



October 22, 2001

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

In re: Model Interconnection Procedures and Model Interconnection and Operating Agreement, Docket No. EX01-5-000

Dear Secretary Boergers:

The Edison Electric Institute (EEI) is pleased to submit its Model Interconnection Procedures and Model Interconnection and Operating Agreement (EEI Interconnection Model) in this proceeding for the Commission's use in developing and promulgating model generation interconnection procedures and agreement.

The EEI Interconnection Model has been prepared by EEI to reflect a balance between generation developers, transmission providers and other users of the transmission system. In developing the EEI Interconnection Model, EEI sought comments and input from all sectors of the electric industry. A description of the process EEI followed in developing the Interconnection Model is included as part of the attached documents. While no other organization fully endorses all aspects of the EEI Interconnection Model at this time, EEI believes that this "working draft" is a sound first step in achieving the kind of even-handed and fair resolution of a number of competing interests that will help the Commission develop a model agreement for all industry stakeholders.

EEI has urged all parties and organizations who were consulted during the process of developing the EEI Interconnection Model or who provided comments that were used in the documents, including EEI members who may not agree with all aspects of the document, to file any further comments they may have directly with the Commission.

Respectfully submitted,

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Attachments

EXPLANATION AND COMMENTARY ON THE EEI MODEL INTERCONNECTION PROCEDURES AND THE EEI MODEL INTERCONNECTION AND OPERATING AGREEMENT

INTRODUCTION

The Edison Electric Institute (“EEI”) is seeking to advance the development of a national standard for interconnection procedures and interconnection agreement. Many in the industry have long thought that a standard set of procedures and a standard interconnection agreement could be adopted that would protect the interests of both generators and transmission providers in a balanced fashion, as well as the interests of other users of the transmission system. It is believed that such a standard set of procedures and agreement would facilitate the development of both new generation and transmission infrastructure. The EEI Model Interconnection Procedures and Model Interconnection Agreement (“EEI Interconnection Model”) have been prepared with that goal in mind.

The EEI Interconnection Model are written to apply to all Transmission Providers. Edison Electric Institute recognizes that there is substantial debate in the industry concerning the extent to which the Model Procedures and Model Agreement should reflect the various transmission configurations that exist, including vertically integrated utilities, independent transcos, merchant transmission, Independent System Operators, for-profit and not-for-profit Regional Transmission Organizations and RTOs that control, but do not own, transmission facilities. The EEI Interconnection Model can easily be modified as necessary to accommodate these transmission configurations.

THE PROCESS FOLLOWED

In late July 2001, EEI undertook to develop the EEI Interconnection Model based on the “best practices” found in procedures and agreements that individual Transmission Providers, ISOs and RTOs have filed with the Federal Energy Regulatory Commission, as well as other commercial forms of agreement that address interconnection issues.

Additionally, to try to harmonize the wide range of perspectives and balance the interests of generators and transmission providers as well as other grid users, EEI solicited input from as many sectors of the industry as possible. In late September 2001, EEI sought comments from its membership on the EEI Interconnection Model. In addition, EEI also sought comment from all of the existing RTOs, ISOs, the Electric Power Supply Association and its members, the American Public Power Association and its members, and the National Rural Electric Cooperative Association and its members. EEI received written input from its members and other industry groups and associations over a three-week period as well as oral input through two all-day meetings and three half-day conference calls.

The result of this process is the EEI Interconnection Model. These documents are solely the work product of EEI, and they are not at this time being endorsed by any other group or industry association. Nonetheless, EEI has made every effort to address

their expressed concerns in the model documents. Because of the complexity of the issues and the diversity of interests, significant differences of opinion within the electric industry on key issues continue to exist. These differences are addressed in the EEI Interconnection Model in the form of alternative provisions and commentary within the documents.

EEI is filing the its Interconnection Model with the Commission at this time as a “working draft” in the hope that it can serve as a guide to the Commission in its own work to promulgate standard interconnection procedures and a standard interconnection and operating agreement.

DRAFT MODEL PROCEDURES

The Draft Model Interconnection Procedures are intended to be used by all Transmission Providers in processing requests to interconnect new generators with the Transmission System and requests by existing generators to increase their generating capacity. They are intended to provide for the processing of interconnection requests as quickly and efficiently as possible, consistent with the need to accommodate the Transmission Provider’s ability to process multiple requests and the Generator’s need to have sufficient time to evaluate the information it receives from the Transmission Provider and decide whether to continue to proceed toward the completion of its interconnection.

DRAFT MODEL INTERCONNECTION AND OPERATING AGREEMENT

The Draft Model Interconnection and Operating Agreement is Appendix 5 to the Model Generator Interconnection Procedures. It is intended to be used as a *pro forma* agreement. This means that Generators and Transmission Providers – when the *pro forma* is adopted by the Commission – may not negotiate differences from the Model Agreement on a case-by-case basis. The parties may, however, negotiate the terms of specific interconnections that are to be included in the Attachments to the Model Agreement. Also, any entity may apply to the Commission to modify the *pro forma* portions of the Model Agreement.

