Gas.

2.1.14 “CCR” means California Code of Regulations.

2.1.15 “CEC” means the California Energy Commission.

2.1.16 “Climate Reserve Tonnes” or “CRTs” means a climate reserve tonne that has been issued by CAR and that meets all of the requirements of and has been certified and verified in accordance with the applicable Protocol and includes any and all Emissions Rights.

2.1.17 “Commercially Reasonable Period” is defined on the Annex Cover Sheet.

2.1.18 “Compliance Offset Protocol” is defined in the Cap and Trade Regulations.

2.1.19 “Confirmation” is a document in the form of one of Exhibits A through A-2 hereto, or as otherwise agreed by the Parties, specifying the terms of an AB32 Transaction.

2.1.20 “CPUC” means the California Public Utilities Commission.

2.1.21 “Delivered” or “Delivery” means the transfer by Seller to Buyer of the Quantity of the AB32 Product to the Delivery Point in accordance with AB32.

2.1.22 “Delivery Date” means the date specified in the AB32 Transaction by which Seller shall Deliver AB32 Product to the Buyer.

2.1.23 “Delivery Point” is Buyer’s Holding Account unless otherwise specified in the AB32 Confirmation.

2.1.24 “Early Action Offset Credit” is defined in the Cap and Trade Regulations.

2.1.25 “Early Action Offset Program” is defined in the Cap and Trade Regulations.

2.1.26 “Emission Rights” means any present or future right, interest, claim, credit, entitlement, benefit or allowance to emit present or future gases arising from, resulting from or in connection with any AB32 Product and includes any right that may be created under any present or future Applicable Law.

2.1.27 “Government Action” means for any particular AB32 Transaction an action by a Governmental Authority that is not a Party that renders Delivery or Receipt illegal, unconstitutional, unenforceable or impossible, including repeal of AB32 or the issuance by a Governmental Authority of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal effectiveness and implementation of the Registry, AB32 or the legal ability of CARB to implement or enforce AB32, other than a sanction or penalty imposed specifically on a Party for the failure to comply with AB32, such that either Party cannot fulfill its obligations hereunder to Deliver or Receive AB32 Product, unless that part of AB32 that pertains to the AB32 Product has been replaced and superseded materially in its entirety with a compliance obligation for which the AB32 Product and its Delivery and Receipt is permitted pursuant to Applicable Law to be used for compliance therewith. Government Action specifically excludes an action of a court having jurisdiction over the bankruptcy of a Party.

2.1.28 “Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Law and includes any department, commission, bureau, board, administrative agency or regulatory body of any government and includes FERC, the Cal EPA, CARB, CEC and CPUC.

2.1.29 “Greenhouse Gas” or “GHG” is defined in the Cap and Trade Regulations.

2.1.30 “Holding Account” means the account in the Registry that an entity receives when it registers with CARB or the appropriate Governmental Authority pursuant to the Cap and Trade Regulations.

2.1.31 “Offset Credit” means an offset credit issued by CARB pursuant to the Cap and Trade Regulations or by a program approved by CARB pursuant to Cap-and-Trade Regulations and that qualifies for compliance use on each Delivery Date and otherwise meets all requirements of the Cap and Trade Regulations and other applicable regulations and, if the AB32 Transaction is Regulatorily Continuing, as each may be amended from time to time.

2.1.32 “Offset Credit Registry” means (i) CARB or (ii) an Offset Credit Project Registry approved by CARB specified in the AB32 Transaction.

2.1.33 “Penalties” means, with respect to the performing Party, the present value of any alternative compliance payments, penalties, fines or fees imposed or assessed against the performing Party by CARB or Governmental Authority under AB32 on account of Delivery and Receipt not occurring on the Delivery Date, as determined by the performing Party in a commercially reasonable manner; provided that any of the same that are imposed or assessed against the performing Party due to the performing Party’s pre-existing adverse compliance record shall not be included in such determination, and provided further that performing Party shall, redacted to comply with any obligations of confidentiality, provide a statement of calculation fairly allocating such amounts if the same are imposed or assessed due to the failure of other persons or entities in addition to the failure of the non-performing Party.

2.1.34 “Project” means an Offset Project as defined by the Cap and Trade Regulations in the case of Offset Credits, a sector based crediting program project in the case of Sector-Based Offset Credits, an Early Action Offset Project in the case of Early Action Offset Credits, and a project registered with the Offset Project Registry in the case of Registry Offset Credits as defined by the Cap and Trade Regulations.

2.1.35 “Program Interim Suspension” means Government Action reasonably expected to be the subject of appeal or further process.

2.1.36 “Quantitative Usage Limit” is defined in the Cap and Trade Regulations.

2.1.37 “Receipt” means Buyer’s receipt of the transfer by Seller to Buyer of the Quantity of the AB32 Product to the Delivery Point in accordance with AB32.

2.1.38 “Registry” means the Compliance Instrument Tracking System Service or other system acceptable to both CARB for compliance with AB32 and to Buyer.

2.1.39 “Regulatorily Continuing” means the AB32 Product complies with AB32 as of the Delivery Date.

2.1.40 “Replacement Offset Credits” means Offset Credits generated by any Project meeting CARB requirements and having the same Vintage and pursuant to the same Compliance Offset Protocol as the Offset Credits in the AB32 Transaction.

2.1.41 “Replacement Price” means (i) the price at which Buyer, acting in a commercially reasonable manner, purchases, as a replacement for any AB32 Product specified in the AB32 Transaction but not Delivered by Seller, AB32 Product complying with the terms of the AB32 Transaction as of the Delivery Date and having the same Vintage as the AB32 Product not Delivered, plus Costs reasonably incurred by Buyer in purchasing such replacement AB32 Product, or (ii) absent a purchase, (A) the market price for such AB32 Product not Delivered, as determined by Buyer in a commercially reasonable manner, or if elected in the Confirmation by the Parties, (B) Penalties; provided, however, that in no event shall Buyer be required to change its utilization of its market positions to minimize Seller’s liability.

2.1.42 "Sales Price" means (i) the price at which Seller, acting in a commercially reasonable manner, resells any AB32 Product not received by Buyer deducting from such proceeds any Costs reasonably incurred by Seller in reselling such AB32 Product and Delivering such AB32 Product to a third party purchaser thereof, or (ii) absent a sale, the market price for such AB32 Product complying with the terms of the AB32 Transaction as of the Delivery Date and having the same Vintage as the AB32 Product not received, as determined by Seller in a commercially reasonable manner; provided, however, that in no event shall Seller be required to change its utilization of its market positions to minimize Buyer's liability; and provided further that if Seller is unable after using commercially reasonable efforts to obtain a market price or resell all or a portion of the AB32 Product not received by Buyer, then the Sales Price with respect to such unsold AB32 Product shall be deemed equal to zero dollars (\$0).

2.1.43 "Sector-Based Offset Credit" is defined in the Cap and Trade Regulations.

2.1.44 "Trade Date" means the date an AB32 Transaction is entered into by the Parties.

2.1.45 "Verifier" is defined in the Cap and Trade Regulations.

2.1.46 "Vintage" means a twelve-month compliance period specified under AB32, in which the AB32 Product is created or first valid for use under AB32.

10.12 2.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (i) the singular includes the plural and vice versa; (ii) all references to a particular entity include a reference to such entity's successors and permitted assigns; (iii) all references to a particular market price index or publication include a reference to such index's or publication's successors, so long as doing so will not be contrary to either (A) the intentions of the Parties set forth in a provision of the EEI Master Agreement respecting market disruption language for Transactions with index-based pricing or (B) Applicable Law and (iv) a reference to a statute or to a regulation issued by a Governmental Authority means the statute or regulation in force as of the Trade Date, and in the case of an A32 Transaction that is Regulatorily Continuing, also as of the Delivery Date; and (v) the word "or" is not necessarily exclusive.

PARAGRAPH THREE: AMENDMENTS TO THE EEI MASTER AGREEMENT

3.1 Obligations and Deliveries. Sections 1.33, 2.4, 3.2 and 6.8 of the EEI Master Agreement shall not apply to AB32 Products or AB32 Transactions. Government Action is not a Regulatory Event within the meaning of Section 10.8 of the EEI Master Agreement.

3.2 Payment Netting.

Option A: Payment Netting with Payment for Power and AB32 Transactions on the same payment date. Section 6.2 of the EEI Master Agreement shall apply to AB32 Products, it being the intent of the Parties that monthly payments for other Transactions shall be netted with monthly payments for AB32 Products, all in accordance with Article 6 of the EEI Master Agreement, including Section 6.4 thereof. In addition to the netting of monthly payments in respect of AB32 Products and other Transactions, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement

Amounts and any other payments for all Transactions shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting with Payment for AB32 Transactions on the 5th Business Day following Delivery of AB32 Product. With respect to AB32 Products only, the first sentence of Section 6.2 shall be replaced with the following sentence: "Unless otherwise agreed by the Parties in an AB32 Transaction, all invoices under this EEI Master Agreement for AB32 Products shall be due and payable in accordance with each Party's invoice instructions on or before the later of the 5th Business Day following Delivery, or the 5th Business Day after receipt of the invoice by Buyer." Section 6.4 of the EEI Master Agreement shall apply to all Transactions; provided, however, for this limited purpose only, monthly payments for AB32 Products shall be netted only with monthly payments for other AB32 Products. If an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

PARAGRAPH FOUR: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR TRANSACTIONS RELATING TO AB32 PRODUCTS

The following provisions apply to AB32 Products only.

4.1 Holding Accounts. Seller shall be responsible for all expenses associated with establishing and maintaining Seller's Holding Account, paying expenses associated with the issuance and transfer fees for the AB32 Product, and transferring the AB32 Product from Seller's Holding Account to the Delivery Point in accordance with the terms of the Transaction. In Section 3.1 and Section 9.2 of the EEI Master Agreement, "at and from" is revised to "from and after Receipt". Each Party will be responsible for the payment of any broker's fees incurred by it in connection with entering into any AB32 Transactions hereunder. If the AB32 Product is rejected by the Executive Officer as a result of Buyer exceeding its holding limit provided in Section 95920 of the Cap and Trade Regulations or Buyer failing to take any action with its Holding Account necessary for Receipt, Article 4 of the EEI Master Agreement applies, and Seller shall not have failed to make such Delivery.

4.2 Further Assurances. Each Party will provide to the other any reasonably requested information or documentation required to implement Delivery, cooperate to cause Delivery to occur, and comply with any and all applicable procedures and requirements of Applicable Law relating to the recording and transfer of the AB32 Product.

4.3 Indemnity. "Claims" as used in Sections 1.8 and 10.4 of the EEI Master Agreement include civil and criminal sanctions and penalties. Nothing in this Annex is limited by the penultimate sentence of Section 10.8 of the EEI Master Agreement or by the last sentence of Section 10.9 of the EEI Master Agreement.

4.4 Transfer of Ownership. When transferring AB32 Product in an AB32 Transaction, whether or not the particular AB32 Product constitutes property, (a) Seller transfers any and all, and the exclusive, Emission Rights relating to that AB32 Product, as well as the exclusive right

to claim ownership and use of the AB32 Product, and (b) Buyer gains the right, exclusive to the full extent applicable, to verify, certify and otherwise take advantage of the rights, claims, ownership and Emission Rights in the AB32 Product.

4.5 Non-Firm Quantities. If a Project may issue renewable energy certificates or other environmental attributes ("RECs") but doing so impairs or diminishes the quantity of Offset Credits that may be issued by the Project in an AB32 Transaction that is Non-Firm, for example in order to comply with CPUC Decision 08-08-028 p. B-2, Seller shall not issue or sell such RECs, unless otherwise provided in the Confirmation.

4.6 Offset Credits. With respect to Offset Credits, without limiting Paragraphs 5.1 and 5.2 of this Annex:

4.6.1 Seller disclaims any representation or warranty concerning the effect of any purchase or sale with respect to Buyer's Quantitative Usage Limit.

4.6.2 Seller will (a) select Verifiers in accordance with AB32 and (b) be responsible for all costs of Verifiers.

4.6.3 Seller shall ensure that no other person or entity not authorized by Buyer may claim the benefit or use of the Offset Credits or any part thereof or Emission Rights relating thereto.

4.6.4 Seller covenants that it will not at any time double claim, double report, or double count Delivered Offset Credits, and agrees that such covenant will survive Delivery, any termination of this Agreement and any Cancellation of any AB32 Transaction.

4.6.5 Seller represents and warrants that the Project is listed by an Offset Credit Registry, or Sector Based Crediting Program as that term is used in the Cap and Trade Regulations for Sector Based Offsets, and meets all of the requirements for Projects under AB32.

4.6.6 Seller shall cause permanent retirement in the original Offset Credit Registry with respect to any Offset Credit issued by CARB for early action.

4.6.7 Seller shall hold Buyer harmless with respect to all Offset Credits that are invalidated, rescinded or otherwise revoked by the Offset Credit Registry or by CARB pursuant to 17 CCR §95985 or otherwise, by providing Buyer within five Business Days, at Buyer's election, either Replacement Offset Credits or the Replacement Price.

4.6.8 Seller warrants and represents that Sector-Based Offset Credits first issued pursuant to a CARB-approved protocol for Reducing Emissions from Deforestation and Forest Degradation (REDD) Plans are issued with a buffer risk or contingency reserve addressing reversal.

4.7 Tariffs: Energy. Party A Tariff and Party B Tariff do not apply to AB32 Transactions unless specifically so stated in the AB32 Confirmation and provided under

Applicable Law. An AB32 Transaction may be entered into in connection with a Transaction for Energy. Delivery of AB32 Product can be with or independent of delivery of the Energy with which the AB32 Product is associated if so permitted under AB32 and Applicable Law.

PARAGRAPH FIVE: FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Mutual Representations and Warranties. On the Effective Date of this Annex and on each Trade Date, each Party represents and warrants to the other what it has represented and warranted in Section 10.2 of the EEI Master Agreement and also that: (i) it is an “eligible commercial entity” and an “eligible contract participant” within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively; (ii) the Parties enter into each AB32 Transaction intending it to be physically settled with Delivery of the AB32 Product and not to be financially settled or to otherwise constitute a “swap” within the meaning of Commodity Exchange Act §1a(47); and (iii) all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

5.2 Warranties and Certain Covenants of Seller. With respect to each AB32 Transaction and the AB32 Product thereunder, Seller represents and warrants to Buyer that: (i) to the extent the AB32 Product constitutes property rights, Seller has good and marketable ownership to such AB32 Product; (ii) Seller has not, under any AB32 or otherwise, sold to any other person or entity, or retired for its own benefit the AB32 Product or any part thereof; (iii) the AB32 Product meets the specifications set forth in the AB32 Transaction; and (iv) the AB32 Product complies with AB32 as of the Trade Date, or would have complied with AB32 as of the Trade Date if the AB32 Product existed as of the Trade Date, and, for an AB32 Transaction that is Regulatorily Continuing, also as of the Delivery Date.

5.3 Attestations; Records. Seller is responsible for (a) the truthful and complete submission of all attestations that are required pursuant to AB32 under the AB32 Transactions and (b) the safe, secure, and accessible storage thereof. Except with respect to the retirement of Offset Credits converted into CARB Offset Credits for early action, Seller shall have no obligation to retire or otherwise submit AB32 Product to CARB or any other Governmental Authority for Buyer’s AB32 compliance. Seller shall maintain all records relating to Allowances for two years from Delivery Date, and all records relating to Offset Credits or Sector-Based Offset Credits for nine years from Delivery Date. Upon Buyer’s request, Seller shall provide copies of its documentation and records including all documents that Buyer is required to maintain or provide to CARB in accordance with AB32 with respect to the AB32 Transaction. Seller shall maintain adequate records to assist Buyer or CARB in meeting any present or future reporting, verification, transfer, registration, or retirement requirements associated with the AB32 Product. Nothing in this Annex limits or waives any obligations of Seller to keep records or provide attestations provided in AB32.

PARAGRAPH SIX: ADDITIONAL TERMS RESPECTING REMEDIES AND FORCE MAJEURE

6.1 Not a Penalty. The Parties intend that no remedy or amount due hereunder represents a penalty to the Defaulting Party or Non-Performing Party.

6.2 Registry Suspension Event. If a Party is unable to Deliver or receive AB32 Product due to the occurrence of a disruption in Deliveries caused by the Registry which is not subject to Paragraph 7.1 and is not within the reasonable control of, or the result of the negligence of, such Party, which such Party was unable to avoid by the exercise of due diligence, and affects in generally the same manner other users of the Registry seeking to make a similar use of the Registry (a "Registry Suspension Event"), such Party shall provide the other Party with written notice and full details within two (2) Business Days of the Registry Suspension Event. In the event of a Registry Suspension Event, the Parties will use their best efforts to cause Delivery and Receipt of the applicable AB32 Product and give effect to the original intention of the Parties. No Party will be relieved due to a Registry Suspension Event from any obligation to provide any notice or make any payments due. A Registry Suspension Event excuses Delivery and Receipt while it is pending, and alone is not an event of Force Majeure.

6.3 Scope of Force Majeure. This Paragraph 6.3 is in addition to and not in replacement of the provisions respecting Force Majeure in the EEI Master Agreement. Force Majeure may not be based upon change in Applicable Law or Government Action, any change in the price or value of AB32 Product in the market generally; any disability or penalty arising with respect to a Party as a result of the failure to comply with AB32; change in the Auction Reserve Price or the Allowance Price Containment Reserve Price, as those terms are used in the Cap and Trade Regulations; change in the manner of distribution or allocation of Allowances to regulated entities by CARB; or changes to the number of Allowances that may be purchased or retired by non-regulated or opt-in entities. In the case of a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of Force Majeure that on any day disables generally in the city in which a Party's invoice payment employees work access to the nation's banking system.

PARAGRAPH SEVEN: CHANGE IN APPLICABLE LAW

7.1 Government Action.

7.1.1 Unless otherwise provided in an AB32 Transaction, upon the occurrence of Government Action, either Party shall, notwithstanding Section 5.2(i) of the EEI Master Agreement, be entitled to terminate and cancel (any such termination and cancellation, a "Cancellation") any and all affected AB32 Transactions. In the event of any such Cancellation, neither Party shall have any further payment or performance obligations under the Cancelled AB32 Transactions; provided, however, that the Parties shall remain liable for any payments due for, and all other obligations that may lawfully be performed respecting, AB32 Product Received prior to such Cancellation and Seller shall refund to Buyer, to the extent it is lawful to do so, any amount previously paid by Buyer for any AB32 Product not Received prior to such Cancellation. Neither Party shall have any rights to, or obligations or liability for, payment of a Termination Payment for or as a result of any Cancellation of any AB32 Transaction. Cancellation of AB32 Transactions shall not terminate or affect the EEI Master Agreement or any other Transactions thereunder.

7.1.2 During a Program Interim Suspension, the Delivery Date automatically extends such that neither Party has an obligation to Deliver or Receive the AB32 Product to the extent prevented by the Government Action. If a Program Interim Suspension is terminated, lifted or ceases to apply within a Commercially Reasonable Period following the effective date of the Government Action, then the Parties shall immediately resume performance under the terms of the AB32 Transaction in good faith. If the Program Interim Suspension is not terminated within a Commercially Reasonable Period following the effective date of the Government Action, then the Program Interim Suspension will constitute Government Action on the basis of which the affected AB32 Transactions will be subject to Cancellation by either Party in accordance with Paragraph 7.1.1 of this Annex.

7.1.3 Notwithstanding the foregoing, (a) no AB32 Transaction will be subject to Cancellation or otherwise affected by Government Action that is specific to a Party and that is taken by a Governmental Authority on the basis of any actual or alleged violation of any Applicable Law by such Party and (b) Government Action and Program Interim Suspension do not suspend or abrogate any other right of a Party to terminate an AB32 Transaction or exercise a remedy hereunder not relating to such Government Action, such as such a right arising pursuant to an Event of Default.

7.2 Governing Law. Notwithstanding Section 10.6 of the EEI Master Agreement, the creation, issuance, transfer, tracking and retirement of AB32 Product shall be governed by the laws, rules and regulations of California.

Schedule 1: Outstanding AB32 Transactions

The AB32 Transactions set forth below constitute Outstanding AB32 Transactions:

Schedule 2: Applicability of Collateral Annex

The Collateral Annex applies to all AB32 Transactions except those set forth below:

**EXHIBIT A: EXAMPLE AB32 TRANSACTION
CONFIRMATION**

To:

From:

Confirmation Administration

Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [] and the EEI California AB32 Product Annex dated [] ("Annex") thereto (collectively, the "Agreement").

Trade Date _____

Seller: _____

Seller Account No.: _____

Buyer: _____

Buyer Account No.: _____

Type of AB32 Product: ☐ Allowance

☐ Offset Credit

Protocol: _____

☐ Sector-Based Offset Credit

Quantity: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: ☐ yes/☐ no; if neither checked, yes applies.

Penalties are part of Replacement Price: ☐ yes/☐ no; if neither checked, yes applies.

Associated Energy/Capacity transaction, if applicable:

import node; other information.

The Parties agree to the AB32 Transaction set forth herein.

[Seller]

[Buyer]

Signed: _____

Signed: _____

Name: _____

Name: _____

**EXHIBIT A-1: EXAMPLE AB32 TRANSACTION
PRE-FIRST AUCTION CONFIRMATION**

[for use only before first auction]

To:

Confirmation Administration

From:

Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [] and the EEI California AB32 Product Annex dated [] ("Annex") thereto (collectively, the "Agreement").

[optional:] This Transaction is contingent upon the Registry becoming operational and the first Auction occurring on or before _____, 2012. If both events do not occur before such date, this Transaction shall at the option of either Party be terminated and upon such termination neither Party shall have any further payment or performance obligations and Seller shall refund to Buyer any amount previously paid by Buyer for prior to such termination.

Trade Date _____

Seller: _____

Seller Account No.: _____

Buyer: _____

Buyer Account No.: _____

Type of AB32 Product: ☐ Allowance
 ☐ Offset Credit Protocol: _____
 ☐ Sector-Based Offset Credit

Quantity: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: ☐ yes/☐ no; if neither checked, yes applies.

Penalties are part of Replacement Price: ☐ yes/☐ no; if neither checked, yes applies.

Associated Energy/Capacity transaction, if applicable:

import node; other information.

The Parties agree to the AB32 Transaction set forth herein.

[Seller]

[Buyer]

Signed: _____

Signed: _____

Name: _____

Name: _____

**EXHIBIT A-2: EXAMPLE CLIMATE RESERVE TONNE
TRANSACTION CONFIRMATION**

To:

Confirmation Administration

From:

Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [] and the EEI California AB32 Product Annex dated [] ("Annex") thereto (collectively, the "Agreement").

Trade Date _____

Seller: _____

Seller Account No.: _____

Buyer: _____

Buyer Account No.: _____

Type of AB32 Product: CRTs

Quantity: _____

Protocol: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: (x) no

Penalties are part of Replacement Price: (x) no

For this Transaction, the Annex is changed as follows:

Delivery Point is Buyer's CAR account.

A Party's Holding Account means the Party's CAR account.

Replacement Offset Credits means Offset Credits generated by a Project meeting CAR requirements and having the same Vintage and pursuant to the same Compliance Offset Protocol as the CRTs in this Transaction.

Paragraph 7 of the Annex does not apply.

Until the ____ anniversary hereof, if any state, regional, federal or international registry or program for offset projects, or GHG registry or program, or system for the transfer of Offset Credits, that involves sources or sinks in the nature of the Project, is implemented, Seller shall

provide all Project documents to Buyer if Buyer, at its expense, elects to additionally register or have Seller register the Offset Credits, with any such registries.

The Parties agree to the AB32 Transaction set forth herein.

[Seller]

[Buyer]

Signed: _____
Name: _____

Signed: _____
Name: _____

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if the Master Agreement or Transaction Confirmations are contemplated to be signed by an Agent on behalf of a party. For drafting convenience, the Master Agreement is amended by this language to identify the party utilizing the Agent as Party B.