ATTACHMENT ___ GENERATOR INTERCONNECTION PROCEDURES

1. Definitions.

When used in these Generator Interconnection Procedures (“Procedures”) with initial capitalization, the terms specified below shall have the meanings indicated.

Terms used in these Procedures with initial capitalization but not defined in this Section 1 shall have the meanings specified in the Transmission Provider OATT.

1.1 Adjacent System. A transmission system that is electrically connected to the Transmission Provider.

1.2 Generator. A person proposing to interconnect a new generator or to increase the capacity of an existing generator that is connected directly to the Transmission System.

1.3 Interconnection Impact Study. A study of the impact of the interconnection of a proposed new generator or an increase in the capacity of an existing generator on the reliability of the Transmission System.

1.4 Interconnection Facilities Study. A study of the facilities necessary to accommodate the interconnection of a new generator or an increase in the capacity of an existing generator, including a study of the cost of the facilities, the allocation of facilities costs and the estimated schedule for the construction of the facilities.

1.5 Interconnection and Operating Agreement. An agreement in the form of the Interconnection and Operating Agreement included in Appendix 5.

- 1.6 Interconnection Request.** A request to interconnect a new generator or to increase the capacity of an existing generator that meets the requirements of Section 3.2.
- 1.7 Interconnection System Upgrades.** The minimum upgrades to the Transmission System that would not have been required but for an Interconnection Request, including upgrades necessary to remove overloads and voltage criteria violations and upgrades necessary to remedy short-circuit and/or stability problems resulting from the connection of the generator to the Transmission System. Interconnection System Upgrades shall not include upgrades to the Transmission System that are required solely to provide transmission service from the Point of Interconnection to load and shall not include Transmission Provider Interconnection Facilities.
- 1.8 Optional Study.** A study of the availability of transmission service from the generator; or a study of the impact of alternative proposed generator interconnections on the Interconnection Request or on the availability of transmission service as provided for in Section 9.1.
- 1.9 Point of Interconnection.** The point at which the Generator's facilities interconnect with the Transmission System.

1.10 Transmission Provider: An entity that owns, controls or operates transmission facilities, which may include a regional transmission organization, a transmission owner, or an independent system operator.¹

1.11 Transmission Provider Interconnection Facilities: All facilities and equipment owned and/or controlled, operated or maintained by the Transmission Provider on Transmission Provider's side of the Point of Interconnection that are necessary to physically and electrically interconnect the generator to the Transmission System. Transmission Provider Interconnection Facilities shall not include Interconnection System Upgrades.

1.12 Transmission Provider OATT. The open access transmission tariff of the Transmission Provider, as amended from time to time.

2. Scope and Application.

2.1 Application of Procedures. Sections 2 through 12 apply to any request to interconnect a new generator or to increase the capacity of an existing generator, where the generator is or will be connected directly to the Transmission System. Section 13 establishes the modified procedures for generating capacity additions of 20 MW or less.

2.2 Role of the Transmission Provider. The Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely

¹ The term "Transmission Provider" is intended to include transmission owners where appropriate. The industry is divided on whether and the extent to which transmission owners who are not Transmission Providers should be involved in interconnection studies, interconnection construction and Interconnection Agreements.

manner as set forth in these Procedures. The Transmission Provider will use the same due diligence in processing and analyzing Interconnection Requests from all Generators, whether the generating facilities are owned by Transmission Provider, its subsidiaries or affiliates or others.

2.3 Scope of Service. [The issue of the scope of interconnection service continues to be controversial. Some market participants believe that interconnection service should only include the right to the physical capability of the radial facilities that connect the generator to the grid and the physical capacity of the interconnection point, for instance, a ring bus or a substation. Others believe that interconnection service should include the right to sufficient grid capacity to permit the generator to be treated as a network resource with the assurance that the system will have the physical capability to deliver the energy to any load in the control area if a network transmission customer designates the generator as a network resource. Still others prefer a menu of options so that a generator may choose the level of interconnection service that it wants, as is done in PJM and the New York ISO. Some Generators have asserted that they should have a right of first refusal for the transmission capacity created by Interconnection System Upgrades for which they are responsible. The resolution of these issues is inextricably linked to the development of regional market designs. For instance, locational marginal pricing may eliminate many Generators' concerns with respect to the deliverability of

energy from generators. The industry should continue to seek consensus on this issue.]

- 2.4 No Applicability to Transmission Service.** These Procedures provide only for the interconnection of a generating facility to the Transmission System and do not provide for the delivery portion of transmission service. A Generator may make a separate request for the delivery portion of transmission service from a generating facility pursuant to the Transmission Provider OATT at the time it submits an Interconnection Request or thereafter.

3. Interconnection Requests

- 3.1 General.** A Generator shall submit to the Transmission Provider an Interconnection Request in the form of Appendix 1 to these Procedures and a refundable deposit of \$10,000. The Transmission Provider shall apply the deposit toward the cost of an Interconnection Impact Study. The Generator shall submit a separate Interconnection Request for each site, including a separate Interconnection Request for each generator option at a site, but may submit a single Interconnection Request for multiple generators located at the same site.

- 3.2 Valid Interconnection Request.** A request to interconnect a new generator or to increase the capacity of an existing generator shall not be considered to be a valid Interconnection Request until the Transmission Provider receives the completed request for interconnection and the deposit. If a request for interconnection does not include such items, the

Transmission Provider shall notify the Generator within seven days of the receipt of the request that the request is not valid and the reasons for such invalidity. The Generator shall provide the Transmission Provider the additional information needed to constitute a valid Interconnection Request within fifteen days after receipt of such notice. If the Generator fails to provide the information within such fifteen-day period, the Transmission Provider shall deem the Interconnection Request to be withdrawn.

3.3 OASIS Posting. The Transmission Provider will maintain on its OASIS a list of all Interconnection Requests. The list will identify, for each Interconnection Request, the maximum megawatt electrical output, the location by county and state, the station or transmission line or lines where the interconnection will be made, the projected in-service date, the status of the Interconnection Request and the availability of any studies related to the Interconnection Request. The list will not disclose the identity of the Generator until the Generator executes an Interconnection and Operating Agreement or requests that the Transmission Provider file an unexecuted Interconnection and Operating Agreement with the FERC.

3.4 Coordination with Affected Adjacent Systems. The Transmission Provider shall provide notice of an Interconnection Request to any Adjacent System that may be affected by such request.² The

² Some of the industry believes that the Transmission Provider also should coordinate its studies with the owners of adjacent distribution facilities.

Transmission Provider shall coordinate with such Adjacent Systems any studies that evaluate the impact of the Interconnection Request on such Adjacent Systems.³

3.5 Withdrawal. The Generator may withdraw its Interconnection Request at any time by written notice of withdrawal to the Transmission Provider. In addition, if the Generator fails to adhere to all requirements of these Procedures except as provided in Section 5.5, the Transmission Provider shall deem the Interconnection Request to be withdrawn and shall provide written notice to the Generator of the withdrawal and an explanation of the reasons for such withdrawal. Withdrawal shall result in the loss of the Generator's queue position. A Generator that withdraws its Interconnection Request shall pay to the Transmission Provider all costs that the Transmission Provider prudently incurs prior to the Transmission Provider's receipt of notice of such withdrawal. The Transmission Provider shall refund to the Generator any portion of the Generator's deposit or study payments that exceeds the costs that the Transmission Provider has incurred. In the event of such withdrawal, the Transmission Provider, subject to the confidentiality provisions of Section 12.1, shall provide the Generator all information that the Transmission Provider developed for the purpose of completing any study required with regard to

³ The development of standard procedures for all Transmission Providers would help manage the coordination of the evaluation of the impacts of generator interconnections on adjacent systems.

the Interconnection Request if the Transmission Provider has not delivered the final study report to the Generator.

4. Queue Position.

4.1 General. The queue position of each Interconnection Request, for the purpose of establishing the Generator's right to the capacity of the Transmission System at the Point of Interconnection, the Transmission Provider's performance of Interconnection Impact Studies and Interconnection Facilities Studies and the Transmission Provider's determination of cost responsibility for the facilities necessary to accommodate the interconnection, shall be based upon the date on which the Transmission Provider receives a valid Interconnection Request.⁴

4.2 Transferability of Queue Position. A Generator may transfer its queue position to another entity only if such entity acquires the specific project identified in the Interconnection Request and the Point of Interconnection does not change.

4.3 Modifications. The Generator may submit to the Transmission Provider modifications to any information provided in the Interconnection Request.

⁴ Some of the industry believes that the determination of cost responsibility should be based on the date on which the Generator executes the Interconnection Agreement or requests that it be filed unexecuted, rather than being based on the date of the Interconnection Request. While this "two-queue" approach may encourage Generators to expedite the interconnection process, some believe that it may impose undue pressure on Generators to make project development decisions prematurely. Alternatively, some market participants assert that if a lower-queued Generator is in a position to accelerate its project it should be allowed to swap queue positions with a higher-queued Generator and thereby incur the System Upgrade cost impacts otherwise associated with the higher-queued project. Yet another view of this issue is that while parties should be permitted to swap queue positions, they would ultimately be responsible for the originally assigned costs if such costs are actually incurred.

In such event the Generator shall retain its queue position only if the modifications, in the judgment of the Transmission Provider after consultation with the Generator, do not have a material adverse effect on the cost or timing of the interconnection of any other Generator. At the request of the Generator, the Transmission Provider shall evaluate the proposed modifications prior to making them and inform the Generator in writing of whether the modifications would have any such material adverse effect.

4.4 Disputes. The dispute resolution procedures of the Tariff apply to any disagreement between the Generator and the Transmission Provider as to the applicability of interpretation of these Procedures. The Generator shall comply with the disputed provision of the Procedures during the dispute resolution process.⁵

5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures.