Other Changes

Section 10.2 shall be amended by designating the original text thereof as paragraph (a), and by adding a new paragraph (b), reading in its entirety as follows:

(b) On the Effective Date and the date of entering into each Transaction, Party B represents and warrants to Party A that:

(i) the execution, delivery, and performance of this Master Agreement and all Confirmations by [insert name of agent] (the "Agent") is within the scope of the power and authority of the Agent to act for and bind Party B pursuant to that certain [insert name of the agency agreement] dated [insert date of agency agreement] the ("Agency Agreement");

(ii) the Agency Agreement has been duly authorized, executed and delivered by the Agent and Party B, is in full force and effect, and constitutes the legal, valid and binding obligations of each of Party B and the Agent;

(iii) the Agent is duly organized, validly existing, and in good standing under the applicable laws of the jurisdiction of its formation; and

(iv) Party B will be fully bound to perform the obligations incurred under this Master Agreement on its behalf by the Agent.

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

The Cover Sheet should be completed in the name of Party B, with the signature block modified as follows:

Party B Name

By: [Name of Agent], as agent for [Party B]

By: _____

Name: _____

Title: _____

In addition, the following acknowledgement should be added below the Party B signature block on the Cover Sheet:

[Party B] hereby acknowledges and confirms (a) that Agent (as herein defined) is its duly authorized agent for all purposes of this Master Agreement and (b) its representations and warranties contained in Section 10.2(b).

Party B Name

By: _____

Name: _____

Title: _____

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

EI EDISON ELECTRIC
INSTITUTE

10.13 Bankruptcy Acknowledgments

10.14 Version 1.0

10.15 March 28, 2007

Section 10.10 is replaced in its entirety with the following:

"10.10 Bankruptcy Issues. The Parties intend that (i) all Transactions constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code") or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code.

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10.16 Bankruptcy – Utility Clause Version 1.0

To be added to Section 10.10:

Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort."

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"CAISO Energy" means with respect to any Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the Tariff).



Coal Annex to the EEI Master Power Purchase and Sales Agreement Version 1.0 April 2, 2007

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PARAGRAPH 4

**to the
COAL ANNEX
to the
EEI MASTER POWER PURCHASE & SALE AGREEMENT**

(i) COAL ANNEX ELECTIONS COVER SHEET

Paragraph 4. Elections and Variables

Name: _____, a _____ organized
under the laws of the State of _____ ("_____" or
"Party A")

Name: _____, a _____ organized
under the laws of the State of _____
("Counterparty" or "Party B")

**Effective Date of EEI Master Agreement between
Party A and Party B:** _____

All Notices:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Street: _____

City: _____

Attn: _____

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

All Notices:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Street: _____

City: _____

Attn: _____

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

Invoices:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

Nominations:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

Confirmations:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

Confirmations:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

Option Exercise:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

Option Exercise:

As set forth on the EEI Master Agreement Cover Sheet
unless otherwise set forth below:

Attn: _____

Phone: _____

Facsimile: _____

(i) Elections for Paragraph Three

3.19(a) Force Majeure – Make-Up of Tonnage

☐ Option A (Affected Quantity Made Up Upon Mutually Agreeable Schedule)

☐ Option B (Affected Quantity Made Up at the Discretion of the Non-Claiming Party, On a Mutually Agreeable Schedule)

☐ Option C (Affected Quantity Not Made Up Unless the Parties Mutually Agree Otherwise).

If none is checked, Option C shall be applicable.

3.19(b) Force Majeure – Effect of Termination

☐ Option A (Neither Party Has Any Obligation To The Other (other than payment obligations for prior performance))

☐ Option B (Termination Pursuant to Article Five (Termination Payment))

If neither is checked, Option A shall be applicable.

3.20 Payment Netting

☐ Option A (Payment Netting Between Other Product and Coal Product Transactions - If neither Option A nor Option B is checked, Option A shall be applicable.

☐ Option B (No Payment Netting Between Other Product and Coal Product Transactions)

If neither is checked, Option B shall be applicable.

Other Changes

Specify, if any:

COAL ANNEX
TO THE
EEI MASTER POWER
PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B are parties to an EEI Master Power Purchase & Sale Agreement (including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the "EEI Master Agreement"), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy or other products related thereto, or gas or other products involving gas; and

WHEREAS, the Parties desire to enter into this Coal Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of coal;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE ELEVEN: PARAGRAPH ONE: GENERAL TERMS

1.1 **Scope of Agreement.** This Coal Annex to the EEI Master Agreement (this "EEI Coal Annex") provides for the terms and conditions pursuant to which the Parties may enter into Transactions for Coal Products (as defined below).

The terms set forth in the EEI Master Agreement and this EEI Coal Annex apply to those Transactions that relate to Coal Products (each such Transaction, a "Coal Products Transaction"). Unless otherwise expressly provided in this EEI Coal Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Coal Products Transactions entered into between the Parties. The term "Transaction" as used in the EEI Master Agreement shall include Coal Products Transactions and, except as otherwise provided in this EEI Coal Annex, the EEI Master Agreement shall apply equally to all Transactions without differentiation. By way of example only, the occurrence of an Event of Default under Section 5.1 would enable the Non-Defaulting Party to exercise any or all of the rights provided in Article Five with respect to all

Transactions notwithstanding whether such Transactions are for Coal Products and/or other Products; and that the collateral provisions agreed to by the Parties in the Collateral Annex to the EEI Master Agreement, if any, shall apply to all Transactions notwithstanding whether such Transactions are for Coal Products and/or other Products. In the event of any inconsistency among or between the EEI Master Agreement and this EEI Coal Annex, this EEI Coal Annex will govern with respect to Coal Products Transactions only.

PARAGRAPH TWO: AMENDMENTS AND SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR COAL PRODUCTS TRANSACTIONS

2.1 **Definitions.** For purposes of Coal Products Transactions only:

- (a) Section 1.23 is supplemented by adding the following sentence at the end of such Section:

- (a) This definition of Force Majeure in Section 1.23 shall not apply to Coal Products Transactions. In respect of Coal Products Transactions, "Force Majeure" shall have the following meaning: "Force Majeure" means events that are beyond the reasonable control and without the fault or negligence of the Party affected thereby ("Claiming Party") that prevents the Claiming Party from performing its obligations under one or more Coal Product Transactions, that, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. A change in market conditions shall not be considered a Force Majeure event. For the avoidance of doubt, Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell Coal; (iii) Buyer's or Buyer's Customer's ability to purchase Coal upon terms more favorable than the terms of the applicable Coal Product Transaction (including, but not limited to, purchasing Coal at a price less than the Contract Price); (iv) the loss or failure of Seller's supply, whether or not foreseeable (including, without limitation, adverse mining conditions or Seller's inability to economically produce or obtain the Coal); or (v) Seller's ability to sell Coal upon terms more favorable than the terms of the applicable Coal Product Transaction (including, but not limited to, selling Coal at a price greater than the Contract Price). A transportation delay shall not be considered a Force Majeure event unless such delay affects Coal deliveries to all Persons at all locations comprising the Delivery Point.

- (b) Section 1.47 is supplemented by adding the following language at the end thereof:

1.47 "Product" or "Products" means or includes, as the case may require, Coal Products.

- (c) Sections 1.22, 1.31, 1.43, and 1.44 shall not be applicable to Coal Products Transactions.

- (d) Section 1.51 is supplemented by adding the following language as the second sentence thereof:

1.51 Notwithstanding the foregoing, for Coal Products, "Replacement Price" means, for each Ton of Coal Product not delivered by Seller, the commercially reasonable market price at which Buyer is able, or absent an actual purchase at the time of Seller's breach, would be able (FOB Delivery Point) to purchase or otherwise receive comparable supplies of Coal of comparable quality on an equivalent ¢/MMBtu, SO₂ adjusted basis, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Coal and (ii) additional transportation charges, if any, reasonably incurred by Buyer as a result of taking delivery of substitute Coal at a location other than FOB the Delivery Point.

- (e) Section 1.53 is supplemented by adding the following language as the second sentence thereof:

1.53 Notwithstanding the foregoing, for Coal Products, "Sales Price" means, for each Ton of Coal Product not accepted by Buyer, the commercially reasonable market price at which Seller is able, or absent an actual sale, would be able (FOB Delivery Point), to sell or otherwise dispose of the Coal Product at the time of Buyer's breach, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Coal Product and (ii) additional transportation charges, if any, reasonably incurred by Seller in delivering such Coal Product to the third party purchasers.

- (f) Section 1.54 is supplemented by adding the following language at the end thereof:

With respect to Coal Products, Coal shall be deemed to have been Scheduled or to be Scheduled Coal when the provisions in Section 3.4 of this EEI Coal Annex have been satisfied.

- (g) Section 1.61 is amended to add "or Transporter" after "Transmission Provider".

- (h) The definitions of "Master Agreement" and "Agreement" on the Cover Page to the EEI Master Power Purchase & Sale Agreement shall include this EEI Coal Annex.

2.2 **Confirmation.** The first sentence of Section 2.3 of the EEI Master Agreement shall be modified by the addition of the following at the end thereof: "or, with respect to Coal Product Transactions, substantially in the form of Exhibit A to this Coal Annex."

2.3 **Obligations and Deliveries.** Section 3.2 of the EEI Master Agreement shall be applicable only to Power Products. The applicable Transportation and Scheduling provisions with respect to Coal Products are set forth in Paragraph Three below.

2.4 **References to Tariffs.** References to the Tariffs of Party A and Party B in the EEI Master Agreement shall only apply to Power Products.

2.5 **Default.** Section 5.1(c) of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

The failure of the Defaulting Party to comply with its material obligations under a Coal Product Transaction, this EEI Coal Annex or the EEI Master Agreement (except to the extent constituting a separate Event of Default hereunder and except for such Party's obligations to deliver or receive Coal Product, the exclusive remedies for which are provided for in Article 4 of the EEI Master Agreement, and such failure continues uncured for ten (10) Business Days after written notice thereof, provided that if it shall be impracticable or impossible to remedy such failure within such ten (10) Business Day period, the cure period shall be extended for an additional period (not to exceed sixty (60) days) reasonably necessary to remedy such failure subject to the condition that during the additional period, the Defaulting Party shall be diligently pursuing a remedy for the failure.

2.6 **Limitation of Liability.** Section 7.1 of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS EEI COAL ANNEX OR IN A CONFIRMATION, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SALE AND PURCHASE OF COAL HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED. SELLER MAKES NO WARRANTY CONCERNING THE SUITABILITY OF COAL DELIVERED HEREUNDER FOR USE IN ANY FACILITIES. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR

DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A COAL TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

2.7 **Taxes and Other Liabilities.** Section 9.2 of the EEI Master Agreement shall not be applicable to Coal Products. The following provision shall be applicable to Coal Products in lieu thereof:

Seller shall be solely responsible as to any Coal Product Transaction for all assessments, fees, costs, expenses and Taxes (including without limitation, New Taxes, but not income taxes) imposed by governmental authorities or other third parties ("Third Party Impositions") relating to the mining, beneficiation, production, sale, use, loading and delivery of Coal to Buyer or in any way accrued or levied prior to the transfer of title to the Coal to Buyer, and including, without limitation, all severance taxes, royalties, black lung fees, reclamation fees and other costs, charges and liabilities. The risk of any change in such Third Party Impositions shall be borne solely by Seller. Buyer shall be solely responsible as to any Coal Product Transaction for Third Party Impositions relating to the Coal accrued or levied at or after the transfer of title to the Coal to Buyer, including, but not limited to, sales or use tax if applicable.

2.8 **Title and Risk of Loss.** The first sentence of Section 10.3 of the EEI Master Agreement shall not be applicable to Coal Products.

2.9 **General.** In Section 10.8 of the EEI Master Agreement, the covenant that "Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this

Agreement without the prior written consent of the other Party" shall not apply in respect of Coal Products Transactions.

PARAGRAPH THREE: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR COAL PRODUCTS TRANSACTIONS

The following provisions are applicable with respect to Coal Products Transactions only.

3.1 **Definitions.**

- (a) "Analysis Person" has the meaning set forth in Section 3.13(b).
- (b) "Analysis Report" has the meaning set forth in Section 3.13(d) of this Coal Annex.
- (c) "ASTM" means the American Society for Testing and Materials.
- (d) "ASTM Standards" means then-current, published, applicable ASTM guidelines relating to the characteristic referenced.
- (e) "ASTM Reproducibility Limits" mean the limits for permissible differences for reproducibility listed within the relevant ASTM Standard.
- (f) "Barge" means a barge with capacity sufficient to hold the number of Tons of Coal for delivery from the Source(s) or Delivery Point(s) (if the Delivery Point is different from the Source) as specified in the relevant Confirmation.
- (g) "Buyer's Customer" means, if any, the party to which Buyer has contracted to sell the Coal purchased from Seller under a Coal Products Transaction.
- (h) "Claiming Party" has the meaning set forth in Section 2.1(a) of this Coal Annex.
- (i) "Coal" means a fossil fuel composed primarily of carbon along with assorted other elements and taking the form of a readily combustible black or brownish-black rock extracted from the ground by mining.
- (j) "Coal Product" or "Coal Products" mean products involving Coal as specified in a Transaction by reference to a Product listed in Exhibit B hereto or as otherwise specified by the Parties in the Transaction.
- (k) "Commercially Reasonable Efforts" means the taking by a Person of such action as would be in accordance with reasonable commercial practices as applied to the particular matter in question to achieve the result as expeditiously as practicable; provided, however, that such action shall not require that such Person incur unreasonable expense.

- (l) "Delivery Schedule" has the meaning set forth in Section 3.4(a) or (b), as applicable, of this Coal Annex.
- (m) "Eastern Mine" means a Coal mine that is located east of the Mississippi River.
- (n) "Financial Difference" means the difference, obtained by subtracting the Settlement Price from the Contract Price.
- (o) "FOB" has the meaning given to such term in the Uniform Commercial Code enacted by the State of New York.
- (p) "Monthly Shipment Notification Date" has the meaning set forth in Section 3.4(a) or (b), as applicable, of this Coal Annex.
- (q) "New Taxes" means (a) any Taxes, fees or assessments enacted and effective after the Trade Date of the relevant Coal Product Transaction, including, without limitation, that portion of any Taxes or New Taxes that constitutes an increase.
- (r) "Nomination Period" shall mean the period during which deliveries of Coal Products may be Scheduled during the term of a particular Coal Product Transaction.
- (s) "Non-Conforming Shipment" has the meaning set forth in Section 3.17 of this Coal Annex.
- (t) "Objecting Person" has the meaning set forth in Section 3.13(d) of this Coal Annex.
- (u) "Option Premium" means the amount, if any, paid by an Option Buyer to the Option Seller as consideration for an Option.
- (v) "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.
- (w) "PRB" means the Powder River basin located in the States of Montana and Wyoming.
- (x) "Quantity" means the quantity of Coal Product that Seller agrees to sell to (or if applicable, exchange with), or cause to be delivered to, Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, pursuant to a Coal Product Transaction, as specified in a Confirmation.
- (y) "QVA" means Quantity Variation Adjustment as set forth in Section 3.9 hereto.
- (z) "Ratable Amount(s)" means the Quantity divided by the number of months in the Term, or if a Confirmation sets forth differing Quantities for delivery during

discrete quarterly, annual or other time periods within the Term, then each such Quantity divided by the number of months in the applicable time period for delivery.

- (aa) "Rejection Limits" means the quality characteristics for the Coal Product that is the subject of a Coal Product Transaction, as specified in the relevant Confirmation, that, if exceeded, give rise to a rejection right of Buyer pursuant to Section 3.17 of this Coal Annex.
- (bb) "Sampling Person" has the meaning set forth in Section 3.13(a).
- (cc) "Shipping Notice" has the meaning set forth in Section 3.5(c) of this Coal Annex.
- (dd) "Shipment" means, as applicable, one Unit Train load, one Barge or vessel load, or the aggregate of the truckloads or other common carrier loads that are loaded for a single delivery loaded in accordance with the Delivery Schedule and in accordance with the applicable Transportation Specifications.
- (ee) "Source" means the mining region, mine(s), mining complex(es), loadout(s) or river dock(s) or other point(s) of origin that Seller and Buyer agree are acceptable origins for the Coal Products in a Coal Product Transaction as specified in the Confirmation by reference to a Source standard listed in Exhibit C hereto or as otherwise specified by the parties in a Confirmation.
- (ff) "Specifications" means the quality characteristics for the Coal Product specified in connection with a Coal Product Transaction, determined on an "as received" basis, using ASTM Standards.
- (gg) "Taxes" means any or all ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.
- (hh) "Ton" means 2,000 pounds avoirdupois.
- (ii) "Transportation Equipment" means Barges, vessels, railcars, or trucks, as specified in the relevant Confirmation.
- (ij) "Transportation Specifications" means that part of the agreement(s) made by or on behalf of Seller or Buyer with its respective Transporter(s) or any applicable tariff, as amended from time to time, with respect to transportation-related requirements for each Shipment.
- (kk) "Transporter" means the entity or entities transporting Coal Product on behalf of Seller to and at the Delivery Point, or, on behalf of Buyer or Buyer's designee, from the Delivery Point.

(ll) "Unit Train" means a train with capacity sufficient to hold the number of Tons of Coal Product for a Shipment, as defined in the relevant Confirmation.

(mm) "Western Mine" means a Coal mine that is located West of the Mississippi River.

3.2 **Obligations and Deliveries.** The following Sections are added to Article Three of the EEI Master Agreement with respect to Coal Products only:

3.4 **Scheduling.** The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period for each Coal Product Transaction; provided, however that the Parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule. Seller agrees to deliver and Buyer agrees to receive the Quantity to be delivered in approximate Ratable Amounts each calendar month over the Term of a Coal Product Transaction.

(a) **Rail or Truck Scheduling.** Except as may be otherwise provided in the relevant Confirmation, Buyer shall advise Seller on or before the 15th day of each calendar month preceding scheduled Shipments of (i) the quantity of Coal Product and the number of Unit Trains or trucks Buyer desires to have delivered in the succeeding month to fulfill, in whole or in part, the Quantity; (ii) Buyer's desired loading dates; and (iii) the delivery schedule therefor ("Delivery Schedule"). Seller shall advise Buyer on or before the 20th day of the month preceding Shipment of Seller's Source and/or Delivery Point for the Scheduled monthly Shipment(s) and Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule no later than the 25th of the month preceding shipment (the "Monthly Shipment Notification Date"). The Parties will work together in good faith to agree on a reasonable and mutually acceptable Delivery Schedule within the Nomination Period and within each month during the Nomination Period provided however that the parties agree to make Commercially Reasonable Efforts to arrange and receive Shipments in accordance with a Delivery Schedule to be completed on or before the 20th of the month preceding the month of shipment. If either Party is unable to meet the scheduling requirements within the time periods set forth herein, such Party shall not have failed to deliver or receive Coal if such scheduling requirements are met within five (5) days of the time for performance of such obligations as set forth above.

(b) **Barge Scheduling.** On or before the third to last Business Day of the month preceding the delivery month:

(i) Buyer shall advise Seller of the quantity of Coal and number of Barges it desires to load during the succeeding month to fulfill the Coal Product Transaction volume and Buyer's desired loading dates and delivery schedule ("Delivery Schedule");

(ii) Seller shall advise Buyer of its Source and/or Delivery Point for the scheduled monthly Shipment(s); and

(iii) Buyer shall advise Seller of the specific transportation arrangements to comply with its Delivery Schedule (the "Monthly Shipment Notification Date").

3.5 Delivery and Risk of Loss.

- (a) Rail or Truck Deliveries. For rail or truck deliveries, the Coal shall be delivered to Buyer FOB Unit Train(s) or FOB truck(s) at the Delivery Point. For rail deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading all railcars in each Unit Train and release of the Unit Train to Buyer's Transporter. For truck deliveries, title to and risk of loss of the Coal will pass to Buyer upon completion of loading of the trucks. Buyer shall furnish suitable Unit Trains or trucks for loading and delivery of the Coal. Such Unit Trains or trucks shall be compatible with the coal loading facilities utilized by Seller and shall be properly prepared to receive Coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of Coal. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into Unit Trains or trucks and proper distribution in such Unit Trains or trucks. If the Delivery Point is at a Source such that the Coal will have been transported by Unit Train or truck prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper placement of the Unit Trains or trucks at the Delivery Point or (ii) other transfer of the custody and control of the Unit Trains or trucks to Buyer or Buyer's Transporter.
- (b) Barge or Vessel Deliveries. For Barge or vessel deliveries, the Coal shall be delivered to Buyer FOB Barge or vessel at the Delivery Point. Title to and risk of loss of the Coal will pass to Buyer upon each Barge or vessel being fully loaded and trimmed. Buyer or its Transporter shall furnish suitable Barges or vessels for delivery of the Coal. Such Barges or vessels shall be compatible with the Source's or Delivery Point's (if the Source is other than the Delivery Point) coal loading facilities to be utilized by Seller and shall be properly prepared to receive Coal. Coal haulage or transportation equipment provided by either Seller or Buyer, as the case may be, shall be clean, dry and suitable for the transportation of Coal. Seller shall arrange for and pay all costs of transporting the Coal to the Delivery Point and handling and loading the Coal into Barges or vessels to the proper draft and proper distribution in such Barges or vessels. Buyer shall arrange for and pay all costs for transporting the Coal by Barge or vessel from and after the Delivery Point to its destination. If the Delivery Point at a Source is such that the Coal will have been transported by Barge or vessel prior to delivery, then title to and risk of loss of the Coal will pass to Buyer upon the earlier to occur of (i) the safe and proper mooring of the Barge(s) or vessel(s) at the Delivery Point loading dock or discharge point or (ii) other transfer of the custody and control of the Barge(s) or vessel(s) to Buyer or Buyer's Transporter.

- (c) Documentation/Shipping Notice. For each Shipment, Seller shall supply Buyer with a shipping notice that includes, as appropriate, the vessel name, Unit Train or Barge or truck number, Source or other point from which supplied or shipped, tonnage shipped, shipping date, destination (if known to Seller), time loading commenced and finished, along with the Analysis Report required under Section 3.13(d) of this Coal Annex and any other information reasonably required by Buyer and agreed to by Seller ("Shipping Notice"). Seller shall within twenty-four (24) hours (or forty-eight (48) hours for PRB sources) of loading or prior to arrival of the vessel, Barge, truck or Unit Train (as applicable) at the destination following loading of such Shipment (whichever comes first), send the Shipping Notice to Buyer by telecopy or other mutually agreed upon method. Notwithstanding the obligations to send Shipping Notices as provided in the previous sentence, Seller agrees to make Commercially Reasonable Efforts to send any such notices as soon as practicable. Seller shall, as soon as is reasonably possible, notify Buyer of any loading deficiencies or delays in loading via telephone or other electronic means, with confirmation in writing.
- (d) Additional Transportation Charges. If, in connection with a Coal Product Transaction, a Party is charged for any increased transportation charges, penalties or other costs, including demurrage or detention, attributable to the other Party's failure to timely load or unload Coal Product in accordance with the terms of such Coal Product Transaction or the timing and tonnage requirements of the Transportation Specifications, and if such failure is not due to Force Majeure or the other Party's Transportation Equipment or Transporter, the Party failing to timely load or unload Coal Product shall promptly reimburse the other Party for any such charges actually incurred, if such charges are usual and customary, after written notice thereof. Upon request by either Buyer or Seller, such Transportation Specifications shall be made available for review by the requesting Party, provided that the disclosing Party shall not be required to disclose pricing information. The requesting Party shall sign an appropriate confidentiality agreement if requested by the disclosing Party.
- (e) Additives/Freeze Conditioning. Seller shall use Commercially Reasonable Efforts to treat the Coal with freeze control agents or other additives as directed by Buyer. Buyer shall reimburse Seller for the actual cost of materials, including reasonable application costs as charged by the Source or Delivery Point, as applicable, for application of the freeze control agents, or other additives. Seller shall invoice Buyer and Buyer shall pay Seller for such freeze conditioning in accordance with the provisions of Article 6 of the EEI Master Agreement.
- (f) Failure to Load as Scheduled. If a Scheduled Shipment fails to load as scheduled, despite the Parties' Commercially Reasonable Efforts to arrange and receive such Shipment in accordance with Sections 3.4(a) or (b), as applicable, the Parties shall make Commercially Reasonable Efforts to reschedule the Shipment to a future load date which is on or before the later of (i) ten (10) days after the originally scheduled Shipment date or (ii) the last day of the originally scheduled delivery month, consistent with industry practices. In the event the Shipment cannot be

rescheduled to a load date within such time period and the Parties cannot agree upon a future load date during the Term, or otherwise, such Shipment will be subject to the provisions of Article 4 of the EEI Master Agreement. If a rescheduled Shipment fails to load as Scheduled, such Shipment will be subject to the provisions of Article 4 of the EEI Master Agreement, unless it is mutually agreed that another future delivery date can be established. The remedies set forth in Article 4 of the EEI Master Agreement shall be a Party's exclusive remedies for the other Party's failure to load a Shipment of Coal as set forth in this EEI Coal Annex.