5.1 Queue Position for Pending Requests. Each request to a Transmission Provider for the interconnection of a generator that was submitted before the effective date of these Procedures shall be assigned a queue position based on the date upon which the Transmission Provider received the Interconnection Request. Except as provided in Section 5.5, the Generator shall comply with all provisions of these Procedures that are

⁵ Some Generators take the position that they should retain their original queue priority if they comply with the disputed provision of the procedures promptly after the conclusion of the dispute resolution process, but that they need not do so while the dispute is being resolved.

applicable after such date. A Generator that modifies an Interconnection Request that was pending on the effective date of these Procedures in order to comply with these Procedures shall not thereby lose its queue position pursuant to Section 4.3.

5.2 New Transmission Provider. If the Transmission Provider transfers control of its Transmission System to another Transmission Provider during the period when an Interconnection Request is pending, the original Transmission Provider shall transfer to the new Transmission Provider any amount of the deposit or payment that exceeds the cost that it incurred to evaluate the request for interconnection. Any difference between such net amount and the deposit or payment required by these Procedures shall be paid by or refunded to the Generator, as appropriate. The original Transmission Provider shall coordinate with the new Transmission Provider to complete any Interconnection Impact Study or Interconnection Facilities Study that the original Transmission Provider has begun but has not completed. If the Transmission Provider has tendered a draft Interconnection and Operating Agreement to the Generator but the Generator has not either executed the agreement or requested the filing of an unexecuted agreement with the FERC, the new Transmission Provider shall tender to the Generator an Interconnection and Operating Agreement in the form of the agreement that is included in Appendix 5. These Procedures shall apply to the negotiation, execution and filing of such Agreement.

5.3 Request for Reasonable Extension. The Transmission Provider shall provide to a person that has submitted a request for interconnection prior to the effective date of these Procedures a reasonable extension of any deadline established by these Procedures if necessary to avoid undue hardship or prejudice to the person making the interconnection request that results from the applicability of these Procedures instead of previously-effective procedures.

6. Interconnection Impact Study

6.1 Interconnection Impact Study Agreement. Within fifteen days of its receipt of an Interconnection Request, the Transmission Provider shall provide to the Generator an Interconnection Impact Study Agreement in the form of Appendix 2 to these Procedures. The Interconnection Impact Study Agreement shall provide that the Generator shall compensate the Transmission Provider for the portion of the cost of the Interconnection Impact Study that exceeds the Generator's \$10,000 deposit, and shall specify the Transmission Provider's estimate of the cost of each phase of the study and the technical data that the Generator must provide for the performance of the study.

6.2 Execution of Interconnection Impact Study Agreement. The Generator shall execute the Interconnection Impact Study Agreement and deliver the executed Agreement to the Transmission Provider within fifteen days of its receipt, together with the required technical data and the payment specified in the Interconnection Impact Study Agreement. If the

Generator does not provide the study payment and required technical data when it delivers the Agreement, the Transmission Provider shall notify the Generator of the deficiency within seven days of the receipt of the executed Interconnection Impact Study Agreement and the Generator shall cure the deficiency within fifteen days of receipt of the notice.

6.3 Scope of Interconnection Impact Study. The Interconnection Impact Study shall evaluate the impact of the proposed generation capacity addition on the reliability of the Transmission System. The Interconnection Impact Study will consider all generating facilities that, on the date the Interconnection Impact Study is commenced: (i) are directly interconnected to the Transmission System; (ii) are interconnected to Adjacent Systems and may have an impact on the Interconnection Request; and (iii) are not directly interconnected to the Transmission System or to an Adjacent System but as to which a Generator has either executed an Interconnection and Operating Agreement or requested the Transmission Provider to file an unexecuted Interconnection and Operating Agreement with the FERC. The Interconnection Impact Study will be conducted in two phases. Phase 1 will consist of a short circuit analysis and a transient stability analysis. Phase 2 will consist of a power flow analysis.⁶ The Interconnection Impact Study will state the assumptions upon which it is based, state the results of the analyses, and

⁶ If a minimal level of interconnection service is adopted, a power flow analysis may not be necessary. See the commentary on Section 2.3.

provide a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection.

6.4 Interconnection Impact Study Procedures. The Transmission Provider shall make reasonable efforts to coordinate the Interconnection Impact Study with any Adjacent System that is affected by the Interconnection Request. The Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. The Generator may request the Transmission Provider to perform Phase 1 and Phase 2 concurrently and receive one Interconnection Impact Study report upon the completion of both phases; or may request the Transmission Provider to perform Phase 1 and Phase 2 sequentially and issue a preliminary report after the completion of Phase 1 and a final report after the completion of Phase 2. If the Generator elects to have the Transmission Provider perform Phase 1 and Phase 2 of the Interconnection Impact Study sequentially, the Generator shall notify the Transmission Provider in writing of its election to proceed with Phase 2 and to provide the Phase 2 study payment and technical data within fifteen days after the receipt of the Phase 1 report. The Transmission Provider shall use due diligence to complete each phase of the study within sixty days after the receipt of the Study Agreement or notification to proceed, study payment and technical data. If the Transmission Provider is unable to complete either phase of the Interconnection Impact Study within that time period, it shall notify the

Generator and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the Transmission Provider shall provide the Generator supporting documentation and workpapers for the Interconnection Impact Study, subject to confidentiality arrangements consistent with Section 12.1. Any difference between the study payment and the documented cost of the study shall be paid to the Transmission Provider or refunded to the Generator, as appropriate.