- (g) Buyer's Administrative Obligation. The Parties agree that some of Buyer's obligations hereunder may be performed by Buyer's Customer; nevertheless; Buyer shall remain liable for all of Buyer's obligations hereunder and Buyer shall indemnify and hold Seller harmless from and against any and all claims made by Buyer's Customer against Seller. Buyer agrees to the following:

(i) Buyer shall inform Seller at least twenty-four (24) hours in advance of arrival of each Unit Train, truck, Barge or vessel at the Source or Delivery point (if the Delivery Point is other than the Source) of the identification number of the Unit Train, truck, Barge or vessel, identification of Buyer's Customer, and destination of such Unit Train, truck, Barge or vessel.

(ii) The loading of such Unit Train, truck, Barge or vessel shall be in accordance with the loading provisions provided to Seller herein unless Buyer notified Seller in advance of different loading provisions and such different loading provisions are in general accordance with operating parameters in the Source's region, and do not, in Seller's reasonable opinion, impose an undue operating or economic burden on Seller.

(iii) All information to be supplied by Seller to Buyer under this EEI Coal Annex including but not limited to analysis, weights, manifest and invoicing information shall be supplied to Buyer and Buyer shall be responsible for transmitting such information to Buyer's Customer.

- 3.6 Title and Indemnity. With respect to each Coal Product Transaction, Seller warrants that it shall have good and marketable title to Coal and shall deliver such Coal to Buyer, free and clear of all claims, liens, security interests, encumbrances, or an interest therein or thereto by any person arising prior to the transfer of title to Buyer. Seller shall indemnify, defend and hold harmless Buyer from any and all Claims arising prior to the transfer of title to Coal from Seller to Buyer. Buyer shall indemnify, defend and hold harmless Seller from any and all Claims arising after the transfer of title to Coal from Seller to Buyer.

- 3.7 Substitute Coal. Unless otherwise restricted by the subject Confirmation, Seller shall, by giving timely notice as provided in Section 3.4 above, have the option, subject to Buyer's approval, not to be unreasonably withheld, to provide the Coal Product from any alternate Source Seller may select. Any such substituted Coal Product must comply with all Specifications for the Coal Product to be replaced

and be otherwise acceptable to Buyer. Seller shall cooperate with Buyer in Buyer's arranging for alternative transportation to allow the Coal Product shipped from the alternate Source to be delivered to Buyer at the Delivery Point at the same time and at the same Contract Price on an equivalent \$/mmBtu and SO₂ adjusted basis (if SO₂ adjustment is provided in the relevant Confirmations) as if delivery had been made to Buyer from the original Source. The Seller shall be solely responsible for any increased transportation, handling, storage and other costs, if any, incurred by Buyer directly resulting from Seller's provision of substitute Coal Product.

3.8 Failure to Deliver or Receive Coal. The remedies set forth in Article 4 of the EEI Master Agreement shall be a Party's exclusive remedies for the other Party's failure to deliver or receive all or part of the Quantity for the relevant delivery month in accordance with the applicable Coal Product Transaction.

(a) Rescheduling. As an alternative to the damages provision in Article 4 of the EEI Master Agreement, if the Parties mutually agree in writing, the Party other than the Party failing to deliver or receive a Shipment of Coal may schedule deliveries or receipts, as the case may be, pursuant to such terms as the Parties agree in order to discharge some or all of the obligation to pay damages. In the absence of such agreement, the liquidated damages provision in Article 4 of the EEI Master Agreement shall apply.

(b) Duty to Mitigate. Both parties shall be subject to a commercially reasonable good faith obligation to mitigate any damages hereunder.

(c) Payment. Payment of amounts, if any, determined under this Section 3.8 shall be made in accordance with Article 4 of the EEI Master Agreement. All such determinations shall be made in a commercially reasonable manner and the Party other than the Party failing to deliver or receive a Shipment of Coal Product shall not be required to enter into any actual replacement transaction in order to determine the Replacement Price or Sales Price as appropriate.

(d) Damages Stipulation. Each Party stipulates that the payment obligations set forth in this Section 3.8 for the damages incurred are a reasonable approximation of the anticipated harm or loss and acknowledges the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unenforceable, an unreasonable penalty or otherwise.

3.9 Quantity Variation Adjustment. If a Confirmation for a Coal Product Transaction in which the Quantity is designated in Unit Train loads or Barge loads states that QVA is applicable, then Coal Product delivered in respect of that Coal Product Transaction that is either in excess of or below the designated capacity of such Unit Train or Barge shall be priced as set forth in Exhibit D.

3.10 Specifications. Seller agrees that the quality of any and all Coal Product to be delivered by Seller and purchased by Buyer pursuant to any Coal Product

Transaction shall conform to the relevant Specifications and contain no synthetic fuels, be substantially free from any extraneous materials (including, but not limited to, mining debris, bone, slate, iron, steel, petroleum coke, earth, rock, pyrite, wood or blasting wire), be substantially consistent in quality throughout a Shipment, meet the size required, and have had no intermediate sizes (including fines) added or removed.

- 3.11 Unit Train or Truck Weighing. Shipments delivered into Unit Trains or trucks shall be weighed at Seller's expense by means of a certified batch weighing system or certified track or truck scale or in the absence of a batch weighing system or track scales for rail weights, official railroad weights. The weights determined thereby (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder.
- (a) Testing. Seller shall make Commercially Reasonable Efforts to cause the Source or Delivery Point (if the Delivery point is other than the Source) to test, calibrate, and certify its scales approximately every six (6) months to maintain them at a scale accuracy in accordance with the guidelines outlined in the National Bureau of Standards Handbook #44. Seller shall make Commercially Reasonable Efforts to notify Buyer as soon as it knows the date and time for such testing and calibration, and Buyer shall have the right, but not the duty, to witness such testing, calibration, and certification of such scales.
- (b) Inoperative Scales. If the scales are determined to be inoperative, if the Source is a Western Mine, then the weight of such Coal delivered shall be determined by averaging the lading weight per railcar of the last five (5) Unit Trains of like equipment under this Agreement weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to such breakdown. If less than five (5) Unit Trains of like equipment under this EEI Coal Annex were weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to the breakdown, the weight per railcar shall be determined by averaging the lading weight per railcar of the Unit Train(s) of like equipment under this EEI Coal Annex weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) prior to the breakdown as well as the lading weight per railcar of Unit Train(s) of like equipment under this EEI Coal Annex first weighed at the Source or Delivery Point (if the Delivery Point is other than the Source) after the scales are operable, so as to comprise a five (5) Unit Train weighted average. If the Source is an Eastern Mine, the weight of such Coal delivered shall be determined by railroad weights. If railroad weights are not available, the procedure for Western Mines shall be utilized.
- (c) Observation. Buyer shall have the right to have a representative present at its own risk and expense at any and all times to observe weighing of the Coal. If either Party should at any time question the accuracy of the scales at the Source or Delivery Point (if the Delivery Point is other than the Source), such Party may request a prompt test and adjustment of such track scales or batch weighing system at its expense by an entity mutually agreed upon by Buyer and Seller.

3.12 Barge and Vessel Weighing. Shipments delivered by Barge(s) or vessel(s) shall be weighed at Seller's expense as determined by a certified belt scale (such certification to be not older than six (6) months from the date of loading) or if not available, by draft survey taken at the Delivery Point prior to the departure of the Barge(s) or vessel(s) from the Delivery Point at Seller's expense. The weights thereby determined (absent manifest error) will be the basis on which invoices will be rendered and payments made hereunder. All such draft surveys at the Delivery Point shall be conducted by an independent surveyor (certified commercial marine surveyor for vessels) experienced in the conduct of draft surveys and selected by mutual agreement of the parties or, failing agreement, by Seller.

3.13 Sampling and Analysis.

- (a) **Sampling.** The Sampling Person shall be Seller or Seller's designee and shall perform sampling and analysis of the Coal pursuant to a Coal Product Transaction at Seller's expense. The Sampling Person shall cause a representative Coal sample to be taken by mechanical sampler that is in working condition and that has been dynamically bias tested within twelve (12) months prior to delivery by an independent certified third party. In the event the Sampling Person is not able to obtain a sample with bias tested equipment in proper working condition, the Parties shall confer for purposes of reaching agreement as to an alternative means of sampling. Samples shall be taken on an "as-loaded" basis, and analyzed on an "as-received" basis, and all sampling, sample preparation and analysis shall be performed in accordance with then current published applicable ASTM Standards.
- (b) **Analysis Procedures.** The Analysis Person shall be an independent certified laboratory. The Analysis Person shall be chosen by good faith agreement of the Parties, or failing agreement, by Seller. The Analysis Person shall, at Seller's expense, perform a short proximate analysis on an "as-received" basis, which shall include total moisture, ash, Btu, sulfur and other data as required by the applicable Confirmation.
- (c) **Analysis Splits.** The Sampling Person's samples of Coal representing each Shipment and the analysis thereof shall be used to determine quality adjustments pursuant to Section 3.16 and any rejection or suspension rights pursuant to Sections 3.17 and 3.18. Each sample shall be divided into three (3) parts in accordance with then current ASTM Standards and placed in separate airtight containers. One (1) part of each sample will be analyzed by the Analysis Person as determined pursuant to sub-section (b) above; one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days or shipped as Buyer directs; and one (1) part shall be retained by the Sampling Person for a period of forty-five (45) days to be used for a referee analysis, if necessary.
- (d) **Analysis Objections.** At the request of either Buyer or Seller, and at the expense of the requesting Party, additional analyses may be performed. The Sampling Person shall or shall cause the results of the short proximate analysis to be reported to Buyer and Seller along with Shipment I.D. number, weight and shipping data ("Analysis Report") by fax, telephone (to be confirmed promptly by fax) or other electronic means as soon as available, but in any event within twenty-four (24) hours (forty-eight (48) hours for PRB Sources) of the completion of the loading of each Shipment. By notice to the Sampling Person within twenty-four (24) hours after delivery of the Analysis Report and in any event prior to unloading of the Coal at the destination, Buyer or Seller may object to the analysis (the "Objecting Person"), and if so, the Sampling Person shall submit the retained sample to an independent testing laboratory selected by and unaffiliated with the Objecting Person for an independent analysis ("Referee Analysis"). If the results of the Referee Analysis are within ASTM

(interlaboratory) Reproducibility Limits, the Analysis Report shall control, and the costs of the Referee Analysis shall be paid by the Objecting Person. If such results for any Specification are not within such Reproducibility Limits, the results of the Referee Analysis shall control, and the costs of the Referee Analysis shall be borne by the non-Objecting Person. All analyses shall be performed in accordance with then current published applicable ASTM Standards.

- 3.14 Rounding and Significant Digits. All calculations will use floating decimals with the final operation being rounded to the significant digits to the right of the decimal place as follows:

Btu/lb. will be zero (0)	nn,nnn.
Grindability will be zero (0)	nn.
Emission Allowances will be zero (0)	n,nnn.
Tons will be two (2)	nn,nnn.nn
Dollars for payment will be two (2)	nnn,nnn.nn
Moisture % will be two (2)	nn.nn%
Ash % will be two (2)	nn.nn%
Sulfur % will be two (2)	nn.nn%
Sodium % will be two (2)	nn.nn%
SO2 lbs./MMBTU will be two (2)	.nn lbs/MMBTU
Dollars per ton will be three (3)	nn.nnn / Ton
Quality Dollars per ton will be three (3)	n.nnn / Ton

Items not specified above will use the industry standards for significant digits to the right of the decimal place.

- 3.15 Representative Presence. Each Party has the right to have a representative present, at such Party's expense, at the Delivery Point during the loading, weighing and sampling of the Coal Product.
- 3.16 Quality Adjustments. If Coal Product delivered in connection with a Coal Product Transaction varies from the Specifications required in respect thereof, and Buyer does not exercise its rejection rights under Section 3.17, quality adjustments shall be calculated pursuant to the formula(s) set forth in the relevant Confirmation. Within ten (10) days after the end of each month during the Term for each Coal Product Transaction, the quality adjustments for each Coal Product Transaction, if any, shall be netted against each other and the net quality adjustment, as appropriate, for all Shipments during such month shall be determined by Seller, and Buyer shall pay Seller the net positive adjustment, if any, or Seller shall credit Buyer the net negative adjustment, if any, on the next invoice (or pay such amount to Buyer in the event no further invoices are due) in

accordance with the billing and payment terms of Article 6 of the EEI Master Agreement.

- 3.17 Buyer's Rejection Rights. If any quality characteristic of any Shipment of Coal Product, determined in accordance with the sampling and analysis procedures set forth herein, is above or below, as applicable, any of the Rejection Limits specified in connection with a Coal Product Transaction (a "Non-Conforming Shipment"), Buyer shall have the option, exercisable by notice to Seller within one (1) Business Day after Buyer's receipt of the Analysis Report and additional analysis, if any, of the Coal provided pursuant to Section 3.13, to either (i) reject such Non-Conforming Shipment at the Delivery Point or in route, but prior to unloading from Transporter's Transportation Equipment; or (ii) reach a mutually agreeable price adjustment or other resolution using Commercially Reasonable Efforts. If Buyer fails timely to exercise its rejection rights under this Section 3.17 as to a Shipment, Buyer shall be deemed to have waived such rights to reject with respect to that Shipment only. In addition, any waiver pursuant to the foregoing sentence shall not constitute a waiver of Buyer's rights under Section 3.18. If Buyer timely exercises its rejection rights under this Section 3.17 with respect to a Non-Conforming Shipment, title, if already passed, shall immediately revert to Seller, and Seller shall be responsible for promptly transporting the rejected Coal to an alternative destination determined by Seller and, if applicable, promptly unloading such Coal and shall reimburse Buyer for all reasonable costs and expenses associated with the transportation, storage, handling and removal of the Non-Conforming Shipment. Seller shall, at Buyer's election, replace the rejected Coal within a reasonable period of time, provided that Buyer gives written notice to Seller of its desire for replacement Coal within forty-eight (48) hours after rejection of the Non-Conforming Shipment.
- 3.18 Suspension Rights. If there are three (3) Non-Conforming Shipments, whether rejected or not, in any three (3) month period or if two (2) out of any four (4) consecutive Shipments under a Coal Product Transaction are Non-Conforming Shipments (or with respect to Shipments by Barge, one (1) or more Non-Conforming Shipments in each of two (2) days of sequential Shipments under a given Coal Product Transaction, whether or not there are any intervening days without Shipments), as the case may be, then Buyer may upon written notice to Seller suspend the receipt of future Shipments under such Coal Product Transaction (except Shipments already loaded or in transit to Buyer; provided that Buyer shall retain all rights under Sections 3.16 and 3.17 with regard to such Shipments). A waiver by Buyer of its suspension right in respect of any one series of Shipments shall not constitute a waiver for any subsequent series of Shipments. If Seller, within ten (10) days of its receipt of such notice of suspension from Buyer under this Section 3.18, provides reasonable assurances in writing to Buyer that future Shipments will conform to the Specifications and Buyer has accepted such assurances (such acceptance not to be unreasonably withheld), Shipments shall resume and any tonnage deficiencies shall be made up within the Term at Buyer's option. If (i) Seller fails to provide such acceptable

assurances within such ten (10) day period; or (ii) after such assurances are provided and within three (3) months thereafter, any Shipments of Coal Product fail to conform to the Specifications and give rise to any of Buyer's rejection rights under Section 3.17 for the Rejection Limit parameter for which there was a prior suspension under such Coal Product Transaction, as the case may be, then such failure shall constitute an Event of Default under the EEI Master Agreement solely with respect to the affected Coal Product Transaction, with Seller deemed to be the Defaulting Party under Article 5 of the EEI Master Agreement.

3.19 Force Majeure.

- (a) Excuse from Performance. In addition to the provisions of Section 3.3 of the EEI Master Agreement, in the event of Force Majeure affecting a Party's obligation to deliver or receive Coal Products:

Option A: delivery of the affected quantity of Coal Product shall be made up on a schedule mutually agreeable to the Parties.

Option B: delivery of the affected quantity of Coal Product shall be made up at the non-Claiming Party's discretion on a schedule mutually agreeable to the Parties.

Option C: delivery of the affected quantity of Coal Product shall not be made up unless the Parties mutually agree otherwise.

- (b) Extended Force Majeure/Non-Claiming Party's Right to Terminate. If the Claiming Party is excused, in whole or in part, from the performance of its obligations with respect to a Coal Product Transaction by Force Majeure for a continuous period of sixty (60) days or more, then the Non-Claiming Party shall have the right, upon three (3) Business Days' prior written notice, to terminate such Coal Product Transaction and the associated obligations of the Parties thereunder (other than payment obligations for prior performance thereunder).

Option A: Neither Party shall have any liability hereunder as a result of termination of the affected Coal Product Transaction (other than payment obligations for prior performance thereunder), including, but not limited to, any Termination Payment pursuant to Section 5.3 of the EEI Master Agreement.

Option B: In the event of termination of the affected Coal Product Transaction, the non-Claiming Party must declare an Early Termination Date pursuant to Article 5 of the EEI Master Agreement and a Termination Payment will be

calculated and payable with respect to the Coal Product Transaction as if such Coal Product Transaction were being terminated in accordance therewith, in which case references to the Defaulting Party and the Non-Defaulting Party will be deemed references to the Claiming Party and the non-Claiming Party, respectively. For the avoidance of doubt, while the Claiming Party shall be deemed to be the Defaulting Party for purposes of calculating the Termination Payment, the Claiming Party shall not be a Defaulting Party for purposes of Article 5 of the EEL Master Agreement solely as a result of the non-Claiming Party's termination of the Coal Product Transaction pursuant to this Section 3.19. In determining a Termination Payment pursuant to this Section, the non-Claiming Party shall (a) if obtaining market quotations from one or more third parties, ask each third party (i) not to take account of the current creditworthiness of the non-Claiming Party or any existing Performance Assurance and (ii) to provide mid-market quotations; and (b) in any other case, use mid-market values without regard to the creditworthiness of the non-Claiming Party.

- (c) Pro Rata Allocation. If Seller claims Force Majeure and is unable to meet all of its sales obligations under an affected Coal Product Transaction and any other of its coal sales agreements involving coal of a similar type and quality as the Coal Product, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under an affected Coal Product Transaction and any other of its coal purchase agreements involving coal of a similar type and quality as the Coal Product, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated on a pro rata basis among the affected Coal Product Transaction(s) and such other coal supply or purchase agreements involving coal of the same type and quality as the Coal Product to the extent contractually permitted by such Coal Product Transaction and agreements.
- (d) Capital Expenditures and Labor Matters. It is understood and agreed that significant capital expenditures and settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require significant capital expenditure or settlement of strikes and lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the Party having difficulty.
- (e) Delivery at Delivery Point. This Section 3.19 shall not require Seller to deliver, or Buyer to receive, the quantity of Coal affected by Force Majeure at points other than the Delivery Point (including allowable substitutions under the terms of the Coal Product Transaction).

3.20 Payment Netting. If neither Option A nor Option B is specified on the Paragraph 4 Cover Sheet as applicable, Option B of this Section 3.20 shall apply.

Option A: Payment Netting Between Other Product and Coal Product Transactions.

Section 6.4 of the EEI Master Agreement shall be applicable to all Products; monthly payment obligations in respect of all other Products shall be netted with monthly payment obligations in respect of Coal Products, all in accordance with Article 6 of the EEI Master Agreement. For clarity, it is expressly agreed that, in addition to the netting of monthly payment obligations in respect of other Products and Coal Products, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions whether for other Products and/or Coal Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting Between Other Product and Coal Product Transactions.

Section 6.4 of the EEI Master Agreement shall be separately applicable to Coal Products; for this limited purpose only, monthly payment obligations in respect of other Products shall not be netted with monthly payment obligations in respect of Coal Products and monthly payment obligations in respect of Coal Products shall be netted only with monthly payment obligations in respect of other Coal Products. For clarity, it is expressly agreed that if an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions whether for other Products and/or Coal Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

3.3 Miscellaneous. The following Section is added to Article 10 of the EEI Master Agreement with respect to Coal Products only:

10.12 UCC Waiver. Section 8 of the EEI Master Agreement and, if applicable, the Collateral Annex, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this EEI Coal Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together with the EEI Master Agreement, shall constitute one and the same agreement) effective as of the Effective Date of the EEI Master Agreement. The Parties expressly acknowledge the validity of facsimile counterparts of the executed EEI Coal Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

EXHIBIT "A-1"
TO THE
EEI COAL ANNEX

CONFIRMATION - EXCLUDING OPTIONS

Date: _____

Counterparties

Coal Seller:

Coal Buyer:

---Counterparty1--- ("---CP-1---")

---Counterparty2--- ("---CP-2---")

Attn: _____

Attn: _____

Tel. _____

Tel. _____

Fax. _____

Fax. _____

---CP-1--- Ref #: _____

---CP-2--- Ref #: _____

This Confirmation sets forth the binding agreement entered into between ---Counterparty1--- ("---CP-1---") and ---Counterparty2--- ("---CP-2---") on the TRADE DATE set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

Commodity: Coal: As defined in the Coal Annex.

Trade

Date: _____

*****Purchase / Sale Information*****

Product: _____

Term: _____

Quantity/Tons: _____

Scheduling (Check one): ☐ Per Master Agreement
☐ Other: _____

Nomination Period (Check one): ☐ Monthly ☐ Quarterly ☐ Other: _____

Source(s): _____

Delivery Point (Check one): ☐ FOB railcar at the Source
☐ FOB barge at the Source
☐ Other: _____

Contract Price: _____

Payment (check one): ☐ Per Coal Annex
☐ Other _____

SPECIFICATIONS:	CHARACTERISTIC	STANDARD	REJECTION LIMIT
	Base Calorific Value	min ___ Btu/lb.	Max ___ Btu/lb.
	Total Moisture	max ___ %	Max ___ %
	Ash	max ___ %	Max ___ %
	Sulfur	max ___ %	Max ___ %
	lbs. SO ₂ /mmBtu	max ___ lbs.	Max ___ lbs.
	Ash Fusion	___ °F	Min ___ °
	Temperature (H= 1/2W		
	°F Reducing		
	Atmosphere)		
	Volatile Matter	___ %	Min ___ %
	Grindability (HGI)	___	Min ___
	Sodium (%)	___ %	

Size

[]" x 0" topsize,
nominal, with a
maximum of 55%
passing 1/4"
square wire cloth
sieve to be
determined on the
basis of the
primary cutter of
the mechanical

sampling system.

FORMULA(S)
FOR QUALITY
ADJUSTMENTS:

Btu Adjustment:

If the actual Btu on an as-received basis of any Shipment accepted by Buyer is other than the Base Calorific Value, an adjustment shall be calculated based on each Shipment as follows:

Base Calorific

$$\text{Value Adjustment} = \frac{[(\text{Actual Calorific Value}) \text{ minus } (\text{Base Calorific Value})] \times (\text{Contract Price})}{\text{Base Calorific Value}}$$

WHERE:

Actual Calorific Value = Shipment average Btu/lb

Base Calorific Value = Btu/lb as shown above

☐ **SO₂ Adjustment** (Applicable only if box is checked) :

If the actual SO₂ lbs/MMBtu on an as-received basis of any Shipment accepted by Buyer is other than the Standard SO₂ lbs/MMBtu, an adjustment shall be calculated based on each Shipment as follows:

$$\frac{((\text{Standard SO}_2 \text{ lbs/MMBtu} - \text{Actual lbs. SO}_2/\text{mmbtu}) * \text{Actual Btu/lb.} * E)}{1,000,000}$$

WHERE:

E is the price of one SO₂ Allowance (as defined below) expressed in dollars. The price of an SO₂ Allowance is determined by the monthly SO₂ price indices published in Argus Air Daily published by Argus Media Ltd. or any successor publication ("Air Daily") for the calendar month of delivery.³

In lieu of a financial SO₂ adjustment, Buyer and Seller may, upon mutual agreement at the time, exchange SO₂ Allowances as determined by the following formula:

³ As noted in the definition of "SO₂ Allowance" below, currently one SO₂ Allowance is required to emit one Ton of SO₂ during a calendar year. Upon implementation of the *Clean Air Interstate Rule* under 40 CFR 96.202 (see Final Rule, 60 Fed. Reg. 91 (May 12, 2005) at p. 25363), this formula will need to be adjusted based upon an increase in the ratio of allowances required for SO₂ emissions as follows:

- a. Use of Title IV allowances with vintage years 2010-2014 will require 2 allowances per Ton of SO₂.
- b. Use of Title IV allowances with vintage years 2015 or later will require 2.86 allowances per Ton of SO₂.

Number of SO₂ Allowances = (Standard SO₂ lbs/MMBtu – Actual SO₂ lbs/MMBtu X Actual Btu/lb X Tons of Coal ÷ 1,000,000⁴

If the product of the above is positive, Buyer shall transfer SO₂ Allowances to Seller, and if the product of the above is negative, Seller shall transfer SO₂ Allowances to Buyer. SO₂ Allowances due to Buyer or Seller hereunder shall be transferred to such party consistent with the payment required for cash SO₂ adjustments. Fractional SO₂ Allowances resulting from the calculations shall be paid in cash.

"SO₂ Allowance" means an authorization by the administrator of the United States Environmental Protection Agency (or its successor) ("EPA") under Title IV of the Clean Air Act Amendments of 1990 (effective November 15, 1990), any amendments thereto and any regulations promulgated thereunder, to emit one Ton of SO₂ during the current calendar year.

If the party owed the SO₂ Allowances (the "SO₂ Transferee") requests the transfer of the SO₂ Allowances, the party owing SO₂ Allowances (the "SO₂ Transferor") shall deliver a fully executed Allowance Transfer Form (OMB No. 2060-0258) ("ATF") relating to such SO₂ Allowances to the SO₂ Transferee. The SO₂ Transferee shall promptly cause all appropriate and fully completed SO₂ Allowance transfer documentation, including the ATF, to be placed on file with the EPA in accordance with the applicable regulations relating to the Allowance Tracking System.

The SO₂ Transferor warrants that it will deliver to the SO₂ Transferee the SO₂ Allowances, free and clear of all liens, claims, security interests, encumbrances and other defects of title. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Each party shall be responsible for any taxes or other fees associated with its respective delivery and receipt of such SO₂ Allowances.

Quality price adjustments shall be rounded to the nearest \$0.001 and calculated on a monthly weighted average.

OTHER:

OPTIONAL TERMS

The following provisions are for administrative convenience and do not alter, or release Seller or Buyer from contractual liability to perform, any obligation of Seller or Buyer under this Transaction.

BUYER NOT END-USER

☐ Buyer Not End-User (Applicable only if box is checked.)

Buyer is not able or expecting to use or consume, or take physical delivery of

⁴ *Id.*

the Coal that is the subject of this Transaction and designates Buyer's Customer as its agent for purposes of, and delegates to Buyer's Customer all of, Buyer's rights, duties and obligations relating to, scheduling, transportation from the Delivery Point, unloading, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments, and rejection and suspension rights ("*Physical Receipt Functions*") relating to the Coal that Buyer may resell to Buyer's Customer(s) (the "*Delegated Downstream Physical Receipt Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by Buyer's Customer as exercise and performance by Buyer.

Buyer shall notify Seller as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identity of Buyer's Customer(s) and provide Seller with the name, telephone number, fax number and electronic mail address of the individual responsible for Buyer's Customer's scheduling activities.

For purposes of this Transaction, the term "*Buyer's Customer*" means any person to which Buyer may resell any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Buyer's designation of Buyer's Customer as its agent and delegation to Buyer's Customer of the Delegated Downstream Physical Receipt Functions is with full right on the part of Buyer's Customer to designate any person to which Buyer's Customer may resell any or all of the Coal that is the subject of this Transaction (a "*Downstream Customer*") as Buyer's Customer's (and, thus, Buyer's) agent for purposes of, and delegate to such person all of, Buyer's Customer's rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions. Seller acknowledges and agrees to the right on the part of Buyer's Customer to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by a Downstream Customer as exercise and performance by Buyer.

☐ Buyer is End-user (Applicable only if box is checked.)

Buyer is able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction. Seller designates Buyer as its

agent for purposes of, and delegates to Buyer all of, Seller's rights, duties and obligations relating to the Physical Receipt Functions relating to Coal that Seller may purchase from Seller's Vendor ("*Delegated Upstream Physical Receipt Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Receipt Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Seller of the benefit and on behalf of Seller and, if applicable, Seller's predecessor(s) in the chain of title to the Coal that is the subject of this Transaction.

SELLER NOT PRODUCER

☐ Seller Not Producer (Applicable only if box is checked.)

Seller is not able or expecting to produce, or make physical delivery of the Coal that is the subject of this Transaction and designates Seller's Vendor as its agent for purposes of, and delegates to Seller's Vendor all of, Seller's rights, duties and obligations relating to, scheduling, loading, transportation to the Delivery Point, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments and rejection and suspension rights ("*Physical Delivery Functions*") relating to the Coal that Seller may purchase from Seller's Vendor (the "*Delegated Upstream Physical Delivery Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by Seller's Vendor as exercise and performance thereof by Seller.

Seller shall notify Buyer as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identify of Seller's Vendor and provide Buyer with the name, telephone number, fax number and electronic mail address of the individual responsible for Seller's Vendor's scheduling activities.

For purposes of this transaction, the term "*Seller's Vendor*" means any person from whom Seller may purchase any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Seller's designation of Seller's Vendor as its agent and delegation to Seller's Vendor of the Delegated Upstream Physical Delivery Functions is with full right on the part of Seller's Vendor to designate any person from which Seller's Vendor may purchase any or all of the Coal that is the subject of this Transaction (an "Upstream Vendor") as Seller's Vendor's (and, thus, Seller's) agent for purposes of, and delegate to such person all of Seller's

Vendor's rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions. Buyer acknowledges and agrees to the right on the part of Seller's Vendor to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by an Upstream Vendor as exercise and performance by Seller.

☐ Seller is Producer (Applicable only if box is checked.)

Seller is able or expecting to produce, or make physical delivery of, the Coal that is the subject of this Transaction. Buyer designates Seller as its agent for purposes of, and delegates to Seller all of, Buyer's rights, duties and obligations relating to the Physical Delivery Functions relating to Coal that Buyer may resell to Buyer's Customer (the "*Delegated Downstream Physical Delivery Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Delivery Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Buyer for the benefit and on behalf of Buyer and, if applicable, Buyer's successor(s) in the chain of title to the Coal that is the subject of this Transaction.

This letter constitutes a "Confirmation" as referred to in the Master Agreement described below. This Confirmation supplements, forms part of, and is subject to, the Master Power Purchase & Sale Agreement dated _____, _____, as it may be amended, and supplemented from time to time (the "Master Agreement") between Coal Buyer and Coal Seller. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile at the fax number specified in the Master Agreement. If you do not return this Confirmation or object to any of the terms stated herein within two (2) Business Days of your receipt of it, then in accordance with the EEI Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supersedes any broker confirmation concerning this Transaction.

COAL SELLER

COAL BUYER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT "A-2"
TO THE
EEI COAL ANNEX

CONFIRMATION - OPTIONS

Date: _____

Counterparties

Option Seller:

Option Buyer:

---Counterparty1--- ("---CP-1---")

---Counterparty2--- ("---CP-2---")

Attn: _____

Attn: _____

Tel. _____

Tel. _____

Fax. _____

Fax. _____

---CP-1--- Ref #: _____

---CP-2--- Ref #: _____

This Confirmation sets forth the binding agreement entered into between ---Counterparty1--- ("---CP-1---") and ---Counterparty2--- ("---CP-2---") on the TRADE DATE set out below as to a Transaction (this "Transaction") regarding the sale/purchase of Coal under the following terms:

Commodity: Coal: As defined in the Master Agreement.

Trade

Date: _____

*****Purchase / Sale Information*****

Option Type: _____

Option Term: _____

Strike Price: _____

Option Quantity / Tons: _____

Exercise Period: _____

Exercise Date (s) (Check one): ☐ Per Master Agreement

☐ Other: _____

*****Purchase / Sale Information*****

Product: _____

Term: _____

Quantity/Tons: _____

Scheduling (Check one): ☐ Per Master Agreement

☐ Other: _____

Nomination Period (Check one): ☐ Monthly ☐ Quarterly ☐ Other: _____

Source(s): _____

Delivery Point (Check one): ☐ FOB railcar at the Source

☐ FOB barge at the Source

☐ Other: _____

Contract Price: _____

Payment (check one): ☐ Per Master Agreement

☐ Other _____

SPECIFICATIONS:	<u>CHARACTERISTIC</u>	<u>STANDARD</u>	<u>REJECTION LIMIT</u>
	Base Calorific Value	min__ Btu/lb.	Max__ Btu/lb.
	Total Moisture	max__ %	Max__ %
	Ash	max__ %	Max__ %
	Sulfur	max__ %	Max__ %

lbs. SO ₂ /mmBtu	max <u> </u> lbs.	Max <u> </u> lbs.
Ash Fusion	<u> </u> °F	Min <u> </u> °
Temperature(H= 1/2W °F Reducing Atmosphere)		
Volatile Matter		
Grindability (HGI)	<u> </u> %	Min <u> </u> %
Sodium (%)	<u> </u> %	Min <u> </u>
Size	<u> </u> " x 0" topsize, nominal, with a maximum of 55% passing 1/4" square wire cloth sieve to be determined on the basis of the primary cutter of the mechanical sampling system.	

FORMULA(S) FOR
QUALITY
ADJUSTMENTS:

Btu Adjustment:

If the actual Btu on an as-received basis of any Shipment accepted by Buyer is other than the Base Calorific Value, an adjustment shall be calculated based on each Shipment as follows:

Base Calorific

Value Adjustment = $\frac{[(\text{Actual Calorific Value}) \text{ minus } (\text{Base Calorific Value})] \times (\text{Contract Price})}{\text{Base Calorific Value}}$

WHERE:

Actual Calorific Value = Shipment average Btu/lb

Base Calorific Value = Btu/lb as shown above

☐ **SO₂ Adjustment** (Applicable only if box is checked) :

If the actual SO₂ lbs/MMBtu on an as-received basis of any Shipment accepted by Buyer is other than the Standard SO₂ lbs/MMBtu, an adjustment shall be calculated based on each Shipment as follows:

$$\frac{((\text{Standard SO}_2 \text{ lbs/MMBtu} - \text{Actual lbs. SO}_2/\text{mmbtu}) * \text{Actual Btu/lb.} * E)}{1,000,000}$$

WHERE:

E is the price of one SO₂ Allowance (as defined below) expressed in dollars. The price of an SO₂ Allowance is determined by the monthly SO₂ price indices published in Argus Air Daily published by Argus Media Ltd. or any successor publication ("Air Daily") for the calendar month of delivery.⁵

In lieu of a financial SO₂ adjustment, Buyer and Seller may, upon mutual agreement at the time, exchange SO₂ Allowances as determined by the following formula:

Number of SO₂ Allowances = (Standard SO₂ lbs/MMBtu – Actual SO₂ lbs/MMBtu X Actual Btu/lb X Tons of Coal ÷ 1,000,000)⁶

If the product of the above is positive, Buyer shall transfer SO₂ Allowances to Seller, and if the product of the above is negative, Seller shall transfer SO₂ Allowances to Buyer. SO₂ Allowances due to Buyer or Seller hereunder shall be transferred to such party consistent with the payment required for cash SO₂ adjustments. Fractional SO₂ Allowances resulting from the calculations shall be paid in cash.

"SO₂ Allowance" means an authorization by the administrator of the United States Environmental Protection Agency (or its successor) ("EPA") under Title IV of the Clean Air Act Amendments of 1990 (effective November 15, 1990), any amendments thereto and any regulations promulgated thereunder, to emit one Ton of SO₂ during the current calendar year.

If the party owed the SO₂ Allowances (the "SO₂ Transferee") requests the transfer of the SO₂ Allowances, the party owing SO₂ Allowances (the "SO₂ Transferor") shall deliver a fully executed Allowance Transfer Form (OMB No. 2060-0258) ("ATF") relating to such SO₂ Allowances to the SO₂ Transferee. The SO₂ Transferee shall promptly cause all appropriate and fully completed SO₂ Allowance transfer documentation, including the ATF, to be placed on file with the EPA in accordance with the applicable regulations relating to the Allowance Tracking System.

The SO₂ Transferor warrants that it will deliver to the SO₂ Transferee the SO₂ Allowances, free and clear of all liens, claims, security interests, encumbrances and other defects of title. EACH PARTY EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING

⁵ As noted in the definition of "SO₂ Allowance" below, currently one SO₂ Allowance is required to emit one Ton of SO₂ during a calendar year. Upon implementation of the *Clean Air Interstate Rule* under 40 CFR 96.202 (see Final Rule, 60 Fed. Reg. 91 (May 12, 2005) at p. 25363), this formula will need to be adjusted based upon an increase in the ratio of allowances required for SO₂ emissions as follows:

- a. Use of Title IV allowances with vintage years 2010-2014 will require 2 allowances per Ton of SO₂;
- b. Use of Title IV allowances with vintage years 2015 or later will require 2.86 allowances per Ton of SO₂.

⁶ *Id.*

WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Each party shall be responsible for any taxes or other fees associated with its respective delivery and receipt of such SO₂ Allowances.

Quality price adjustments shall be rounded to the nearest \$0.001 and calculated on a monthly weighted average.

OTHER:

OPTIONAL TERMS

The following provisions are for administrative convenience and do not alter, or release Seller or Buyer from contractual liability to perform, any obligation of Seller or Buyer under this Transaction.

BUYER NOT END-USER

☐ Buyer Not End-User (Applicable only if box is checked.)

Buyer is not able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction and designates Buyer's Customer as its agent for purposes of, and delegates to Buyer's Customer all of, Buyer's rights, duties and obligations relating to, scheduling, transportation from the Delivery Point, unloading, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments, and rejection and suspension rights ("*Physical Receipt Functions*") relating to the Coal that Buyer may resell to Buyer's Customer(s) (the "*Delegated Downstream Physical Receipt Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by Buyer's Customer as exercise and performance by Buyer.

Buyer shall notify Seller as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identity of Buyer's Customer(s) and provide Seller with the name, telephone number, fax number and electronic mail address of the individual responsible for Buyer's Customer's scheduling activities.

For purposes of this Transaction, the term "*Buyer's Customer*" means any person to which Buyer may resell any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Buyer's designation of Buyer's Customer as its agent and delegation to Buyer's Customer of the Delegated Downstream Physical Receipt Functions is with full right on the part of Buyer's Customer to designate any person to which Buyer's Customer may resell any or all of the Coal that is the subject of this Transaction (a "Downstream Customer") as Buyer's Customer's (and, thus, Buyer's) agent for purposes of, and delegate to such person all of, Buyer's Customer's rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Downstream Physical Receipt Functions. Seller acknowledges and agrees to the right on the part of Buyer's Customer to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Downstream Physical Receipt Functions and further agrees to recognize and accept exercise and performance thereof by a Downstream Customer as exercise and performance by Buyer.

☐ Buyer is End-user (Applicable only if box is checked.)

Buyer is able or expecting to use or consume, or take physical delivery of the Coal that is the subject of this Transaction. Seller designates Buyer as its agent for purposes of, and delegates to Buyer all of, Seller's rights, duties and obligations relating to the Physical Receipt Functions relating to Coal that Seller may purchase from Seller's Vendor ("*Delegated Upstream Physical Receipt Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Receipt Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Seller of the benefit and on behalf of Seller and, if applicable, Seller's predecessor(s) in the chain of title to the Coal that is the subject of this Transaction.

SELLER NOT PRODUCER

☐ Seller Not Producer (Applicable only if box is checked.)

Seller is not able or expecting to produce, or make physical delivery of the Coal that is the subject of this Transaction and designates Seller's Vendor as its agent for purposes of, and delegates to Seller's Vendor all of, Seller's rights, duties and obligations relating to, scheduling, loading, transportation to the Delivery Point, additional charges (demurrage, etc.), shipping documentation, freeze conditioning, weighing, sampling and analysis, quality adjustments and related payments and rejection and suspension rights ("*Physical Delivery Functions*") relating to the Coal that Seller may purchase from Seller's Vendor (the "*Delegated Upstream Physical Delivery Functions*"). Buyer acknowledges and agrees to Seller's delegation of all rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and

performance thereof by Seller's Vendor as exercise and performance thereof by Seller.

Seller shall notify Buyer as soon as practicable, but in any event no later than the Monthly Shipment Notification Date, of the identify of Seller's Vendor and provide Buyer with the name, telephone number, fax number and electronic mail address of the individual responsible for Seller's Vendor's scheduling activities.

For purposes of this transaction, the term "*Seller's Vendor*" means any person from whom Seller may purchase any or all of the Coal that is the subject of this Transaction.

☐ Daisy-chain Provision (Applicable only if box is checked.)

Seller's designation of Seller's Vendor as its agent and delegation to Seller's Vendor of the Delegated Upstream Physical Delivery Functions is with full right on the part of Seller's Vendor to designate any person from which Seller's Vendor may purchase any or all of the Coal that is the subject of this Transaction (an "Upstream Vendor") as Seller's Vendor's (and, thus, Seller's) agent for purposes of, and delegate to such person all of Seller's Vendor's rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions, including the right on the part of such person pursuant to this paragraph to further delegate all of the rights, duties and obligations relating to the Delegated Upstream Physical Delivery Functions. Buyer acknowledges and agrees to the right on the part of Seller's Vendor to further designate an agent for performance of, and to further delegate the rights, duties and obligations relating to, the Delegated Upstream Physical Delivery Functions and further agrees to recognize and accept exercise and performance thereof by an Upstream Vendor as exercise and performance by Seller.

☐ Seller is Producer (Applicable only if box is checked.)

Seller is able or expecting to produce, or make physical delivery of, the Coal that is the subject of this Transaction. Buyer designates Seller as its agent for purposes of, and delegates to Seller all of, Buyer's rights, duties and obligations relating to the Physical Delivery Functions relating to Coal that Buyer may resell to Buyer's Customer (the "*Delegated Downstream Physical Delivery Functions*"). Seller acknowledges and agrees to Buyer's delegation of all rights, duties and obligations relating to the Delegated Downstream Physical Delivery Functions and agrees to exercise and perform such rights, duties and obligations on behalf of Buyer for the benefit and on behalf of Buyer and, if applicable, Buyer's successor(s) in the chain of title to the Coal that is the subject of this Transaction.

This letter constitutes a "Confirmation" as referred to in the Master Agreement described below. This Confirmation supplements, forms part of, and is subject to, the Master Power Purchase & Sale Agreement dated _____, _____, as it may be amended, and supplemented from time to time (the "Master Agreement") between Coal Buyer and Coal Seller. All provisions contained in the Master Agreement govern this Confirmation to the extent not in conflict with the terms hereof. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Please confirm that the foregoing correctly sets forth the terms of the agreement between you and us as to this Transaction by timely returning an executed copy of this letter by facsimile at the fax number specified in the Master Agreement. If you do not return this Confirmation or object to any of the terms stated herein within two (2) Business Days of your receipt of it, then in accordance with the EEI Master Agreement this Confirmation shall be deemed correct, and binding and conclusive evidence of this Transaction. This Confirmation supersedes any broker confirmation concerning this Transaction.

Option Buyer

By: _____

Title: _____

Date: _____

Option Seller

By: _____

Title: _____

Date: _____

**EXHIBIT B
TO THE
EEI COAL ANNEX**

PRODUCTS

As used in this Exhibit:

* This specification will be determined per ASTM standards.

">" means "greater than".

"<" means "less than".

"N/A" means such specification is not applicable to the Product.

Product Specifications.

"**CAPP Rail 12500 CS**" or "**CAR125CS**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<u>Specification</u>	<u>Standard</u>	<u>Shipment Rejection Limits (Lot: Unit Train)</u>
BTU/LB.	12,500	< 12,200
MOISTURE	7.0 %	> N/A %
ASH	12.0 %	> 13.5 %
SULFUR		
- CS	N/A	> N/A %
SULFUR DIOXIDE (S02)		
- CS	1.20 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< 30.0 %
Size (2" x 0"):		
-- Top size (inches)*	< 2"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	43	< 40

"**CAPP Rail 12500 LS**" or "**CAR125LS**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<u>Specification</u>	<u>Standard</u>	<u>Shipment Rejection Limits (Lot: Unit Train)</u>
BTU/LB.	12,500	< 12,200
MOISTURE	7.0 %	> N/A %
ASH	12.0 %	> 13.5 %
SULFUR		
- LS	N/A	> 1.00 %
SULFUR DIOXIDE (S02)		
- CS	N/A	N/A
VOLATILE	N/A %	< 30.0 %
Size (2" x 0"):		
-- Top size (inches)*	< 2"	> N/A "

-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	43	< 40

"NYMEX Look-alike" or **"NXLA"** means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<u>Specification</u>	<u>Standard</u>	<u>Shipment Rejection Limits (Lot: Barge)</u>
BTU/LB.	12,000	< 11,750
MOISTURE	10.0 %	> 10.0 %
ASH	13.5 %	> 13.5 %
SULFUR	1.00 %	> 1.05 %
SULFUR DIOXIDE (SO ₂)	N/A	> N/A lb./MMBTU
VOLATILE	30.0 %	< 30.0 %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> 55.0 %
GRINDABILITY (HGI)	41	< 38

"PRB 8400" or **"PR84"** means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<u>Specification</u>	<u>Standard</u>	<u>Shipment Rejection Limits (Lot: Unit Train)</u>
BTU/LB.	8,400	< 8,200
MOISTURE	30.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %
SULFUR DIOXIDE (SO ₂)	0.80 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

"PRB 8800" or **"PR88"** means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<u>Specification</u>	<u>Standard</u>	<u>Shipment Rejection Limits (Lot: Unit Train)</u>
BTU/LB.	8,800	< 8,600
MOISTURE	27.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %

SULFUR DIOXIDE (SO ₂)	0.80 lb./MMBTU	> 1.20 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

"**PRB 8800 Low Sulfur**" or "**PR88LS**" means Coal which conforms to at least the following rejection limits/specifications on an "as received" basis:

<u>Specification</u>	<u>Standard</u>	<u>Shipment Rejection Limits (Lot: Unit Train)</u>
BTU/LB.	8,800	< 8,600
MOISTURE	27.0 %	> N/A %
ASH	5.5 %	> N/A %
SULFUR	N/A %	> N/A %
SULFUR DIOXIDE (SO ₂)	0.55 lb./MMBTU	> 0.80 lb./MMBTU
VOLATILE	N/A %	< N/A %
Size (3" x 0"):		
-- Top size (inches)*	< 3"	> N/A "
-- Fines (% by weight)*		
Passing 1/4" screen	< N/A %	> N/A %
GRINDABILITY (HGI)	N/A	< N/A

EXHIBIT C
TO THE
EEI COAL ANNEX

SOURCE STANDARDS

“CAPP-CSX Standard” means any rail loadout located on the CSX railroad within the Kanawha Rate District or the Big Sandy Rate District capable of loading 100 car/10,000 Ton Unit Trains in four hours or less.