6.5 Posting on OASIS. The Transmission Provider shall post the availability of the “base case” study of the Transmission System and the Interconnection Impact Study report on its OASIS.⁷ The name of the Generator shall be redacted from the Interconnection Impact Study report.

7. Interconnection Facilities Study

7.1 Interconnection Facilities Study Agreement. The Generator shall request an Interconnection Facilities Study within fifteen days after the receipt of the Interconnection Impact Study. When the Transmission Provider provides the Interconnection Impact Study to the Generator, it shall also provide to the Generator an Interconnection Facilities Study Agreement in the form of Appendix 3. The Interconnection Facilities Study Agreement shall provide that the Generator shall compensate the

⁷ The “base case” study is made available so that the Generator can make its own evaluation of the deliverability of power on the Transmission System. Allowing the Generator to pre-study generating sites should help increase siting efficiency on the Transmission System. It also should reduce the number of optional study requests made to the Transmission Provider pursuant to Article 9.

Transmission Provider for the documented cost of the Interconnection Facilities Study and specify the Transmission Provider's estimate of the cost of the study and the technical data that the Generator must provide for the study. The Generator shall execute the Interconnection Facilities Study Agreement and deliver the executed agreement to the Transmission Provider within fifteen days after its receipt, together with the required technical data and the payment specified in the Study Agreement.

7.2 Scope of Interconnection Facilities Study. The Interconnection Facilities Study Agreement shall determine the work required in accordance with Good Utility Practice to physically and electrically connect the proposed generating facility or additional capacity to the Transmission System at the Point of Interconnection and to address any problems identified in the Interconnection Impact Study. The Study shall also identify the electrical switching configuration of the connection equipment, including without limitation the transformer, switchgear, meters and other station equipment; the nature and estimated cost of any Transmission Provider Interconnection Facilities and Interconnection System Upgrades necessary to accomplish the interconnection; and an estimate of the time required to complete the construction and installation of the facilities.

7.3 Interconnection Facilities Study Procedures. The Transmission Provider shall make reasonable efforts to coordinate the Interconnection Facilities Study with any Adjacent System that is affected by the Interconnection Request. The Transmission Provider shall utilize existing

studies to the extent practicable in performing the study. The Transmission Provider shall use due diligence to complete the study and issue a preliminary Interconnection Facilities Study report to the Generator within sixty days of receipt of an executed Interconnection Facilities Study Agreement, technical data and study payment. If the Transmission Provider is unable to complete the Interconnection Facilities Study and issue a preliminary Interconnection Facilities Study report within sixty days, it shall notify the Generator and provide an estimated completion date and an explanation of the reasons why additional time is required. The Generator may within thirty days after receipt of the preliminary report provide written comments to the Transmission Provider, which the Transmission Provider shall consider in preparing the final report. The Transmission Provider shall issue the final Interconnection Facilities Study report within fifteen days of receiving the Generator's comments or the Generator's statement that it will not provide comments. The Transmission Provider may reasonably extend such fifteen-day period upon notice to the Generator if the Generator's comments require the Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Report. Upon request, the Transmission Provider shall provide the Generator supporting documentation and workpapers for the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 12.1. Any difference between the study payment

and the actual cost of the study shall be paid to the Transmission Provider or refunded to the Generator, as appropriate.

7.5 Posting on OASIS. The Transmission Provider shall post the availability of the Interconnection Facilities Study report on its OASIS.⁸ The name of the Generator shall be redacted from the report.

8. Preliminary Engineering, Design and Procurement Activities.

8.1 Letter Agreement. At the request of the Generator after the Generator executes an Interconnection Facilities Study Agreement, the Transmission Provider shall provide to the Generator an agreement that authorizes the Transmission Provider to begin engineering, design and siting activities and procurement of long lead-time items necessary for the establishment of the interconnection. The agreement is an optional procedure that the Generator may elect if it desires to accelerate the interconnection process. It will not alter the Generator's queue position. The agreement shall provide for the Generator to pay the cost of all activities authorized by the Generator and to make advance payments or provide other satisfactory security for such costs. The Generator shall pay the cost of such authorized activities and any cancellation costs for equipment that is already ordered for the project whether or not such items or equipment later become unnecessary. The Transmission Provider is not required to

⁸ Some Generators and Transmission Providers assert that Interconnection Facilities Studies should not be posted at all because they contain information that is commercially sensitive in competition among Generators and in competition between Generators and Transmission Providers for the management of congestion.

begin any construction activities until after the Generator executes and delivers the Interconnection and Operating Agreement to the Transmission Provider or requests that an unexecuted Interconnection and Operating Agreement be filed with the FERC and executes the agreement provided for in Section 10.4.