“CAPP-NS Standard” means any rail loadout located on the Norfolk Southern railroad within the Kenova Rate District or the Thacker Rate Districts capable of loading 100 car/10,000 Ton Unit Trains in four hours or less.

“NYMEX Standard” means any dock located on the Ohio River between MP 306 and MP 317 or on the Big Sandy River.

“PRB Standard” means any rail loadout located on the joint line (Burlington Northern Santa Fe/Union Pacific) in the Southern Powder River Basin within Converse or Campbell Counties, Wyoming capable of loading 12,000 to 15,000 Ton Unit Trains.

EXHIBIT D
TO THE
EEI COAL ANNEX

QUANTITY VARIATION ADJUSTMENTS

The formula for determining the Quantity Variation Adjustment when applicable are as follows:

If the absolute value of the difference obtained by subtracting the actual Tons of Coal delivered during a calendar month from Contract Quantity for such month is greater than the Allowance, then Seller shall calculate and invoice a Quantity Variation Adjustment determined as follows:

$$\text{Quantity Variation Adjustment} = [(\text{Basis} \times \text{number of monthly contracted Barges or Unit Trains}) - \text{actual monthly Tons delivered}] \times [(\text{Prompt Monthly Price} + \text{Product Basis Differential}) - \text{Contract Price}]$$

Where

“Allowance” has the meaning for the applicable Product as set forth below.

“Basis” has the meaning for the applicable Product as set forth below.

“Monthly Quantity” means the Basis multiplied by the number of Barges or Unit Trains to be delivered for the applicable calendar month as set forth in a Transaction.

“Product Basis Differential” has the meaning for the applicable Product as set forth below.

“Prompt Monthly Price” means the average daily OTC Prompt Month Broker Index for the applicable Product published in Platts Coal Trader, published for the month immediately preceding the month of scheduled delivery.

If Quantity Variation Adjustment is a negative number, Seller shall pay the absolute value of the Quantity Variation Adjustment to Buyer. If Quantity Variation Adjustment is a positive number, Buyer shall pay the absolute value of the Quantity Variation Adjustment to Seller.

For Products PRB 8800, PRB 8800 Low Sulfur, PRB 8400:

“Allowance” means one percent (1%) of the Monthly Quantity.

“Basis” means 14,500 Tons per Unit Train.

“Product Basis Differential” is zero (0).

For Products CAPP Rail 12500 LS, CAPP Rail 12500 CS:

“Allowance” means two percent (2%) of the Monthly Quantity.

“Basis” means 10,000 Tons per Unit Train.

"Product Basis Differential" has the meaning as set forth on the Confirmation, or if not set forth therein, zero (0).

For Product NYMEX Look-Alike:

"Allowance" means two percent (2%) of the Monthly Quantity.

"Basis" shall mean 7,550 Tons per monthly contract.

"Product Basis Differential" is zero (0).



Collateral Annex

Version 1.0
2/21/02

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COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the "Collateral Annex") supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement, dated _____, including the Cover Sheet and any other annexes thereto between _____ ("Party A") and _____ ("Party B"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

"Calculation Date" means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

"Cash" means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

"Collateral Account" shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

"Paragraph 10 Cover Sheet" means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

"Collateral Requirement" shall have the meaning attributed to it in Paragraph 3(b).

"Collateral Threshold" means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

"Collateral Value" means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Credit Rating Event" shall have the meaning attributed to it in Paragraph 6(a)(iii).

"Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

"Custodian" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Downgraded Party" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Eligible Collateral" means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

"Exposure" of one Party ("Party X") to the other Party ("Party Y") for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

- (a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party Y and that remain unpaid as of such Calculation Date; plus
- (b) the Current Mark-to-Market Value of such Transaction to Party X.

"Exposure Amount" shall have the meaning set forth in Paragraph 3(a).

"Independent Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

"Interest Amount" means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such

Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

"Minimum Transfer Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Net Exposure" shall have the meaning attributed to it in Paragraph 3(a).

"Notification Time" means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

"Obligations" shall have the meaning attributed to it in Paragraph 2.

"Performance Assurance" means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

"Pledging Party" shall have the meaning attributed to it in Paragraph 3(b).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Secured Party" shall have the meaning attributed to it in Paragraph 3(b).

"Transfer" means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;
- (b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and
- (c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

"Valuation Percentage" means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the "Exposure Amount" for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the "Secured Party") shall be deemed to have a "Net Exposure" to the other Party equal to the Secured Party's Exposure Amount.

(b) The "Collateral Requirement" for a Party (the "Pledging Party") means the Secured Party's Net Exposure minus the sum of:

- (1) the Pledging Party's Collateral Threshold; plus
- (2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus
- (3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a Party will be deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's

Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the

Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a "Custodian") to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the "Downgraded Party" (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or

otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to Paragraph 6(a) (such Party shall be the "Downgraded Party" and the event that caused it or its Custodian to be ineligible to hold Cash shall be a "Credit Rating Event") then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the "Collateral Account") within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with

respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts

owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided in Paragraph 6(a)(ii), nothing in this Collateral Annex shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;
- (ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;
- (iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or

- (iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.
- (b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).
- (c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.
- (d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:
- (1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;
 - (2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and
 - (3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

Paragraph 8. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided,

returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the

security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

SCHEDULE 1 to Collateral Annex

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or
2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on _____.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]



11.2 Commodity Exchange Act Representations

11.3 Version 1.1

11.4 July 5, 2005

I. Section 10.2, Representations and Warranties, is amended by replacing clauses (x), (xi) and (xii) in their entirety with the following:

“(x) it is an “eligible commercial entity” within the meaning of Section 1a (11) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xi) it is an “eligible contract participant” within the meaning of Section 1a (12) of the Commodity Exchange Act; and

(xii) each Transaction that is not executed or traded on a “trading facility”, as defined in Section 1(a)(33) of the Commodity Exchange Act, is subject to individual negotiation by the Parties.”



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11.5 Confidentiality

The following is added an additional sentence at the end of Section 10.11: A Party may disclose any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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(i)

11.6 EEI's Market Disruption Provisions:

11.7 Discussion

11.8 of Revised Optional Language

11.9 for Transactions

11.10 with Index-based Pricing

11.11

11.12 Version 2.0⁷

11.13 June 9, 2008

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⁷ This version may be used as an alternative to the original market disruption provisions published by EEI.

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EEI's MARKET DISRUPTION PROVISIONS:
DISCUSSION OF REVISED OPTIONAL LANGUAGE FOR TRANSACTIONS WITH INDEX-BASED PRICING

A. Background

The Edison Electric Institute ("EEI") first published "Optional Language for Transactions with Index-based pricing" in 2002 (the "Original Market Disruption Provisions"). This provision was published for use by parties that envision pricing certain Transactions based on an index or other third party price source and, as a result, wish to provide for an alternative basis for determining the Contract Price should the relevant index or price source be disrupted, substantially altered or no longer published.

In February 2007 the EEI Contract Drafting Committee formed a Market Disruption Subcommittee (the "Subcommittee") to consider whether the Original Market Disruption Provisions should be revised and updated to address several issues that had been raised by market participants. For example, a number of parties had found that the existing provisions did not properly address market disruption events when they actually occurred and, consequently, these terms were often disregarded in practice. In addition, some firms were concerned about the fact that other market disruption provisions commonly used in the commodity markets, such as those published by the International Swaps and Derivatives Association, Inc. (ISDA) for commodity derivative transactions, were inconsistent with EEI's optional provisions in several respects. Because of this inconsistency, these firms maintained that related transactions under separate master agreements could potentially be priced differently following the occurrence of a market disruption event, creating unintended "basis risk" for the transactions.

The Subcommittee sought to leverage the lessons learned during the last few years to create a set of provisions that would produce an outcome more closely aligned to the parties' wishes and expectations upon the occurrence of a market disruption event. As part of this effort, the Subcommittee also attempted to better harmonize these new market disruption provisions with those included in the 2005 ISDA Commodity Definitions. The result is a set of new provisions entitled "Revised Optional Language for Transactions with Index-based Pricing" (the "Revised Market Disruption Provisions"). Capitalized terms used in this discussion and not otherwise defined have the meanings given to them in the Revised Market Disruption Provisions.

B. Explanation of Changes

Expanded Definition of Market Disruption Event. As noted above, the Revised Market Disruption Provisions reflect several changes to the previously published provisions in order to achieve greater consistency with ISDA's market disruption provisions. For example, the definition of "Market Disruption Event" was expanded to include material changes to the composition of the Product. In addition language was added to address the fact that certain Transactions may reference a price that is announced or made available by a regional transmission operator (RTO) or independent system operator (ISO).

Revised Waterfall of Disruption Fallbacks. The Revised Market Disruption Provisions revise the original waterfall of fallbacks that apply following the occurrence of a Market Disruption Event in an attempt to make them not only more consistent with ISDA's waterfall but also more likely to produce a result desired by the parties. For example, upon the occurrence of a Market Disruption Event, the Revised

Market Disruption Provisions first require the parties to use a fallback Floating Price to the extent such a fallback price was specified in the Confirmation, consistent with ISDA's waterfall.

If the parties have not specified a fallback Floating Price, the Revised Market Disruption Provisions require the parties to endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute price taking into consideration industry initiatives (e.g., guidance, protocols, recommendations by trade organizations and industry groups) in response to such market disruption event. This fallback is similar to ISDA's concept of "Negotiated Fallback" and one of the fallbacks included in the Original Market Disruption Provisions. However, the Revised Market Disruption Provisions specifically require the parties to look toward market conventions adopted to address the event concerned in attempting to determine a mutually agreeable substitute price. The Revised Market Disruption Provisions provide that the parties have up to 5 Business Days (rather than 12) to agree to a substitute price in an attempt to achieve greater consistency with the 2005 ISDA Commodity Definitions.

The Revised Market Disruption Provisions also provide that, to the extent the Price Source specified in the Transaction publishes the relevant Floating Price for a Disrupted Day before the parties have managed to agree to a substitute price, the parties must utilize that retrospectively published Floating Price for the relevant Disrupted Day. This fallback is similar to ISDA's "Delayed Publication or Announcement" and was not included in EEI's Original Market Disruption Provisions. In contrast, ISDA's "Postponement" fallback was not included in the waterfall for the Revised Market Disruption Provisions because the Subcommittee determined that it was not appropriate to shift the pricing date for a Transaction upon the occurrence of a Market Disruption Event.

If the parties cannot determine a Floating Price pursuant to the foregoing fallbacks within 5 Business Days of the occurrence of the Market Disruption Event, the parties must then determine the Floating Price based on a form of dealer poll. This final fallback is similar to ISDA's concept of "Fallback Reference Dealers" and the fallback included in the Original Market Disruption Provisions, with certain modifications and clarifications.

Changes to "Corrections to Published Prices". The Revised Market Disruption Provisions provide that a party may require that payments be adjusted to reflect any correction to a published price that is issued within 30 days of the original publication. This 30-day lookback period is consistent with the 2005 ISDA Commodity Definitions and represents a substantial reduction from the two-year lookback period that was included in the Original Market Disruption Provisions. However, this provision is subject to an important exception for RTO Transactions, consistent with RTO rules, as the Subcommittee recognized that a longer period may be necessary for these types of Transactions.

Rounding. On rounding the Subcommittee determined that it has become common practice to round Floating Prices to four decimal places rather than three (as the Original Market Disruption Provisions provided), so the Revised Market Disruption Provisions reflect this convention. However, the Subcommittee also observed that it is necessary for parties to consider what their systems and confirmation platforms can accommodate when agreeing to a rounding convention and therefore left the numbers in this provision in brackets.

AMENDMENT TO THE Master Power Purchase and Sale Agreement

[/or/ ISDA Master Agreement including the ISDA North American Power Annex]
Relating to Scheduling Firm (LD) and Firm (No Force Majeure) Transactions in
ERCOT Upon Implementation of the Texas Nodal Market

This Amendment (“**Amendment**”) is made this ____ day of ____ 201__, by and between a _____ (“**Party A**”), and _____, a _____ (“**Party B**”) (each a “**Party**” and collectively “**Parties**”). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Master Agreement defined below and/or the ERCOT Nodal Protocols, as applicable.

RECITALS

WHEREAS, the Parties are parties to that certain Edison Electric Institute Master Power Purchase and Sale Agreement dated _____, 20__ (“**Master Agreement**”);

[/or/ **WHEREAS**, the Parties are parties to that certain ISDA Master Agreement, including the ISDA North American Power Annex thereto, dated as of _____, 200__ (“**Master Agreement**”);]

WHEREAS, upon implementation of the “Texas Nodal Market” in the Electric Reliability Council of Texas region (“**ERCOT**”), pursuant to the ERCOT Nodal Protocols, the Parties will be able to schedule Firm (LD) and Firm (No Force Majeure) Products either prior to the time in which ERCOT runs the Reliability Unit Commitment (“**RUC**”) market or the day after delivery;

WHEREAS, as of the Texas Nodal Market Implementation Date, if both Buyer and Seller do not schedule a Firm (LD) and Firm (No Force Majeure) Product in ERCOT on or before the applicable RUC market scheduling deadline for hourly and day-ahead transactions, ERCOT can assess RUC charges;

WHEREAS, the Parties desire to Schedule Firm (LD) and Firm (No Force Majeure) Products in ERCOT prior to the hourly or day-ahead RUC scheduling deadline, as applicable, and in a manner that gives each Party sufficient time to correct any scheduling errors and the ability to avoid the imposition of RUC charges;

WHEREAS, the Parties understand that submitting complete schedules at least thirty (30) minutes prior to the day-ahead RUC scheduling deadline would give the Parties sufficient time to correct any scheduling errors;

WHEREAS, with effect from and after the Texas Nodal Market Implementation Date, the Parties desire to amend the terms of the Master Agreement, on the terms and subject to the conditions set forth in this Amendment in order to require each Party to schedule Firm (LD) and Firm (No Force Majeure) Products in ERCOT on or before the applicable RUC deadline.

NOW, THEREFORE, for the above reasons, in consideration of the mutual covenants herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties desire to amend the Master Agreement as follows:

1. Adoption

The Parties agree that upon the Texas Nodal Market Implementation Date, the definitions and provisions contained in this Amendment shall be deemed incorporated into and applied to the Master Agreement.

2. Amendments

The Parties agree that:

1. Section 3.2 Transmission and Scheduling [ISDA Power Annex Part[6](b)(ii)] of the Master Agreement shall be amended by adding the following at the end thereof:

“With respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in the Electric Reliability Council of Texas (“ERCOT”) region, the following shall apply, notwithstanding any other Scheduling deadlines in the ERCOT Nodal Protocols:

(A) Definitions: “DRUC Schedule Deadline” means the time at which ERCOT is required to start the DRUC process relating to such day of delivery.

“HRUC Schedule Deadline” means the time at which ERCOT is required to start an HRUC process relating to such hour of delivery.

“First HRUC Schedule Deadline” means the HRUC Schedule Deadline which immediately follows the time at which the Parties entered into the Transaction and which occurs after the start of the next clock hour.

(B) HRUC Scheduling Requirement: Buyer and Seller shall Schedule each hour’s deliveries of the Product with ERCOT prior to the First HRUC Schedule Deadline unless the time at which the Transaction was entered into is less than thirty (30) minutes prior to the start of the next clock hour, in which case the HRUC Schedule Deadline immediately following the First HRUC Schedule Deadline shall be the applicable scheduling deadline.

(C) DRUC Scheduling Requirement: If a Transaction is entered into prior to that day’s DRUC Schedule Deadline, Buyer and Seller shall Schedule such day’s deliveries of the Product with ERCOT prior to that day’s DRUC Schedule Deadline.”

2. Section 4.1 [ISDA Power Annex Part[6](c)(i)] of the Master Agreement shall be relabelled 4.1(a) [Part[6](c)(i)(A)] and a new Section 4.1(b) [Part[6](c)(i)(B)] shall be added to deal with Seller Failure with respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in ERCOT:

“4.1(b) [ISDA Power Annex Part[6](c)(i)(B)] Seller Failure in ERCOT for Firm (LD) Transactions and Firm (No Force Majeure) Transactions. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet [in the Elective Provisions of the ISDA Power Annex], within five (5) Business Days of invoice receipt, (i) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and (ii) an amount equal to the ERCOT charges incurred by Buyer, if any, as a result of Seller’s failure to Schedule a Firm (LD) or Firm (No Force Majeure) Transaction in the ERCOT region prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Section 3.2 [ISDA Power Annex Part[6](b)(ii)]. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.”

3. Section 4.2 [ISDA Power Annex Part[6](c)(ii)] of the Master Agreement shall be relabelled 4.2(a) [Part[6](c)(ii)(A)] and a new Section 4.2(b) [Part[6](c)(ii)(B)] shall be added to deal with Buyer Failure with respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in ERCOT:

“4.2(b) [ISDA Power Annex Part[6](c)(ii)(B)] Buyer Failure in ERCOT for Firm (LD) Transactions and Firm (No Force Majeure) Transactions. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet [in the Elective Provisions of the ISDA Power Annex], within five (5) Business Days of invoice receipt, (i) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price; and (ii) an amount equal to the ERCOT charges incurred by Seller, if any, as a result of Buyer’s failure to Schedule a Firm (LD) or Firm (No Force Majeure) Transaction prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Section 3.2 [ISDA Power Annex Part[6](b)(ii)]. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.”

3. **Miscellaneous**

(a) **Entire Agreement.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Except as set forth herein, nothing amends or cancels the Master Agreement or any prior Confirmations thereunder.

(b) **Non-reliance.** Each Party acknowledges that in agreeing to this Amendment it has not relied on any oral or written representation, warranty or other assurance and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Amendment will limit or exclude any liability of a Party for fraud.

(c) **Headings.** The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(d) **Governing Law.** This Amendment will be governed by and construed in accordance with the law specified to govern the Master Agreement and otherwise in accordance with applicable choice of law doctrine.

(e) **Counterparts.** This Amendment (and each amendment, modification and waiver in respect of it) may be executed and delivered in any number of counterparts (including by facsimile transmission or PDF files) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by their authorized officers or agents on the date first written above, but effective upon implementation of the Texas Nodal Market in the ERCOT.

[Party A]	[Party B]
By:	By:
Name:	Name:
Title:	Title:



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Errata

Version 1.1 – July 18, 2007

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Errata

The language set forth below may be appropriate for inclusion in the Cover Sheet to the Master Power Purchase and Sale Agreement as “Other Changes”.

Other Changes

The Master Agreement is hereby amended as follows:

Cover Sheet—Schedule M.

Delete the reference to “Section 8.6” and replace it with “Section 8.4”.

Section 1.12—“Credit Rating”.

Delete the word “issues” and replace it with “issuer”.

Section 1.50—“Recording”.

Delete the reference to “Section 2.4” and replace it with “Section 2.5”.

Section 5.2—Declaration of an Early Termination Date and Calculation of Settlement Amounts.

Reverse the placement of “(i)” and “to”.

The language set forth below may be appropriate for inclusion in Paragraph 10 to the Collateral Annex to the EEI Master Power Purchase and Sale Agreement as “Other Changes”.

Other Changes

The Collateral Annex is hereby amended as follows:

Introductory Paragraph.

Delete “Paragraph 10 Elections” in the first introductory paragraph and replace it with “Paragraph 10 Cover Sheet”.

Paragraph 1.—Definitions.

Delete “Paragraph 6(a)(iii)” in the definition of “Credit Rating Event” and replace it with “Paragraph 6(a)(ii)”.

Add “a.m.” after “11:00” in the definition of “Notification Time”.

Delete “Paragraph 6(a)(iv)” in the definition of “Performance Assurance” and replace it with “Paragraph 6(a)(iii)”.

Delete “capital and surplus” in the definition of “Qualified Institution” and replace it with “capital surplus”.

Delete “Paragraph 3(b)” in the definition of “Secured Party” and replace it with “Paragraph 3(a)”.

Paragraph 5.—Reduction and Substitution of Performance Assurance.

Delete “before the Notification Time on a Business Day” in Paragraph 5(a) and replace it with “before the Notification Time on a Local Business Day”.

Paragraph 6.—Administration of Performance Assurance.

Delete “to perfect the security interest of the Non-Downgraded Party” in Paragraph 6(a)(ii)(B) and replace it with “to perfect the security interest of the Downgraded Party”.

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if the parties desire that the Master Agreement govern power transactions entered into by the parties prior to execution of the Master Agreement.

Other Changes

Prior Transactions. The following additional sentence is added at the beginning of Section 2.2:

Party A and Party B confirm that this Master Agreement shall apply to, and shall supersede and replace all similar provisions contained in, the transactions listed on Schedule T hereto, and agree that such transactions are, effective as of the Effective Date, governed by this Master Agreement, and are part of the single integrated agreement between the Parties, consistent with this Section 2.2.

[Use of this provision requires that Schedule T be completed and attached to the Master Agreement.]

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

(i)

11.14 EEL's Market Disruption Provisions:

11.15 Revised Optional Language

11.16 for Transactions

11.17 with Index-based Pricing

11.18

11.19 Version 2.0⁸

11.20 June 8, 2008

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Revised Optional Language for Transactions with Index-based Pricing

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if Transactions with index-based pricing are envisioned, and the Parties desire to provide for an alternative basis for determining the Contract Price should the relevant index be substantially altered, disrupted or no longer published.

Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) **Market Disruption.** If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a "Disrupted Day"), then:

- The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
- If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
- If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a "Delayed Floating Price") before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.
- If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties ("Specified Dealers"), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
 - If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
 - If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
 - If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable

manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.

- Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events:

- (a) the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
- (b) the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
- (c) the temporary or permanent discontinuance or unavailability of the Price Source;
- (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
- (e) a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

"Price Source" means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

"RTO" means any regional transmission operator or independent system operator.

"RTO Transaction" means a Transaction in which the Price Source is an RTO.

"Trading Day" means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

- (b) **Corrections to Published Prices.** If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original

publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

- (c) **Rounding.** [When calculating a Floating Price, all numbers shall be rounded to [four (4)] decimal places. If the [fifth (5th)] decimal number is five (5) or greater, then the [fourth (4th)] decimal number shall be increased by one (1), and if the [fifth (5th)] decimal number is less than five (5), then the [fourth (4th)] decimal number shall remain unchanged.]⁹

⁹ Parties should bilaterally determine the rounding convention they will apply to Transactions that reference Floating Prices, taking into account their systems requirements and conventions applicable to confirmation platforms that they may use, as appropriate.

PRACTICE NOTES:

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

IN PARTICULAR, MARKET PARTICIPANTS SHOULD CONSIDER WHETHER THEY MAY HAVE AN INTEREST IN HARMONIZING THE MARKET DISRUPTION PROVISIONS THAT THEY HAVE NEGOTIATED IN OTHER AGREEMENTS THAT ARE RELATED TO THE TRANSACTIONS ENTERED INTO UNDER THE EEI MASTER POWER PURCHASE AND SALE AGREEMENT (E.G., TRANSACTIONS ENTERED INTO UNDER AN ISDA MASTER AGREEMENT).



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Mobile Sierra

Parties may wish to consider using this optional provision to document their intent to waive or limit the ability of regulators to modify the rates or terms and conditions of wholesale power transactions. The issues are complex and evolving, and each person is advised to consult with his or her counsel on the appropriate use of this provision.

This version is modified from what EEI published on its website in 2004 in two ways. First, the Supreme Court in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. ___ (2008) ruled that there is a single statutory standard of FERC review- the "just and reasonable" standard, which permits contract abrogation by FERC only in "those extraordinary circumstances where the public will be severely harmed" (Slip. Op. at 23), and not two standards from which parties may select by agreement. Second, a referenced FERC policy statement on the subject of its standard of review has since been terminated – see Docket No. RM-35-000, Notice of Proposed Rulemaking, footnote 1.

The following is added to the Agreement as Section 10. FERC Standard of Review; Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v.

Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. ____ (2008) (the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

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Renewable Energy Certificates Annex to the EEI Master Power Purchase & Sale Agreement

Version 1.0

11/4/10

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INTRODUCTION AND EXPLANATORY NOTES

Introduction

This is the Renewable Energy Certificates Annex to the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (EEI RECs Annex). It was developed by a subcommittee of the Contracts Drafting Committee of the Edison Electric Institute (EEI) and was derived from the Master Renewable Energy Certificate Purchase and Sale Agreement that was prepared by a working group comprised of members of the Renewable Energy Resources Committee and the Special Committee on Energy and Environmental Finance of the American Bar Association's Section of Environment, Energy and Resources, the Environmental Markets Association, and the American Council on Renewable Energy (the "ABA/EMA/ACORE Master Agreement").

The following notes explain certain concepts that are novel to trading in these instruments, and that the user would likely want to understand. They are written to educate, and are not part of the document itself, and do not create legal obligations between the parties.

The EEI RECs Annex uses a disclosure driven-model. The RECs Product bookends are a "Standard REC", which includes all Environmental Attributes (as that term is defined with its own exclusions), and a "Basic REC", which includes only the proof of generation of the electricity. In between is a "Specified REC," which includes proof of generation and less than all Environmental Attributes. "Standard REC" is called "standard" because it most closely represents the predominant products traded in these markets. Currently a "Standard REC" will likely be required in order for a RECs Product to be certifiable under the Center for Resource Solutions' Green-e program, and one may conclude from a review of the definition of a "Green Attribute" in the California Renewable Portfolio Standard that a "Standard REC" currently is necessary for a California-compliant product.

Change in Law Risks

The EEI RECs Annex uses the term "Regulatorily Continuing" to allocate change in law risk. If an Applicable Program is specified, the Seller is agreeing today to meet the standards of the Applicable Program as it is in effect today. But the Applicable Program can be changed by regulators or legislators. If the Applicable Program does get changed, the Seller bears the risk of any cost of compliance with that change if a transaction is "Regulatorily Continuing." If a transaction is not Regulatorily Continuing, the buyer bears the risk of whether the product it agrees to buy today meets the requirements of the program tomorrow, to the extent tomorrow's requirements differ from today's requirements.

To analogize, a certain quality of 2x4 boards can be defined in a contract, and the seller can represent that it meets the contractually defined quality and leave it to the buyer to figure out if it meets a particular building code. The seller can also represent that the boards meet a particular building code, as that code is in effect today. The seller could also promise that when the boards are delivered, it will meet a particular building code as that code is in effect, however it may be changed.

When a REC is indicated as sold in an Applicable Program (e.g., a compliance market), the seller represents that as of the date of the trade, the REC complies with the requirements of the Applicable Program indicated, but the buyer takes the risk of the potential for change in the legal requirements after the trade date. The parties can have the seller bear the risks of change-in-law in the Applicable Program between the trade date and the delivery date by electing to sell the product as "Regulatorily Continuing." Presence or absence of the "Regulatorily Continuing" designation does not give rise to a right by either Buyer or Seller to cancel delivery or purchase if there is a failure of the Product to comply for a later delivery date if the program is changed; rather it is an allocation of risks of what parties may be required to do so the delivery can, when made, be used for compliance. Additionally, if the Applicable Program is later cancelled, delivery is still to be made and paid for at the original price, unless the parties have specifically provided otherwise in the original RECs Confirmation.

Additionally, the EEI RECs Annex does not provide for a "price majeure" if, for example, a voluntary Applicable Program's RECs suddenly become more valuable due to a promulgation of a new RPS that makes compliance mandatory. Parties can vary this. Additionally, parties can evaluate outs akin to the "Change in Scheme" concept sometimes seen in documentation for the European Emissions Trading Scheme.

Disaggregation of Environmental Attributes

A particular quantity of renewable energy generation includes a variety of avoided emissions and other environmental impacts. Some of these are unknown in magnitude until measured. There will likely be significant developments concerning which Environmental Attributes are required to be part of a REC for a particular purpose, especially as the intersection of renewable energy and carbon emission constraining programs develops. For example, one could measure and verify avoided CO₂ emissions from a unit of renewable generation, to be stripped and sold in the CO₂ markets, leaving a "no CO₂" REC available for sale. As sticks are pulled out of the REC bundle, different buyers will attribute different values to the various removed sticks and the remainder of the bundle.

The ABA/EMA/ACORE Master Agreement sets forth a robust mechanism for so stripping out or otherwise independently selling environmental attributes. The EEI RECs Annex does not include this full mechanism in this document; those who require such functionality are referred to the aforesaid form agreement.

Future Allowances

Distinguish between generating unit electric generation and generating unit capacity. There may be future programs providing allowances to renewable energy facilities based on facility capacity, but not generation. This is distinct from credits (or allowances) provided on account of actual renewable resource generation. A "Standard REC," which is "all" Environmental Attributes, includes within it any future allowances (or credits) that are awarded based on the measured quantity of generation with which the Standard REC was associated. If the parties do not wish to transfer future potential allowances or credits based on generation, they should elect to trade a "Specified REC" and carve those out in the confirmation.

If under a new greenhouse gas emissions law, an allowance-based compliance regime is created and initial allowances are allocated to all existing generation, fossil and non-fossil fueled generation, and a wind facility is given in a table 100 Carbon Allowances, which it does not need for compliance, has the wind facility which sold a Standard REC sold any of its carbon allowances? If the allowances were for identifiable prior generation, and a buyer paid for them, they were transferred. If the allocation of allowances is made on an on-going future basis, as electricity is generated, and the amount of allowances is keyed to actual energy production, the allowances are part of a Standard REC. But an allocation of allowances *based on* historic output of the unit (i.e., demonstrated capacity) does not mean the allowances transfer to those to whom the past performance was sold. A system which allocates allowances based on some formula other than on-going actual generation of energy is very different from a system that gives credit for displacing emissions based on actual generation of energy from a renewable resource. The drafters have sought to be as clear as possible under the circumstances, but the parties are advised to remain informed about the potential for future allowance and credit-based programs which might apply to their units and draft their RECs Transactions accordingly. Parties may consider adding the following language to the definition of Environmental Attributes:

Environmental Attributes do not include, unless the parties have expressly agreed otherwise, tradable emission allowances or other entitlements to produce emissions issued by a Governmental Authority and allocated to a Renewable Energy Facility on a basis other than actual generation of avoided emissions associated with the generation of electricity by the Renewable Energy Facility. For example, any CO₂ emission allowances that may be allocated to a Renewable Energy Facility by a Governmental Authority on a basis other than a calculation of such Facility's actual avoided emissions would not be included as an Environmental Attribute.

Unit Contingent Definitions

Two defined terms in Schedule P-RECs refer to the generating unit's performance. Some types of renewable resource generators, such as wind turbines or solar cells, are intermittent, and only generate electricity when the wind blows or the sun shines. Therefore, these units may not be able to generate to a fully contracted quantity. In a "Unit Contingent" sale, Seller is excused from underdelivery if the unit does not generate the full amount contracted for with Buyer in the period indicated, and puts Buyer at the top of the stack from which the Seller may be making sales from the unit over the period indicated. In a "Unit Contingent-Allocated" sale, Seller is excused if the unit does not generate the full amount contracted with Buyer and all the other parties to whom Seller has contracted for sale from the unit, and puts Buyer within the stack from which Seller may be making sales from the unit over the period indicated. Buyers of a Unit Contingent-Allocated Product may consider asking the seller about those other sale commitments. A seller with a 20MW unit entering into two 10MW Unit Contingent transactions runs the risk of breaching both contracts by making both sales Unit Contingent, since both buyers could claim a first entitlement to generation from the unit. A seller in such case may wish to indicate the Product is Unit Contingent-Allocated, and that each buyer receives half of the RECs as generated.

RENEWABLE ENERGY CERTIFICATES ANNEX
to the
EEI MASTER POWER PURCHASE & SALE AGREEMENT

Name: _____, a _____ organized **Name:** _____, a _____ organized
under the laws of the State of _____ ("Party A") under the laws of the State of _____
("Party B")

Effective Date of EEI Master Agreement between Party A and Party B: _____

Paragraph 8 Renewable Energy Certificate Elections Cover Sheet:

All Notices:

As set forth on the EEI Master Agreement Cover Sheet unless
otherwise set forth below:

Street: _____
City: _____
Attn: _____
Phone: _____
Facsimile: _____

Invoices:

As set forth on the EEI Master Agreement Cover Sheet unless
otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Confirmations:

As set forth on the EEI Master Agreement Cover Sheet unless
otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

As set forth on the EEI Master Agreement Cover Sheet unless
otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

As set forth on the EEI Master Agreement Cover Sheet unless
otherwise set forth below:

BNK: _____
ABA: _____
ACCT: _____

All Notices:

As set forth on the EEI Master Agreement Cover Sheet unless
otherwise set forth below:

Street: _____
City: _____
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Confirmations:

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Payments:

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otherwise set forth below:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

As set forth on the EEI Master Agreement Cover Sheet unless
otherwise set forth below:

BNK: _____
ABA: _____
ACCT: _____

Additional elections for EEI Master Agreement Section 2.1 Transactions

Outstanding RECs Transactions. This EEI RECs Annex applies to the following pre-existing RECs Transactions:

- ☐ Option A: All RECs Transactions outstanding between the parties as of the Effective Date of this EEI RECs Annex. – If no options are selected, Option A applies.
- ☐ Option B: The RECs Transactions listed in Schedule 1 to this EEI RECs Annex only.
- ☐ Option C: None of the RECs Transactions between the Parties that were executed prior to the Effective Date of this EEI RECs Annex.

Applicability of Articles 8.1, 8.2, and, if applicable, the Collateral Annex

- ☐ Option A: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all RECs Transactions. – If no options are selected, Option A applies.
- ☐ Option B: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, do not apply to any RECs Transactions.
- ☐ Option C: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all RECs Transactions except those RECs Transactions set forth in Schedule 2 as amended from time to time.

Elections for Paragraph Three:

3.5 Payment Netting

- ☐ Option A (Payment Netting) – If neither Option A nor Option B is checked, Option A shall apply.
- ☐ Option B (No Payment Netting)

Other Changes

Specify, if any:

[Parties should refer to any provisions of their EEI Cover Sheet and optional provisions that should not govern RECs Transactions, for example Mobile-Sierra waivers.]

IN WITNESS WHEREOF, the Parties have caused this EEI RENEWABLE ENERGY CERTIFICATES ANNEX to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the Effective Date of this EEI RECs Annex. The Parties expressly acknowledge the validity of facsimile counterparts of this EEI RECs Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

Party A: _____

Party B: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

RENEWABLE ENERGY CERTIFICATES ANNEX
TO THE
EEI MASTER POWER
PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B have entered into an EEI Master Power Purchase & Sale Agreement (including any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy and other products related thereto; and

WHEREAS, the Parties desire to enter into this Renewable Energy Certificates Annex to the EEI Master Agreement to provide terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of Renewable Energy Certificates (as hereinafter defined; each such Transaction, a “RECs Transaction”);

NOW, THEREFORE, the Parties agree as follows:

PARAGRAPH ONE: GENERAL TERMS

1.2 Scope of Agreement. The Parties enter into this Renewable Energy Certificates Annex to the EEI Master Agreement (this “EEI RECs Annex”) in order to provide for the terms and conditions pursuant to which they may enter into Transactions for RECs Products (as defined below). This EEI RECs Annex, together with the Paragraph 8 Renewable Energy Certificate Elections Cover Sheet (“Paragraph 8 Cover Sheet”), supplements, forms a part of, and is incorporated into, the EEI Master Agreement. Capitalized terms used in this EEI RECs Annex but not defined herein shall have the meanings given such terms in the EEI Master Agreement.

1.2 The terms set forth in the EEI Master Agreement and this EEI RECs Annex apply to those Transactions that relate to RECs Products (each such Transaction, a “RECs Transaction”). Unless otherwise expressly amended by this EEI RECs Annex, all of the terms and conditions set forth in the EEI Master Agreement apply to RECs Transactions. “Transaction” as used in the EEI Master Agreement includes both Transactions relating to Power Products and RECs Products and except as otherwise provided in this EEI RECs Annex, the EEI Master Agreement shall apply equally to all such Transactions without differentiation. By way of example only, the Parties intend that the occurrence of an Event of Default under Section 5.1 of the EEI Master Agreement would enable the Non-Defaulting Party to exercise any or all of the rights of Article Five with respect to all Transactions notwithstanding whether such Transactions are for RECs Products or Power Products. In the event of any inconsistency among or between the EEI Master Agreement and this EEI RECs Annex, this EEI RECs Annex will govern with respect to RECs Transactions only.

PARAGRAPH TWO: DEFINITIONS

2.1 Definitions. With respect to RECs Transactions, these terms have the following meanings, and if the same term is defined in the EEI Master Agreement, the definition herein supersedes and replaces that in the EEI Master Agreement:

2.1.47 “Administrator” means an administrator, Certifier, Governmental Authority or other body with jurisdiction over Certification or transfer of Environmental Attributes in the Applicable Program.

11.21 2.1.2 “Alternative Compliance Payment” means a monetary amount under Applicable Law for an Applicable Program the payment of which is in lieu of compliance or other maximum amount agreed upon by the Parties.

11.22 2.1.3 “Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the Applicable Program or any one or both of the Parties or the terms hereof.

11.23 2.1.4 “Applicable Program” means a mandatory or voluntary domestic, international or foreign RPS, renewable energy, or other program, scheme or organization, with respect to a market, registry or reporting for Environmental Attributes specified in a RECs Transaction.

11.24 2.1.5 “Attestation” means a Transfer Certificate or Certification in form and substance as agreed to by the Parties separate and apart from the RECs Confirmation, an example of which for voluntary and potentially other Applicable Programs is attached as Exhibit C.

11.25 2.1.6 “Certification” means, if applicable, the certification by the Certifier of the Applicable Program of (i) the creation and characteristics of a REC, (ii) the qualification of a Renewable Energy Facility under the Applicable Program, (iii) Delivery of a REC or (iv) other compliance with the requirements of the Applicable Program.

11.26 2.1.7 “Certifier” means an entity that certifies the generation, characteristics or Delivery of a REC, or the qualification of a Renewable Energy Facility under the Applicable Program, and may include the Administrator, a GIS, a Governmental Authority, one or both of the Parties, an independent auditor or other third party, and should include (i) absent an Applicable Program, the Seller, or the generator of the RECs if the Seller is not the generator, (ii) if the RECs are to be Delivered pursuant to the Applicable Program, the Administrator of the Applicable Program, or such other person or entity specified by the Applicable Program to perform Certification or (iii) such other person or entity specified by the Parties.

11.27 2.1.8 “Certified Renewable Energy Facility” means a Renewable Energy Facility that is certified under or pursuant to the Applicable Program.

11.28 2.1.9 “Delivered” or “Delivery” means the transfer from Seller to Buyer of the Contract Quantity of the RECs Product in accordance with the Applicable Program and recognition by any applicable Administrator, Certifier, or GIS that such transfer has completed.

11.29 2.1.10 “Delivery Date” means the dates specified in the RECs Transaction for Delivery of the RECs Product to the Buyer.

11.30 2.1.11 “Environmental Attribute” means an aspect, claim, characteristic or benefit, howsoever entitled, associated with the generation of a quantity of Energy by a Renewable Energy Facility, other than the electric energy produced, and that is capable of being measured, verified or calculated, including any fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances resulting from the purchase, generation or use of energy from a Renewable Energy Facility or the avoidance of any emission of any gas, chemical or other substance to the air, soil or water attributable to such energy generation or arising out of any present or future Applicable Law. An Environmental Attribute may include one or more of the following identified with a particular megawatt hour of generation by a Renewable Energy Facility designated prior to Delivery: the Renewable Energy Facility’s use of a particular renewable energy source, avoided NO_x, SO_x, CO₂ or greenhouse gas emissions, avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Renewable Energy Facility itself), or as otherwise defined under the Applicable Program or as agreed by the Parties. Environmental Attributes do not include any Energy, capacity, reliability or other power attributes from the Renewable Energy Facility, production tax credits or other direct third-party subsidies, filed rates, or feed-in tariffs for generation of electricity by the Renewable Energy Facility.

11.31 2.1.12 “GIS” means a generation information system or generation attribute tracking system operated by an Independent System Operator or a Regional Transmission Organization, or any other system that records generation from Renewable Energy Facilities.

11.32 2.1.13 “Government Action” means action (and not merely the speculation thereof) by a Governmental Authority, Administrator, Certifier, or by the governing body of the Applicable Program, including a Regulatory Event, which results in a change to the eligibility of a RECs Product for the Applicable Program or a substantial change to the requirements for compliance by persons or entities obligated to comply with the Applicable Program which in either case has a material effect on the supply or value of a RECs Product that is the subject of a particular RECs Transaction, and includes a change in Applicable Law that disqualifies any previously qualifying or Certified Renewable Energy Facilities (by Energy sources, Initial Operating Date or otherwise) or previously complying RECs Product, that is the subject of a RECs Transaction entered into prior to the change under an existing Applicable Program, including a change that that (i) eliminates or discontinues certification of the RECs Product, or (ii) creates any adverse material change in the application of the Applicable Program regarding a Party’s authority to sell or purchase the RECs Product.

11.33 2.1.14 “Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or

regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

11.34 2.1.15 “Initial Operating Date” means the date when a particular Renewable Energy Facility first became commercially operational.

11.35 2.1.16 “Penalties” means, with respect to the Non-Defaulting Party, the present value of any Alternative Compliance Payments, penalties, fines or fees imposed or assessed against the Non-Defaulting Party by an Administrator or Governmental Authority on account of Delivery not occurring on the Delivery Date, as determined by the Non-Defaulting Party in a commercially reasonable manner.

11.36 2.1.17 “RECs Product” means the RECs and Environmental Attributes to be delivered in a particular RECs Transaction.

11.37 2.1.18 “RECs Confirmation” is the form used by the Parties in the form of Exhibit A or Exhibit B or as otherwise agreed by the Parties, specifying the terms of a RECs Transaction.

11.38 2.1.19 “RECs Product Reporting Rights” means the exclusive right to report sole ownership of the RECs Product to any Certifier, GIS, Administrator, Governmental Authority or other party, including under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future Applicable Program.

11.39 2.1.20 “RECs Transaction” is a Transaction under the Agreement governed by this EEI RECs Annex.

11.40 2.1.21 “Regulatorily Continuing” means, with respect to a RECs Transaction represented by a Party as complying with an Applicable Program, such compliance will be as of both the Delivery Date and the Trade Date notwithstanding any Government Action.

11.41 2.1.22 “Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag or other transferable indicia, howsoever entitled, created by or pursuant to the Applicable Program or Certifier indicating generation of a particular quantity of energy, or RECs Product associated with the generation of a specified quantity of Energy from a renewable energy source by a Renewable Energy Facility, separate from the Energy produced.

11.42 2.1.23 “Renewable Energy Facility” means an electric generation unit or other facility or installation that produces Energy qualifying under the Applicable Program, and includes a Certified Renewable Energy Facility.

11.43 2.1.24 “Renewable Portfolio Standard” or “RPS” means a domestic, international, or foreign state, provincial or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of electricity that is sold or used by specified entities to be generated from renewable energy.

11.44 2.1.25 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases replacement RECs Product for any RECs Product

specified in the RECs Transaction but not delivered by Seller, which replacement RECs Product complies with the Applicable Program as of the Delivery Date for a Regulatorily Continuing RECs Transaction and as of the Trade Date for a RECs Transaction that is not Regulatorily Continuing, and have the same Vintage as the RECs Product not Delivered, plus Costs reasonably incurred by Buyer in purchasing such substitute RECs Product, or absent a purchase, the market price for such RECs Product not delivered, as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such market price exceed any applicable Alternative Compliance Payment set forth in the Applicable Program (if any), nor shall Buyer be required to acquire replacement RECs or utilize or change its utilization of its market positions to minimize Seller's liability.

11.45 2.1.26 "Reporting Year" means a twelve-month compliance period specified under the Applicable Program.

11.46 2.1.27 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells any RECs Product specified in the RECs Transaction not received by Buyer deducting from such proceeds any Costs reasonably incurred by Seller in reselling such RECs Product and Delivering to a third party purchaser thereof, or absent a sale, the market price for such RECs Product that complies with the Applicable Program as of the Delivery Date for a Regulatorily Continuing RECs Transaction and as of the Trade Date for a RECs Transaction that is not Regulatorily Continuing, and have the same Vintage as the RECs Product not received, as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such market price include any Penalties or similar charges or stranded costs unless specified in the applicable RECs Transaction, nor shall Seller be required to utilize or change its utilization of its market positions to minimize Buyer's liability; and provided further that if Seller is unable after using commercially reasonable efforts to obtain a market price or resell all or a portion of the RECs Product not received by Buyer, then the Sales Price with respect to such unsold RECs Product shall be deemed equal to zero dollars (\$0).

11.47 2.1.28 "Trade Date" means the date a RECs Transaction is entered into by the Parties.

11.48 2.1.29 "Transfer Certificate" means an Attestation, GIS record of ownership transfer or other document evidencing Delivery of a REC and otherwise satisfying the requirements of the Parties and any Applicable Program.

11.49 2.1.30 "Vintage" means the calendar year, Reporting Year or other period specified by the Parties or the Certifier, as applicable, in which the RECs Product is created or first valid for use under the Applicable Program.

11.50 2.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (i) the singular includes the plural and vice versa; (ii) all references to a particular entity or market price index include a reference to such entity's or index's successors and (if applicable) permitted assigns; and (iii) a reference to a statute or to a regulation issued by a Governmental Authority includes the statute or regulation in force as of the Trade Date, or Delivery Date with respect to a RECs Product that is Regulatorily Continuing; and (iv) the word "or" is not necessarily exclusive.

PARAGRAPH THREE: AMENDMENTS TO THE EEI MASTER AGREEMENT

3.1 Definitions. Section 1.47 of the EEI Master Agreement is amended by adding to the end thereof “in the EEI RECs Annex or RECs Product Transactions thereunder.”

3.2 Confirmation. The first sentence of Section 2.3 of the EEI Master Agreement shall be modified by the addition of the following at the end thereof: “and substantially in the form of a RECs Confirmation with respect to RECs Transactions.”

3.3 Additional Confirmation Terms. Section 2.4 of the EEI Master Agreement shall apply only to Power Products.

3.4 Obligations and Deliveries. Sections 3.1 and 3.2 of the EEI Master Agreement shall apply only to Power Products. The applicable provisions with respect to RECs Products are set forth in Paragraph 4.1 below.