9. Optional Study

9.1 Optional Study Agreement. On or after the date when the Generator submits an Interconnection Request, the Generator may submit to the Transmission Provider a reasonable number of written requests to perform Optional Studies.⁹ Each such request shall describe the assumptions that the Generator wishes the Transmission Provider to study within the scope described in Section 9.2. Within fifteen days after receipt of a request for an Optional Study, the Transmission Provider shall provide to the Generator an Optional Study Agreement in the form of Appendix 4. The Optional Study Agreement shall specify the technical data that the Generator must provide for each phase of the Optional Study and the Transmission Provider's estimate of the cost of each phase of the Optional Study. To the extent known by the Transmission Provider, such estimate shall include any costs expected to be incurred by any Adjacent System

⁹ Some Transmission Providers assert that a Generator should be permitted to request only one Optional Study because the performance of multiple Optional Studies is time consuming and may interfere with the performance of Interconnection Impact Studies and Facilities Studies. They note that if "base case" Interconnection Impact Studies are available on the OASIS, as proposed in Section 6.6, Generators should be able to perform their own studies of deliverability and interconnection scenarios.

whose participation is necessary to complete the Optional Study. The Generator shall execute the Optional Study Agreement and deliver the Agreement, the technical data and the study payment to the Transmission Provider.

9.2 Scope of Optional Study. Phase 1 of the Optional Study will consist of a sensitivity analysis that incorporates: (i) a reasonable number of transmission paths selected by the Generator; and/or (ii) the inclusion of proposed generator interconnection requests specified by the Generator in the Study. Phase 2 of the Optional Study will identify the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades, and the estimated cost thereof, that may be required to provide transmission service or interconnection service based upon the results of Phase 1 of the Optional Study. The Optional Study shall be performed solely for informational purposes. The Transmission Provider shall make reasonable efforts to coordinate the study with any Adjacent Systems that may be affected by the services that are being studied. The Transmission Provider shall utilize existing studies to the extent practicable in conducting the Optional Study.

9.3 Optional Study Procedures. The Generator may request the Transmission Provider to perform the entire Optional Study; or may request the Transmission Provider to initially perform Phase 1 of the study and perform Phase 2 of the study only after the Generator provides to the Transmission Provider a notification to proceed, the Phase 2 technical

data and the Phase 2 study payment. The Transmission Provider shall use due diligence to complete each phase of the Optional Study within sixty days after receipt of the Optional Study Agreement or notification, study payment and technical data. If the Transmission Provider is unable to complete either phase of the Optional Study within such time period, it shall notify the Generator and provide an estimated completion date and an explanation of the reasons why additional time is required. Any difference between the study payment and the actual cost of the study shall be paid to the Transmission Provider or refunded to the Generator, as appropriate. Upon request, the Transmission Provider shall provide to the Generator supporting documentation and workpapers for the Optional Study, subject to confidentiality arrangements consistent with Section 12.1.

9.4 Posting on OASIS. The Transmission Provider shall post the availability of each phase of the Optional Study report on its OASIS. The name of the Generator shall be redacted from the report.

10. Interconnection and Operating Agreement.

10.1 Tender. Within twenty days after issuance of the final Interconnection Facilities Study report to the Generator, the Transmission Provider shall tender to the Generator a draft Interconnection and Operating Agreement. The draft Interconnection and Operating Agreement shall be in the form of the *pro forma* Interconnection and Operating Agreement included in

Appendix 5 to these Procedures with blanks and appendices completed with information available to the Transmission Provider.

10.2 Negotiation. Notwithstanding Section 10.1, at the request of the Generator the Transmission Provider shall begin negotiations with the Generator concerning the Attachments to the Interconnection and Operating Agreement at any time after the Generator submits an Interconnection Request. The Transmission Provider and the Generator shall negotiate concerning any disputed provisions of the Attachments to the draft Interconnection and Operating Agreement for not more than sixty days after tender of the draft Interconnection and Operating Agreement pursuant to Section 10.1. If the Generator determines that negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the Interconnection and Operating Agreement pursuant to Section 10.1. The Generator also may at its discretion extend the negotiation period for an additional thirty days if the Transmission Provider has not completed the Optional Study specified in Section 9.1 when the negotiation period begins. The shall provide to the Generator a final draft of the Interconnection and Operating Agreement within fifteen days after the completion of the negotiation process.

10.3 Execution and Filing. No later than the conclusion of the negotiation period established pursuant to Section 10.1, the Generator shall either: (i) execute two originals of the tendered Interconnection and Operating Agreement and return them to the Transmission Provider; or (ii) request in

writing that the Transmission Provider file with the FERC an Interconnection and Operating Agreement in unexecuted form. As soon as practicable, but not later than fifteen days after receiving either the two executed originals of the tendered Interconnection and Operating Agreement or the request to file an unexecuted Interconnection and Operating Agreement, the Transmission Provider shall file the Interconnection and Operating Agreement with FERC, together with its explanation of any matters as to which the Generator and the Transmission Provider disagree and support for the costs that the Transmission Provider proposes to charge to the Generator under the Interconnection and Operating Agreement.