3.5 Payment and Netting.

Option A: Payment Netting with Payment for Power and RECs Transactions on the same payment date. Section 6.2 of the EEI Master Agreement shall apply to Power Products and RECs Products, it being the intent of the Parties that monthly payments for Power Products shall be netted with monthly payments for RECs Products, all in accordance with Article 6 of the EEI Master Agreement, including Section 6.4 thereof. In addition to the netting of monthly payments in respect of RECs Products and Power Products, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions whether for Power Products or RECs Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting with Payment for RECs Transactions on the 5th Business Day following Delivery of RECs. The first sentence of Section 6.2 of the EEI Master Agreement shall apply only to Power Products. With respect to RECs Products only, the first sentence of Section 6.2 shall be replaced with the following sentence: “Unless otherwise agreed by the Parties in a RECs Transaction, all invoices under this EEI Master Agreement for RECs Products shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 5th Business Day following Delivery, or the 5th Business Day after receipt of the invoice by Buyer.” Section 6.4 of the EEI Master Agreement shall apply to both Power Products and RECs Products; provided, however, for this limited purpose only, monthly payments for Power Products shall be netted only with monthly payments for other Power Products and monthly payments for RECs Products shall be netted only with monthly payments for other RECs Products. If an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions whether for Power Products or RECs Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

3.6 Title and Indemnity. Sections 10.3 and 10.4 of the EEI Master Agreement shall apply only to Power Products. The provisions that apply to RECs Products are set forth in Paragraph 4.3 below.

**PARAGRAPH FOUR: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR
TRANSACTIONS RELATING TO RECs PRODUCTS**

The following provisions apply to RECs Products only.

4.1 Delivery. Seller shall Deliver the RECs Product, and Buyer shall receive and pay for the RECs Product, in the manner required to comply with the terms of this RECs Annex and any RECs Transactions into which the Parties may from time to time enter.

4.2 Taxes and Fees. In any RECs Transaction, the term “Delivery Point” as used in the EEI Master Agreement is defined in the RECs Confirmation, if applicable. Each Party will be responsible for the payment of any fees, including broker’s fees, incurred by it in connection with any RECs Transactions hereunder.

4.3 Transfer of Title. Unless otherwise specified in a RECs Transaction, none of Seller’s applicable property and other right, title and interests in the RECs Product will pass to Buyer until the Delivery and payment are complete and upon such completion, all rights, title and interest in and to the RECs Product, to the full extent the same is property, will transfer to Buyer.

4.4 Effect of Transfer of Environmental Attributes. By transferring RECs Product in a RECs Transaction, Seller transfers any and all, and the exclusive, right to use that RECs Product in any Applicable Program, whether or not the RECs Transaction specifies that the RECs Product is eligible for an Applicable Program, and whether or not the particular RECs Product or any Environmental Attribute therein constitutes property, as well as any and all RECs Product Reporting Rights. Transfer of an Environmental Attribute does not transfer eligibility for production tax credits or other direct third-party subsidies for generation of electricity by any specified Renewable Energy Facility. Delivery of a RECs Product grants the Buyer the right, exclusive to the full extent applicable, to verify, certify and otherwise take advantage of the rights, claims and ownership in the RECs Product.

4.5 Certifying. The type and amount of any Environmental Attribute transferred and Delivered will be measured, calculated, verified and certified as agreed by the Parties or as required pursuant to the Applicable Program, if any. Unless otherwise specified in a RECs Transaction or the Applicable Program, Seller will (a) ensure that the selection of the Certifier complies with this EEI RECs Annex and the Applicable Program and (b) be responsible for the costs of the Certifier required for Delivery.

4.6 Secondary Markets; Exclusion of Warranties. Unless otherwise specified in a RECs Transaction, neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation or breach by a Certifier (other than those due to failure to pay required fees, charges or expenses). Except as required under the Applicable Program, to the

extent a RECs Product is evidenced or Delivered with a Transfer Certificate or other documents executed by or setting forth the findings of third parties, the sole representations of Seller with respect thereto will be that (i) Seller has no actual knowledge that any statement therein is false or intentionally misleading, and (ii) the documents provided by it are true and correct copies of the documentation it has. All representations and warranties made by a Seller to a Buyer with respect to the Environmental Attributes, Renewable Energy Facility, Energy delivery location or Vintage of a RECs Product are transferable by the Buyer. However, as different Applicable Programs have differing compliance requirements, any representation that a RECs Product is Regulatorily Continuing applies solely to the Delivery by the Seller of RECs Product under the Applicable Program to the Buyer and only up to the Delivery Date, and the benefit of such representation is not assignable by Buyer, except as consented to by Seller in writing. Any other representation of compliance with the Applicable Program applies only up to the Trade Date. A RECs Transaction may provide by its terms that the Renewable Energy Facility will be designated by the Seller after the Trade Date and on or before the Delivery Date, so long as once having been designated, the Delivery complies with the requirements of the Applicable Program, in the manner represented by Seller.

4.7 Tariffs; Energy. Party A Tariff and Party B Tariff do not apply to RECs Transactions unless specifically so stated in the RECs Confirmation. A RECs Transaction may be entered into in connection with a Transaction for Energy. Delivery of RECs Product can be with or independent of delivery of the Energy with which the RECs Product is associated if so permitted under the Applicable Program.

PARAGRAPH FIVE: FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Mutual Representations and Warranties. On the Effective Date and on each Trade Date, each Party represents and warrants to the other what it has represented and warranted in Section 10.2 of the EEI Master Agreement and that: (i) it is an “eligible commercial entity” and an “eligible contract participant” within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively and (ii) except as otherwise provided in Paragraph 4.6, all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

5.2 Warranties and Certain Covenants of Seller. With respect to each RECs Transaction, Seller represents and warrants to Buyer on the Trade Date and on the Delivery Date for all RECs Product that: (i) Seller has good and marketable title to such RECs Product; (ii) Seller has not, under any Applicable Program or otherwise, sold to any other person or entity, retired for its own benefit, or represented as part of any Energy sale the RECs Product or any Environmental Attribute of the RECs Product to be transferred to Buyer; (iii) all right, title and interest in and to such RECs Product are free and clear of any liens, taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer; (iv) each Environmental Attribute and REC meets the specifications set forth in the RECs Transaction; (v) the RECs Product is separate from the Energy generated by the Renewable Energy Facility, unless otherwise specified by the Parties; (vi) such RECs Product complies with

the Applicable Program for which the RECs Product requires compliance until (a) Delivery for RECs Transactions that are Regulatorily Continuing, or (b) the Trade Date for RECs Transactions that are not Regulatorily Continuing; (vii) unless expressly set forth in a RECs Transaction, with respect to Seller, the RECs Product is not transferred, and has not been transferred pursuant to a contract filed or required to be filed with or approved by any Governmental Authority having jurisdiction over the sale of Energy; (viii) the representations and warranties set forth in the form of Attestation, if any, as of the Delivery Date are true and correct, provided that if the RECs Transaction is not Regulatorily Continuing, this representation is only as to the form of Attestation in effect as of the Trade Date; and (ix) subject to Paragraph 4.6 and unless otherwise specified to the contrary on the RECs Transaction, Seller has disclosed to Buyer any and all Transfer Certificates, Attestations, and all other relevant documentation received by it in connection with its acquisition of the RECs Product sold to Buyer hereunder, and any use by any Environmental Attribute of the RECs Product by Seller or any other person or entity to comply with any Applicable Program. With respect to any RECs Transaction, absent a representation by Seller that the RECs Product complies with the requirements of a specified Applicable Program, Buyer bears the risk that the RECs Product is or will be in compliance with such Applicable Program. With respect to any RECs Transaction, if Seller represents that a RECs Product complies with the Applicable Program, such representation is made and effective as of the Trade Date, and Seller will not be in breach of such representation on account of any Government Action occurring after the Trade Date, unless the RECs Transaction is Regulatorily Continuing, in which case Seller must Deliver RECs Product that complies with the Applicable Program as of the Delivery Date. If the RECs Transaction is Regulatorily Continuing, Seller will cause the RECs Product that is Delivered to comply with the requirements of the Applicable Program on the Delivery Date, including Delivering substitute RECs Product acceptable to Buyer if appropriate.

5.3 LIMITATION OF WARRANTIES. THE EXPRESS WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE RECS PRODUCT DELIVERED AND TRANSFERRED WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER, INCLUDING WITH RESPECT TO ANY GOVERNMENT ACTION OR ANY OTHER FUTURE ACTION OR FAILURE TO ACT OR APPROVAL OR FAILURE TO APPROVE BY ANY GOVERNMENTAL AUTHORITY OR ADMINISTRATOR.

5.4 Cooperation on Delivery; Review of Records. Upon either Party's receipt of notice from the Administrator that the transfer of RECs pursuant to a RECs Transaction will not be recognized or a RECs Product Delivery was not made as required pursuant to the terms of a RECs Transaction, that Party will immediately so notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and RECs Product Delivered. Each Party agrees to provide copies of its records to the extent reasonably necessary for the Certifier to perform the functions designated on the RECs Transaction, and to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party. If, as a result of Seller's failure to provide Buyer with documentation and records it has agreed in the RECs Transaction to provide any or all of the Contract Quantity of RECs

Product is disallowed (“Disallowed RECs”) Seller will pay damages for such Disallowed RECs as if there had been a failure to Deliver them and Buyer shall after receipt of such damages return the Disallowed RECs to Seller. If Seller is not the owner or operator of the Renewable Energy Facility that generated the RECs Product, Seller will cooperate with Buyer in any efforts to review the records of the original Seller of such RECs Product. If Seller is the owner or operator of the Renewable Energy Facility that generated the RECs Product in a RECs Transaction, it consents to the Buyer’s assignment of rights under this Paragraph to any subsequent purchaser of such RECs Product. The obligations set forth in this Paragraph terminate with respect to any particular RECs Transaction on the later of thirty days following the last banking date under the Applicable Program for the Vintage of the RECs Product Delivered, or the third anniversary of the Delivery Date. Notwithstanding any provisions in the EEI Master Agreement regarding confidentiality, Buyer, and any affiliates or customers of Buyer to which Buyer resells the Product delivered by Seller hereunder, will have the right to disclose (i) to any entity or governmental authority having jurisdiction, any information necessary to demonstrate compliance with any RPS, and (ii) to any customer of Buyer or Buyer’s affiliates that is participating in any voluntary renewable energy retail electric service customer choice program, the RECs Product content and characteristics.

PARAGRAPH SIX: ADDITIONAL TERMS RESPECTING REMEDIES AND FORCE MAJEURE

6.1 Not a Penalty. The Parties intend that no remedy or amount due hereunder represents a penalty to the Defaulting Party.

6.2 Registry Failure. If a Party is unable to Deliver or receive RECs due to the occurrence of a disruption in Deliveries caused by the applicable Administrator or GIS, as applicable which is not subject to Paragraph 7.11 and is not within the reasonable control of, or the result of the negligence of, such Party, by the exercise of due diligence, such Party was unable to avoid (a “Registry Failure”), it shall provide the other Party with written notice and full details within two (2) Business Days. The Parties will use their best efforts to cause Delivery and give effect to the original intention of the Parties. No Party will be relieved due to a Registry Failure from any obligation to provide any notice or make any payments due.

6.3 Scope of Force Majeure. This Paragraph 6.3 is in addition to and not in replacement of the provisions respecting Force Majeure in the EEI Master Agreement. With respect to Unit Specific RECs, Force Majeure includes events of Force Majeure that disrupt the operation of the specified Renewable Energy Facility. Force Majeure may not be based upon change in Applicable Law or Government Action in a Regulatorily Continuing RECs Transactions. In the case of a Party’s obligation to make payments hereunder, Force Majeure will be only an event or act of a Governmental Authority that on any day disables the banking system through which a Party makes such payments.

PARAGRAPH SEVEN: APPLICABLE LAW

7.11 Government Action. The Parties acknowledge that the Applicable Programs, which among other things establish the conditions for a market for certain RECs Products, may

be the subject of Government Action. Unless otherwise provided in a RECs Transaction, Government Action that changes in any respect the value of a RECs Product, without rendering the RECs Product out of compliance with the Applicable Program if Regulatorily Continuing, including the Applicable Program being discontinued, suspended, cancelled, repealed, or otherwise no longer scheduled to proceed, will have no effect on the obligation of the Parties to purchase and sell such RECs Product at the price and on the terms set forth in the RECs Transaction. To the extent that Government Action (i) renders Delivery illegal under Applicable Law, or (ii) makes impossible the trading or transferring of the RECs Product, then promptly after the occurrence of such Government Action, the Parties will use their best efforts to reform the affected RECs Transaction(s) in order to give effect to the original intention of the Parties or transfer the RECs Product under another Applicable Program or method if possible. For purposes of the affected RECs Transaction(s) only, if the Parties are unable, despite such efforts, to reform such RECs Transaction(s) or transfer the RECs Product within ten (10) Business Days following the Government Action, either Party may, at its sole option terminate the affected RECs Transaction(s) without terminating the EEI Master Agreement and with no further payment or performance obligation; provided that the Parties shall make any payments due in accordance with obligations already performed and that portion of whatever has been paid for the quantity of RECs Product not yet Delivered will be refunded by Seller, to the extent it is lawful to do so. If Government Action results in the Applicable Program being superseded by another state, regional or federal renewable energy program, then, Seller shall Deliver either under the existing Applicable Program or under the superseding program, to the extent possible and commercially reasonable. Notwithstanding the foregoing, no RECs Transaction will be affected, cancelled or otherwise impaired by Government Action that is specific to a Party under Applicable Law taken by a Governmental Authority alleging that Party's violation thereof.

7.2 Governing Law. Notwithstanding Section 10.6 of the EEI Master Agreement, the creation, issuance, transfer, tracking and retirement of RECs shall be governed by the laws, rules and regulations of the Applicable Program, if any.

SCHEDULE P-RECS: RECS PRODUCT DEFINED TERMS

“Basic REC” means a REC that consists solely of a Certification of the generation of electricity by a Renewable Energy Resource, without any additional Environmental Attributes.

“Firm” means, with respect to a RECs Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the RECs Product, the Party to which performance is owed shall be entitled to receive from the Party that failed to perform an amount determined pursuant to Article 4 of the EEI Master Agreement. Force Majeure shall not excuse performance of a Firm RECs Transaction.

“Resource Type Specific” when referring to RECs Product means that the Renewable Energy Facility that has generated or is eligible to generate the RECs Product utilizes a specified type of renewable energy.

“Specified REC” means a REC that includes or excludes specified Environmental Attributes.

“Standard REC” means a REC that includes all Environmental Attributes arising as a result of the generation of electricity associated with the REC, whether such Environmental Attributes have been certified and whether creditable under any existing Applicable Program.

“Unit Contingent” means that Seller is excused from any failure to Deliver RECs Product quantity on account of failure of a specified Renewable Energy Facility to generate the amount of RECs necessary in the Vintage or other time period indicated. In such event, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article 4.

“Unit Contingent-Allocated” means that Seller is excused from any failure to Deliver RECs Product quantity on account of failure of a specified Renewable Energy Facility to generate the amount of RECs necessary in the Vintage or other time period indicated to satisfy all obligations of RECs delivery to all purchasers as assigned by Seller to the Renewable Energy Facility. In such event, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article 4.

“Unit Non-specific” means that the Renewable Energy Facility generating the RECs Product need not be specified.

“Unit Specific” means that the Renewable Energy Facility generating the RECs Product is and must be specified.

Schedule 1: Outstanding RECs Transactions

The RECs Transactions set forth below constitute Outstanding RECs Transactions:

Schedule 2: Applicability of Collateral Annex

The Collateral Annex applies to all RECs Transactions except those set forth below:

EXHIBIT A: EXAMPLE RECS CONFIRMATION

**RECS TRANSACTION CONFIRMATION
BETWEEN**

AND

This confirmation ("Confirmation") confirms the transaction ("Transaction") between [] ("Seller") and [] ("Buyer"), each individually a "Party" and together the "Parties", effective as of [], 20[] (the "Trade Date"). This Transaction is governed by the pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated _____, 20[] and the EEI Renewable Energy Certificates Annex dated _____, 20[] ("EEI RECs Annex") thereto (collectively, the "Agreement"). Initially capitalized terms used and not otherwise defined herein are defined in the Agreement and Schedule P-RECs or in the Applicable Program.

Seller: _____		Buyer: _____	
Contact Information:	Seller	Buyer	
	Tel: _____ Fax: _____	Tel: _____ Fax: _____	
Product:	Type of REC		
	<input type="checkbox"/> Standard REC		
	<input type="checkbox"/> Basic REC		
	<input type="checkbox"/> Other RECs Product [describe]: _____		
	Applicable Program		
	<input type="checkbox"/> United States Renewable Energy Standard		
	<input type="checkbox"/> California RPS		
	<input type="checkbox"/> RPS		
	<input type="checkbox"/> Certified by Green-e Energy Center For Resource Solutions or Green-e approved entity		
	<input type="checkbox"/> Certifiable by Green-e Energy Center For Resource Solutions		
<input type="checkbox"/> Other			
<input type="checkbox"/> None			
Product: (Check One):			
<input type="checkbox"/> Firm			
<input type="checkbox"/> Unit Contingent			
<input type="checkbox"/> Unit Contingent-Allocated			
<input type="checkbox"/> Unit Specific:			
Certifier			
<input type="checkbox"/> WREGIS			
<input type="checkbox"/> Center for Resource Solutions Green-e Energy			
<input type="checkbox"/> Other:			
Contract Quantity:	[[] MWh/[] RECs]		
Vintage:	_____		
Reporting Year:	_____		

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Renewable Energy Resource (if applicable):	Name of Facility(ies):	
	Location:	
	ETA Number:	
	California Energy Commission ID (or other Applicable Program Renewable Energy Facility Certifier ID):	
	GIS ID:	
	Certification Date:	
	On-line Date:	
Resource-Type (if applicable)		
Contract Price:	Vintage ____ [\$ /MWh/\$] REC] Vintage ____ [\$ /MWh/\$] REC] Vintage ____ [\$ /MWh/\$] REC] Vintage ____ [\$ /MWh/\$] REC]	
Delivery Term:	The Delivery Term of this Transaction shall commence on [], 20[] and shall continue until [delivery by Seller to Buyer of the Product has been completed/[], 20[]].	
Alternate Payment Terms:	<input type="checkbox"/> Prepay <input type="checkbox"/> Payment under Article Six of EEI Master Agreement based on time of upon Delivery of electricity with which REC's Product is associated, if applicable <input type="checkbox"/> Payment upon Delivery of GIS Certificates	
Allocation of Change in Law Risk: (check one)	Seller's representations of compliance with the Applicable Program in Paragraph 5.2 are: <input type="checkbox"/> made as of the Trade Date; <input type="checkbox"/> made as of each Delivery Date during the Delivery Term and hence Regulatorily Continuing; <input type="checkbox"/> excluded and shall not apply to this Transaction.	
Delivery Point:	<input type="checkbox"/> Buyer's GIS account (specify account information) <input type="checkbox"/> Other _____	
Alternate Title Transfer	<input type="checkbox"/> Title transfers from Seller to Buyer upon the completion of both Delivery and payment for the RECs <input type="checkbox"/> Title transfers from Seller to Buyer upon the completion of Delivery of the RECs, regardless of payment	
Additional Terms:	The following additional terms shall apply: _____	

The Parties agree to the RECs Transaction set forth herein.

[Seller]
 Signed: _____

[Buyer]
 Signed: _____

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Name: _____ Name: _____

**EXHIBIT B: EXAMPLE RECS CONFIRMATION
RECS TRANSACTION
CONFIRMATION**

To:

From:

Confirmation Administration

This confirms a RECs Transaction between Buyer and Seller for the sale, purchase and delivery of Renewable Energy Certificates ("RECs") pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [_____] and the EEI Renewable Energy Certificates Annex dated [_____] ("EEI RECs Annex") thereto (collectively, the "Agreement"). Initially capitalized terms used and not otherwise defined herein are defined in the Agreement and Schedule P-RECs.

Trade Date _____

Seller: _____

Buyer: _____

Type of RECs Product: ☐ Standard RECs
 ☐ Unit Contingent-Allocated

1. Amount: Number of RECs: _____ MWh
2. Vintage: _____
3. Price: \$ _____/MWh for RECs
4. Delivery Date: _____
5. Method of Transfer: _____ Attestation _____ GIS specified as _____
6. Renewable Energy Facility: _____ Renewable Energy Source: _____
7. Seller represents that these RECs are compliant with the following Applicable Programs:
_____ [list] as of the Trade Date or,
☐ [check only if applicable] Regulatorily Continuing and as of the Delivery Date.

The Parties agree to the RECs Transaction set forth herein.

[Seller]

[Buyer]

Signed: _____

Signed: _____

Name: _____

Name: _____

Renewable Energy Certificate Record Keeping: Seller will deliver, to the extent applicable, the Attestation in a form similar to that attached hereto, or in such other form as may be required from time to time by such Certifier or as may from time to time be mutually agreed to by the Parties pursuant to the terms of the Applicable Program.

EXHIBIT C
EXAMPLE ATTESTATION

I, _____, as the authorized representative of [Company Name] (“Generator”) declare that Generator hereby sells, transfers and delivers to Buyer the RECs Product (including, unless otherwise specified, all Environmental Attributes and RECs Product Reporting Rights) associated with the generation and delivery of energy to Buyer from the Renewable Energy Facility as described below, in the amount of one REC for each megawatt hour generated as Delivery of [RECs Product], and that the RECs sold hereunder:

1. were generated by the following Renewable Energy Facilities and sold, subject to receipt of payment, to Buyer;
2. qualify as [RECs Product] as of the Trade Date;
3. are solely and exclusively owned by Generator;
4. have not been used by Generator or any third party to meet the RPS or other Applicable Program requirements in another state or jurisdiction;
5. were delivered into the [Delivery Area (e.g. PJM Control Area (as defined by PJM))] and complied with [PJM] energy delivery rules;
6. were not sold to any end-use customer or other wholesale provider other than Buyer during the calendar/Reporting Year; and
7. were not used on-site for generation.

Generator Name or Designation	Technology Type	Fuel Type	Generator Location	EIA #	[RECs Product]	Start and End Dates

As an authorized representative of Generator, I state that the above statements are true and correct to the best of my knowledge. This Attestation may serve as a Bill of Sale to confirm, in accordance with the Agreement, the transfer from Generator to Buyer all of Seller’s right, title and interest in and to the RECs Product as set forth above.

Name: _____

Date _____
[notarize if required]

Either Party may disclose this Attestation to others, including the Administrator, Certifier and the public utility commissions having jurisdiction over Buyer, to substantiate and verify the accuracy of the Parties’ compliance, advertising and public claims.

Note: If the Applicable Program contemplates certification by green-e or other Applicable Program making use of materials provided by the Center for Resource Solutions, or other voluntary program or protocol, users should consult the most current form of attestation required by such program.



(i)

11.51 Uniform Commercial Code Waiver

11.52 Version 1.0
February 6, 2007

Background Statement:

EEI contract users have asked the EEI Drafting Committee to develop language to clarify their intent that the credit assurances provisions set forth in the contract reflect the entirety of the parties contractual, legal, and/or equitable rights to call for financial assurances, including collateral or other credit support, and that neither party may rely on or use law external to the contract, including any implied right arising from Section 2-609 of the Uniform Commercial Code or similar legal doctrines, as a way to require further financial assurances from a party already complying with the express provisions of the contract. Parties should only use this provision if they are comfortable that the four corners of the contract set forth all the circumstances under which they would want credit support from their counterparty. The waiver is limited and is not meant to waive the entirety of Section 2-609 of the Uniform Commercial Code or other legal doctrines to the extent that they relate to matters other than financial assurances.

Some EEI contract users believe that under existing law, this new provision is unnecessary, and that by checking the "Not Applicable" box for "Credit Assurances" on the Cover Sheet, a party has already waived any right implied by the Uniform Commercial Code to request or demand adequate assurances. Some of these users might therefore view this optional provision as unnecessary.

Provision:

Section 8 of the Agreement and, if applicable, the Collateral Annex, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the

options elected by the Parties in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

- a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

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Optional Language to make the Master Agreement "Unilateral", i.e., only covering sales from Party A to Party B

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if the parties desire to limit the Agreement's applicability only to sales of Products by Party A to Party B.

Other Changes

Unilateral Agreement. The definition of "Transaction" in Section 1.60 is amended to read, in its entirety, as follows:

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale by Party A and the purchase by Party B of a Product pursuant to this Master Agreement.

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

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10/16/13

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GAS ANNEX COVER SHEET

This Gas Annex to the EEI Master Power Purchase & Sale Agreement (“Gas Annex”) is entered into as of the following date: _____ (“Effective Date”), and is pursuant to the EEI Master Power Purchase & Sale Agreement (including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”) previously entered into between the Parties. The Gas Annex, together with the EEI Master Agreement (including any Gas Transactions accepted in accordance with Paragraph 1.3 hereto) shall be referred to as the “Agreement.” Party A (as defined below) and Party B (as defined below) are referred to individually as the “Party” and collectively as the “Parties.” The Parties to this Gas Annex are the following:

Name: _____, a _____ organized under the laws of the State of _____ (“Party A”)		Name: _____, a _____ organized under the laws of the State of _____ (“Party B”)	
Date of the EEI Master Agreement between Party A and Party B: _____			
Effective Date of Gas Annex: _____		_____ (the “Gas Annex Effective Date”)	
		<i>If the Parties do not specify a Gas Annex Effective Date, the Gas Annex Effective Date shall be the Date of the EEI Master Agreement.</i>	
All Notices:		All Notices:	
As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:	
Street: _____		Street: _____	
City, State, Zip: _____		City, State, Zip: _____	
Attn: _____		Attn: _____	
Phone: _____		Phone: _____	
Facsimile: _____		Facsimile: _____	
Email: [NOTE: Parties should consider		Email: [NOTE: Parties should consider	

	potential implications of email notice and confer with legal counsel before completing this field.]		potential implications of email notice and confer with legal counsel before completing this field.]
Duns:		Duns:	
Federal Tax ID Number:		Federal Tax ID Number:	
Invoices:		Invoices:	
As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Nominations:		Nominations:	
As set forth on the Cover Sheet to the EEI Master Agreement with respect to "Scheduling" unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement with respect to "Scheduling" unless otherwise set forth below:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Confirmations:		Confirmations:	
As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:	
Attn:		Attn:	
Phone:		Phone:	
Facsimile:		Facsimile:	
Email:		Email:	
Option Exercise:		Option Exercise:	
As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:		As set forth on the Cover Sheet to the EEI Master Agreement with respect to "All Notices" unless otherwise set forth below:	
Attn:		Attn:	

Phone:		Phone:	
Facsimile:		Facsimile:	
<input type="checkbox"/> Wire Transfer - or - <input type="checkbox"/> ACH (check one box):		<input type="checkbox"/> Wire Transfer - or - <input type="checkbox"/> ACH (check one box):	
As set forth in the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:		As set forth in the Cover Sheet to the EEI Master Agreement unless otherwise set forth below:	
Bank:		Bank:	
ABA:		ABA:	
Account:		Account:	
Other Details:		Other Details:	

(i) Paragraph One Elections:

1.2 Alternative Spot Price Index:	The Parties have agreed to the following Alternative Spot Price Index: [None.]
	<i>If no index is specified, then no Alternative Spot Price Index will apply unless otherwise specified in a Confirmation with respect to a Gas Transaction.</i>
1.3 Applicability to Outstanding Gas transactions:	<input type="checkbox"/> Option A: All Gas transactions outstanding between the Parties in respect of Gas Products as of the Gas Annex Effective Date.
	<input type="checkbox"/> Option B: All Gas transactions outstanding between the Parties in respect of Gas Products that are specified in Schedule 1 to this Gas Annex.
	<input type="checkbox"/> Option C: None of the Gas transactions outstanding between the Parties in respect of Gas Products as of the Gas Annex Effective Date.
	<i>If none of the options specified above are selected, Option A shall apply.</i>
1.4 Outstanding Gas Credit Support:	<input type="checkbox"/> Applicable.
	<input type="checkbox"/> Not Applicable.
	<i>If neither of the options specified above are selected, Paragraph 1.4 shall <u>not</u> apply.</i>

(ii)

(iii)

(iv)

(v) Paragraph Two Elections:

2.2 Timing of Payments:	<input type="checkbox"/> Option A: Payment Netting, with Payment for Gas Transactions and Transactions other than Gas Transactions on the 25 th .
	<input type="checkbox"/> Option B: Payment Netting, with Payment for Gas Transactions and Transactions other than Gas Transactions on the 20 th .
	<input type="checkbox"/> Option C: No Payment Netting, with Payment for Gas Transactions on the 25 th .
	<input type="checkbox"/> Option D: No Payment Netting, with Payment for Gas Transactions on the following date of each month: _____
	<i>If none of the options specified above are selected, Option C shall apply.</i>

(vi) Paragraph Three Elections

3.2 Remedies For Failure to Deliver/Receive Gas Products:	<input type="checkbox"/> Option A: Cover Standard
	<input type="checkbox"/> Option B: Spot Price Standard
	<i>If neither of the options specified above are selected, Option A shall apply.</i>
3.6 Governmental Charges (Taxes):	<input type="checkbox"/> Option A: Buyer Pays At the Delivery Point
	<input type="checkbox"/> Option B: Seller Pays Before the Delivery Point
	<i>If neither of the options specified above are selected, Option A shall apply.</i>
3.9 U.S. Customs:	<input type="checkbox"/> Option A: Importer of Record

	<input type="checkbox"/> Option B: Importer of Record and Provision of North American Free Trade Agreement Certificate of Origin
	<i>If neither of the options specified above are selected, Option A shall apply.</i>

Other changes:

Specify, if any:

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Gas Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the date specified as the Gas Annex Effective Date. The Parties expressly acknowledge the validity of facsimile counterparts of the executed Gas Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

PARTY A

PARTY B

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

GENERAL TERMS OF THE GAS ANNEX
TO THE
EEI MASTER POWER PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B have entered into that certain EEI Master Power Purchase & Sale Agreement, dated as of the date specified on the Gas Annex Cover Sheet (and including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into Transactions relating to the purchase and sale of electric capacity, energy and other products related thereto;

WHEREAS, the Parties desire to enter into this Gas Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of natural gas and products related thereto;

WHEREAS, the Gas Annex, together with the EEI Master Agreement, shall be referred to as the “Agreement”; and

NOW, THEREFORE, the Parties agree as follows:

ARTICLE TWELVE: PARAGRAPH ONE: GENERAL TERMS

1.1 Scope of Agreement.

- (a) The Parties agree that they are entering into this Gas Annex in order to provide for the terms and conditions pursuant to which the Parties may enter into Transactions (or which, pursuant to Section 1.3 of this Annex, may govern certain Outstanding Gas transactions) for the purchase and sale of natural gas, including any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane, or such similar product otherwise specified by the Parties in a Confirmation and identified as being governed by this Gas Annex. This Gas Annex supplements, forms a part of, and is subject to the Agreement, and each reference to the Agreement shall include this Gas Annex. Unless otherwise expressly amended pursuant to this Gas Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Gas Transactions entered into between the Parties. In the event of any inconsistency between a Confirmation with respect to a Gas Transaction and this Gas Annex, the terms of such Confirmation will govern with respect to such Gas Transaction. In the event of any inconsistency among or between the EEI Master Agreement and this Gas Annex, this Gas Annex will govern with respect to Gas Transactions only.

(b) 1.2 Defined Terms.

- (a) Capitalized terms used in this Gas Annex but not defined herein shall have the meanings given such terms in the EEI Master Agreement.

(b) Upon execution of this Gas Annex the following definitions and terms in the EEI Master Agreement will be amended as follows:

- (i) “Product” means electric capacity, energy, Gas Product(s) or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.
- (ii) “Transaction” means a particular transaction or Gas Transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.
- (iii) The term “written supplements” in the EEI Master Agreement shall apply to annexes to the EEI Master Agreement, and shall include this Gas Annex.

(c) For purposes of this Gas Annex the following definitions shall apply:

“Alternative Damages” means such damages, expressed U.S. Dollars or in U.S. Dollars per MMBtu, as the Parties shall agree upon with respect to a Gas Transaction, in the event either Seller fails to perform a Firm obligation to deliver Gas or Buyer fails to perform a Firm obligation to receive Gas.

“Alternative Spot Price Index” if any, has the meaning specified in the Gas Annex Cover Sheet or, with respect to a particular Gas Transaction, means the Alternative Spot Price Index specified in the Confirmation in respect of such Gas Transaction.

“British thermal unit” or “Btu” means the International BTU, which is also called the Btu (IT).

“Contract Price” means the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the Parties in a Gas Transaction.

“Contract Quantity” means the quantity of Gas to be delivered and taken as agreed to by the Parties in a Gas Transaction.

“Cover Standard” means that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Gas Annex, then the performing Party shall use commercially reasonable efforts to (a) if Buyer is the performing Party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (b) if Seller is the performing Party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming Party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming Party.

“Day” means a period of 24 consecutive hours, coextensive with a “day” as defined by the Receiving Transporter with respect to a particular Gas Transaction.

“EFP” means the purchase, sale or exchange of natural gas as the “physical” side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of “Firm”, provided that a Party’s excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act (7 U.S.C. §1 et. seq., as amended).

“Firm” means that either Party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the Party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Paragraph 3.4(c) related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

“Floating Price” means a Contract Price or factor of a Contract Price specified in a Transaction based upon a Price Source.

“Force Majeure” shall have the meaning specified in Paragraph 3.3 of this Gas Annex.

“Gas” means any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

“Gas Product” or “Gas Products” means products involving the purchase and sale of Gas or such similar product as otherwise specified by the Parties in the Transaction.

“Gas Transaction” means a particular Transaction with respect to which the Product is a Gas Product.

“Imbalance Charges” means any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

“Interruptible” means that either Party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability except such interrupting Party may be responsible for any Imbalance Charges as set forth in Paragraph 3.4(c) related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

“MMBtu” means one million British thermal units, which is equivalent to one dekatherm.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Receiving Transporter” means the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

“Scheduled Gas Quantity” means the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

“Specified Spot Price Index” means, unless an Alternative Spot Price Index is specified in the Gas Annex Cover Sheet or in a Confirmation with respect to a Gas Transaction, the column captioned “Midpoint” in the “Daily price survey” table set forth in the *Gas Daily* publication published by Platts, or any successor publication thereto, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s). If an Alternate Spot Price Index is specified in the Gas Annex Cover Sheet, or in a Confirmation with respect to a Gas Transaction, the Specified Spot Price Index means the Alternative Spot Price Index so specified.

“Spot Price” means the price listed in the Specified Spot Price Index for the relevant Day; provided, if there is no single price published in the Specified Spot Price Index for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (a) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (a) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

“Termination Event” means the contractual right of a Party to terminate a Gas Transaction in the event that the other Party fails to perform a Firm obligation to deliver Gas in the case of Seller, or to receive Gas in the case of Buyer, for a designated number of Days during a period as specified in the applicable Confirmation.

“Transporter(s)” shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Gas Transaction.

- 1.3 Applicability to Outstanding Gas transactions. Those Gas transactions that were entered into between the Parties prior to the Gas Annex Effective Date and designated on the Gas Annex Cover Sheet (“Outstanding Gas transactions”) shall, unless the Parties otherwise agree in writing with respect to one or more specific Outstanding Gas transactions, be Gas Transactions for purposes of the Agreement and shall, from and after the Gas Annex Effective Date, be subject to the terms and conditions of the Agreement. Each confirmation evidencing such Outstanding Gas transactions shall be deemed to be a “Confirmation” under and as defined in the Agreement. In the event that a confirmation is issued or entered into with respect to any Outstanding Gas transaction pursuant to the terms of any other master agreement or contains terms and conditions that are not directly related to the commercial terms of such Outstanding Gas transaction and are inconsistent with or duplicative of the terms and conditions contained in the Agreement (such other master agreement or the portion of such confirmation containing such terms and conditions, the “Outstanding Master Agreement”) then, notwithstanding any provision of the Outstanding Master Agreement to the contrary, the terms of the Agreement shall

automatically supersede such Outstanding Master Agreement as of the Gas Annex Effective Date.

1.4 Outstanding Gas Credit Support. If this Paragraph 1.4 is specified as applicable in the Gas Annex Cover Sheet:

- (a) To the extent that any collateral, margin, security, cash or other similar credit support (collectively, but excluding any guaranty, the “Outstanding Gas Credit Support”) is held by a Party in connection with the obligations of the other Party under any Outstanding Gas transactions, such Outstanding Gas Credit Support shall be deemed to have been delivered in connection with this Agreement.
- (b) The Parties further agree that, with respect to any Outstanding Gas Credit Support, if the Parties have entered into a Collateral Annex or other agreement similar in connection with the Agreement or have specified that the relevant provisions of Sections 8.1 and/or 8.2 of the EEI Master Agreement are applicable (such Collateral Annex, other agreement or the relevant provisions of the EEI Master Agreement, the “Existing EEI Credit Support”), such Existing EEI Credit Support shall constitute credit support or Performance Assurance, as applicable, provided under this Outstanding Gas Credit Support Paragraph in respect of Outstanding Gas transactions, effective as of the date agreed by the Parties.
- (c) In the event that a Party delivered a guaranty in support of its obligations under any Outstanding Gas transactions or an Outstanding Master Agreement, such Party represents and warrants that any amendments necessary to ensure that such guaranty continues to extend to the Gas Transactions under the Gas Annex have been made prior to the Gas Annex Effective Date.
- (d) The Parties agree that they will enter into any necessary amendments to any other Outstanding Gas Credit Support as may be necessary to give full effect to the terms of this Paragraph 1.4.

PARAGRAPH TWO: AMENDMENTS TO THE EEI MASTER AGREEMENT

2.1 Payment and Netting. In accordance with Section 6.1 of the EEI Master Agreement, Seller shall invoice Buyer for Gas delivered and received in the preceding calendar month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, the invoice will be prepared based on the Scheduled Gas Quantity. The invoiced quantity will then be adjusted to the actual quantity on the following calendar month’s invoice or as soon thereafter as actual delivery information is available. Any dispute or adjustment of invoices shall be addressed in accordance with Section 6.3 of the EEI Master Agreement.

(c) 2.2 Timeliness of Payment. With respect to all Transactions:

- (a) The first sentence of Section 6.2 of the EEI Master Agreement is hereby amended and restated as follows in accordance with the option selected on the Gas Annex Cover Sheet:

Option A: Payment Netting, with Payment for Gas Transactions and all other Transactions on the 25th.

“Unless otherwise agreed by the Parties in a Transaction, all payments with respect to both Gas Transactions and all other Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twenty-fifth (25th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.”

Option B: Payment Netting, with Payment for Gas Transactions and all other Transactions on the 20th.

“Unless otherwise agreed by the Parties in a Transaction, all payments with respect to both Gas Transactions and all other Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.”

Option C: No Payment Netting, with Payment for Transactions other than Gas Transactions on the 20th and for Gas Transactions on the 25th.

“Unless otherwise agreed by the Parties in a Transaction, (i) all payments with respect to Transactions other than Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day and (ii) all payments with respect to Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twenty-fifth (25th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.”

Option D: No Payment Netting, with Payment for Transactions other than Gas Transactions on the 20th and for Gas Transactions on a Specified Date.

“Unless otherwise agreed by the Parties in a Transaction, (i) all payments with respect to Transactions other than Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day and (ii) all payments with respect to Gas Transactions under this EEI Master Agreement shall be due and payable in

accordance with each Party's invoice instructions on or before the later of date specified in Gas Annex Cover Sheet or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day."

- (b) Section 6.2 of the EEI Master Agreement is hereby further amended by, as applicable, either (x) adding at the end thereof the following sentence or (y) to the extent that the Parties have previously agreed to an analogous amendment to Section 6.2 of the EEI Master Agreement, amending and restating the last sentence of Section 6.2 as follows:

"Notwithstanding the foregoing, all payments with respect to Transactions that relate to Products other than Gas Products and Power Products shall be due and payable on such dates as are specified in the annexes applicable to such Products."

PARAGRAPH THREE: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR GAS TRANSACTIONS

Notwithstanding any analogous provision of the EEI Master Agreement (including, but not limited to, Section 9.2, Sections 3.2 and 3.3, and Article Four thereof), unless otherwise specified in the Gas Annex Cover Sheet, the following provisions shall apply with respect to all Gas Transactions.

3.1 Specific EEI Master Agreement Changes Relating Only to Gas Transactions: With respect to Gas Transactions only:

- (a) Confirmations. Section 2.3 of the EEI Master Agreement is hereby amended to add the phrase "with respect to Power Transactions and substantially in the form of Exhibit A to the Gas Annex with respect to Gas Transactions" after the reference "Exhibit A" in each instance set forth therein.
- (b) Remedies for Failure to Deliver/Receive. Sections 3.6 (if applicable), 5.1(c), 6.4, and 6.5 of the EEI Master Agreement are hereby amended by adding the phrase "with respect to Power Products and Paragraph 3.2 of the Gas Annex with respect to Gas Products" after the first reference to "Article Four" in each instance set forth therein.
- (c) Mobile-Sierra Standard applicable to Gas Transactions. The following new Section is hereby added to Article Ten of the EEI Master Agreement at the end thereof:

To the extent that a Gas Transaction does not qualify as a "first sale" as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each Party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Gas Annex, any Gas Transaction hereunder or any other agreements entered into in connection with this Agreement (collectively, the "Covered Agreements"). By this provision, each Party

expressly waives its right to seek or support: (i) an order from the U.S. Federal Energy Regulatory Commission (“FERC”) finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties under the Covered Agreements are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of the Covered Agreements proposed by a Party (to the extent that any waiver as set forth in this Section is unenforceable or ineffective as to such Party), a non-Party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, 128 S. Ct. 2733 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

[NOTE: Parties who have an existing EEI Master Agreement for electric capacity, energy or other related Products should consider separately adopting the Mobile-Sierra provision for such Products, as the Mobile-Sierra provision above is applicable *only* to Gas Transactions entered into pursuant to the EEI Gas Annex. A Mobile-Sierra provision appropriate for application to such electric Products can be found on the EEI website, on the “Miscellaneous” page, under the heading “Miscellaneous Provisions for Use with the EEI Master Contract” at:

<http://www.eei.org/resourcesandmedia/mastercontract/Pages/Miscellaneous.aspx>].

- 3.2 Remedy for Failure to Deliver/Receive Gas Products. Article Four of the EEI Master Agreement shall not apply to any Gas Transaction. In the event of a breach of a Firm obligation to deliver or receive Gas, unless Alternative Damages are specified as applying in a Confirmation signed by both Parties, the Parties agree that:

Option A: Cover Standard. The sole and exclusive remedy of the Parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (a) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (b) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is

available; and (c) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third Party, and no such replacement or sale is available for all or any portion of the Contract quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing Party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of Gas not replaced or sold. Imbalance Charges shall not be recovered under this Paragraph 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Paragraph 3.4(c) of this Gas Annex. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing Party's invoice, which shall set forth the basis upon which such amount was calculated.

Option B: Spot Price Standard. The sole and exclusive remedy of the Parties shall be recovery of the following: (a) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (b) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Paragraph 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Paragraph 3.4(c) of this Gas Annex. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing Party's invoice, which shall set forth the basis upon which such amount was calculated

If the Parties do not specify either Option A or Option B as applicable in the Gas Annex Cover Sheet, Option B shall apply.

In addition to Option A and Option B above, the Parties may provide for a Termination Event in a Confirmation executed in writing by both Parties. The Confirmation containing the Termination Event will designate the length of nonperformance triggering the Termination Event and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

3.3 Force Majeure. Section 3.3 of the EEI Master Agreement shall not apply to any Gas Transaction, and the Force Majeure provisions below shall govern with respect to Gas Transactions.

- (a) Except with regard to a Party's obligation to make payment(s) due under Articles Six and Eight of the EEI Master Agreement, Section 5.3 of the EEI Master Agreement and payment of Imbalance Charges under Paragraph 3.4(c) of this Gas Annex, neither Party shall be liable to the other for failure to perform a Firm obligation in respect of a Gas Transaction to the extent such failure was caused by

Force Majeure. The term “Force Majeure” for purposes of this Gas Annex means any cause not reasonably within the control of the Party claiming suspension, as further defined in Paragraph 3.3(b) of this Gas Annex.

- (b) Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.
- (c) Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller’s ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer’s ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer’s market(s) or Buyer’s inability to use or resell Gas purchased hereunder, except, in either case, as provided in Paragraph 3.3(b) of this Gas Annex; or (v) the loss or failure of Seller’s gas supply or depletion of reserves, except, in either case, as provided in Paragraph 3.3(b) of this Gas Annex. The Party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.
- (d) Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.
- (e) The Party whose performance is prevented by Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the

extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

- (f) Notwithstanding Paragraphs 3.3(b) and 3.3(c) of this Gas Annex, the Parties may agree to alternative Force Majeure provisions with respect to a Gas Transaction in a Confirmation executed in writing by both Parties.

3.4 Transportation, Nominations and Imbalances. Section 3.2 of the EEI Master Agreement shall not apply to any Gas Transaction, and the provisions below shall govern with respect to Gas Products:

- (a) Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).
- (b) The Parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each Party shall give the other Party timely prior notice, sufficient to meet the requirements of all Transporter(s) involved in the Gas Transaction, of the quantities of Gas to be delivered and purchased each Day. Should either Party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such Party shall promptly notify the other Party.
- (c) The Parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the Parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

3.5 Quality and Measurement. All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of Gas Transactions shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

3.6 Governmental Charges (Taxes). Notwithstanding the first two sentences of Section 9.2 of the EEI Master Agreement, the following elections are applicable to the Gas Annex:

Option A: Buyer Pays At and After the Delivery Point. Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery

Point(s) and all Taxes after the Delivery Point(s). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof

Option B: Seller Pays Before and At the Delivery Point. Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof.

If the Parties do not specify either Option A or Option B as applicable in the Gas Annex Cover Sheet, Option A shall apply.

3.7 Market Disruption Events.

If a Market Disruption Event has occurred then the Parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the Parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each Party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either Party fails to provide two quotes then the average of the other Party's two quotes shall determine the replacement price for the Floating Price. If both Parties fail to provide two quotes, then the Parties shall use the average of all of quotes actually obtained to determine the replacement price for the Floating Price. "Market Disruption Event" means, with respect to an index specified for a Gas Transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both Parties agree that a material change in the formula for or the method of determining the Relevant Price has occurred. For the purposes of the calculation of a replacement price for the Relevant Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

3.8 Title, Warranty and Indemnity relating to Gas Transactions.

- (a) Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).
- (b) Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS PARAGRAPH 3.8, ALL OTHER WARRANTIES WITH RESPECT TO GAS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.
- (c) Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.
- (d) Notwithstanding the other provisions of this Paragraph 3.8 of this Gas Annex, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Paragraph 3.5 of this Gas Annex.

3.9 U.S. Customs.

The Parties may elect to apply one of the following options:

- Option A: Importer of Record. In the event Seller took title to Gas under a Gas Transaction outside the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3) for delivery to the Buyer within the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

Option B: Importer of Record and Provision of North American Free Trade Agreement Certificate of Origin. If checked, both (i) and (ii) shall apply.

- (i) In the event Seller took title to Gas under a Gas Transaction outside the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3) for delivery to the Buyer within the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements; and
- (ii) In the event that Seller sells Gas under a Gas Transaction outside the Customs Territory of the United States for delivery to the Buyer within the United States, Seller agrees to provide to Buyer within two Business Days of the sale a fully executed North American Free Trade Agreement Certificate of Origin.

If neither option is checked, then Option A shall apply.

3.10 UCC. Each Party agrees that notwithstanding any provisions of law relating to adequate assurance of future performance, including without limitation Article 2-609 of the UCC, the Parties shall only be entitled to request adequate assurance as specifically provided in the Agreement, including the Collateral Annex thereto. For purposes of the foregoing, UCC means the Uniform Commercial Code as adopted by the jurisdiction governing the Parties and the Gas Transactions. Any section references are to the Model Uniform Commercial Code and are intended to correspond to the same substantive provisions contained in the specific codes adopted in the controlling jurisdictions, to the extent that section references differ.