10.4 Commencement of Interconnection Activities. If the Generator executes the final draft Interconnection and Operating Agreement, the Transmission Provider and the Generator shall perform in accordance with the terms of the Interconnection and Operating Agreement. If the Generator requests the Transmission Provider to file an unexecuted Interconnection and Operating Agreement, it may also execute an agreement in the form set out in Appendix 6 that commits the parties to comply with the unexecuted Interconnection and Operating Agreement, as modified by the FERC. The Transmission Provider shall execute the letter agreement promptly upon receiving it, and both parties shall perform under the Interconnection and Operating Agreement as filed, subject to its modification by the FERC. If the Generator does not execute an

Interconnection and Operating Agreement or an agreement in the form of Appendix 6, the Transmission Provider shall not commence interconnection activities until it resolves all disputed issues with the Generator. In such event, the schedules and costs set out in the unexecuted Interconnection and Operating Agreement shall be modified to reflect the deferred commencement of interconnection activities.

11. Construction of Transmission Provider Interconnection Facilities and Interconnection System Upgrades.

11.1 Schedule. The Transmission Provider and the Generator shall negotiate in good faith concerning a schedule for the construction of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades.

11.2 Permits. The Interconnection and Operating Agreement shall specify the allocation of the responsibilities of the Transmission Provider and the Generator to obtain all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with applicable laws and regulations. The Transmission Provider and the Generator shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations.

12. Miscellaneous

12.1 Confidentiality. The Transmission Provider shall keep confidential all information that the Generator provides for each study performed pursuant to these Procedures, except to the extent such information is made public in the study report or such disclosure is required by law. The

Transmission Provider shall provide the workpapers that support a study to any person who enters into a confidentiality agreement consistent with this section.

12.2 Delegation of Responsibility. The Transmission Provider may use the services of subcontractors, including transmission owners, to perform its obligations under these Procedures. The Transmission Provider shall require such subcontractors to comply with these Procedures in providing such services.

13. Procedures to Connect Generation Up to 20 MW

13.1 Applicability. This Section establishes the modified Procedures that apply to the interconnection of generating capacity additions of 20 MW or less, including the aggregate of distributed generation units or energy collection systems totaling 20 MW or less at a single interconnection point, to the Transmission System or to a distribution system that is connected to the Transmission System.

13.2 Deposit. The Generator shall submit a \$2,000 deposit with its Interconnection Request instead of a \$10,000 deposit. Despite the reduction of the deposit requirement, the Generator shall be responsible for all documented costs associated with the processing of the Interconnection Request and the performance of the Interconnection Impact Study and the Interconnection Facilities Study related to the Interconnection Request and the Transmission Provider shall bill the

Generator for the portion of such costs that exceeds the deposit following the completion of such studies.

13.3 Interconnection Impact Study. The Interconnection Impact Study will examine a limited contingency set that focuses on the impact of the generating capacity addition on contingency limits in the immediate vicinity of the Point of Interconnection. If local area performances are known to be limited and marginal, the Transmission Provider shall evaluate the generating capacity addition based on its positive or negative impact on the contingencies limiting such local area performance. The Interconnection Impact Study generally will be completed in less than sixty days.

13.4 Interconnection Facilities Study. The Interconnection Facilities Study generally will be completed in less than sixty days because of the reduced likelihood that Transmission Provider Interconnection Facilities or Interconnection System Upgrades will be required to accommodate the interconnection.

APPENDIX 1

INTERCONNECTION REQUEST

1. The undersigned Generator submits this request to interconnect generation with the Transmission Provider's Transmission System pursuant to the Transmission Provider's Open Access Transmission Tariff.
2. This Interconnection Request is for (check one):
 - A proposed new generating facility.
 - An increase in the generating capacity of an existing generating facility.
3. Is the Generator requesting expedited procedures for new generating facilities of 20 MW or less or generating capacity additions of 20 MW or less to existing generating facilities?
 - Yes
 - No
4. The Generator provides the following information:
 - a. Address or location of the proposed new generating facility site (to the extent known) or, in the case of an existing generating facility, the name and specific location of the facility:
 - b. Maximum megawatt electrical output of the proposed new generating facility or the amount of megawatt increase in the generating capacity of an existing generating facility:
 - c. General description of the equipment configuration:
 - d. Planned-in-service date by day, month and year:
 - e. Name, address, telephone number and e-mail address of the Generator's contact person:
5. A refundable deposit in the amount of \$10,000.00 (\$2,000 in the event of a request to interconnect generating capacity of 20 MW or less) is attached to this Interconnection Request.

INTERCONNECTION REQUEST

Page 2

6. This Interconnection Request shall be submitted to the representative indicated below:

[To be completed by Transmission Provider]

7. Representative of the Generator to contact:

[To be completed by Generator]

8. This Interconnection Request is submitted by:

Name of Generator: _____

By (signature) _____

Name (type or print): _____

Title: _____

Date: _____

APPENDIX 2

INTERCONNECTION IMPACT STUDY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and between _____, a corporation organized and existing under the laws of the State of _____, ("Generator,") and _____ a corporation existing under the laws of the State of _____, ("Transmission Provider "). Generator and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, Generator is proposing to develop a ____ MW generation facility or generating capacity addition to an existing generating facility to be located at _____ ("Facility"); and

WHEREAS, the Facility is not connected to the Transmission System; and

WHEREAS, Generator is proposing to establish an interconnection with the Transmission System; and

WHEREAS, Generator has requested the Transmission Provider to perform an Interconnection Impact Study to assess the impact of the proposed Facility on the reliability of the Transmission System, and of any Affected Adjacent Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

- 1.0 The terms used in this Agreement with initial capitalization shall have the meanings specified in the Transmission Provider OATT.
- 2.0 Transmission Provider shall cause an Interconnection Impact Study to be performed in accordance with the Transmission Provider OATT.
- 3.0 Generator elects to have Phase 1 (short circuit analysis and transient stability analysis) and Phase 2 (power flow) performed (___) concurrently or (___) sequentially [select one option].
- 4.0 The scope of the Interconnection Impact Study shall be subject to the assumptions set forth in Attachment A to this Agreement.
- 5.0 The Interconnection Impact Study shall be based on the technical information provided by Generator in Attachment B to this Agreement. Transmission Provider reserves the right to request additional technical information from Generator as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Impact Study. If Generator modifies its Interconnection

Request or the technical information provided in Attachment B is modified, incomplete or inaccurate, the time to complete the Interconnection Impact Study may be extended and/or the results may be inaccurate.

6.0 The Interconnection Impact Study report shall provide the following information:

- Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection.
- Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection.
- Identification of any thermal overload or voltage limit violations resulting from the interconnection.

7.0 The estimated cost for performance of the Interconnection Impact Study is \$_____. The Generator shall pay the Transmission Provider the amount by which the estimated cost exceeds the deposit the Generator submitted with its Interconnection Request when it executes this Agreement. The Transmission Provider shall charge and Generator shall pay the actual costs of the Interconnection Impact Study. Any difference between the initial payment and the actual cost of the study shall be paid by or refunded to the Generator, as appropriate.

8.0 This Agreement is subject to the provisions of the Transmission Provider OATT.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]

[Insert name of Generator]

By _____
Name (typed or printed):
Title

By _____
Name (typed or printed):
Title

**Attachment A to
Interconnection Impact
Study Agreement**

ASSUMPTIONS USED IN CONDUCTING THE STUDY

The Interconnection Impact Study will evaluate the impact of _____ MW of generation located at **[DESCRIBE]** and connected to the Transmission Provider's Transmission System at **[DESCRIBE]**, with a projected in-service date of _____ **(MONTH, DAY, YEAR)**.

The Interconnection Impact Study will be based upon the following assumptions:

[To be completed by Transmission Provider]

**Attachment B to
Interconnection Impact
Study Agreement**

TECHNICAL INFORMATION RELATING TO GENERATOR REQUIREMENTS

[Information requirements are to be provided by Transmission Provider]

APPENDIX 3

INTERCONNECTION FACILITIES STUDY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____ by and between _____, a corporation organized and existing under the laws of the State of _____, ("Generator,") and _____, a corporation organized and existing under the laws of the State of _____ ("Transmission Provider"). Generator and the Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, Generator is proposing to develop a ____ MW generation facility or generating capacity addition to an existing generating facility to be located at _____ ("Facility"); and

WHEREAS, the Facility is not connected to the Transmission System; and

WHEREAS, Generator is proposing to establish an interconnection with the Transmission System; and

WHEREAS, Generator has requested the Transmission Provider to prepare an Interconnection Facilities Study to determine the facilities necessary to physically and electrically connect the Facility at the Point of Interconnection, and to address any reliability problems identified in the Interconnection Impact Study;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed as follows:

- 1.0 The terms used in this Agreement with initial capitalization shall have the meanings specified in the Transmission Provider OATT.
- 2.0 The Transmission Provider shall cause an Interconnection Facilities Study to be performed in accordance with the Transmission Provider OATT.
- 3.0 The Interconnection Facilities Study shall be based on the Interconnection Impact Study Report. The Transmission Provider reserves the right to request additional technical information from Generator as may become reasonably necessary consistent with Good Utility Practice during the course of the Interconnection Facilities Study. If Generator's Interconnection Request is modified or the technical information provided in Attachment B to the Interconnection Impact Study Agreement is modified, incomplete or inaccurate, the time to complete the Interconnection Facilities Study may be extended and/or the results may be inaccurate.

- 4.0 The final Interconnection Facilities Study Report shall provide the following information:
- Identification of Transmission Provider Interconnection Facilities and Interconnection System Upgrades.
 - An estimate of the cost to install the Transmission Provider Interconnection Facilities and Interconnection System Upgrades.
 - An estimate of the schedule to complete the installation of the Transmission Provider Interconnection Facilities and Interconnection System Upgrades.
- 5.0 The estimated cost for performance of the Interconnection Facilities Study is \$_____. Generator shall pay the Transmission Provider that amount when it executes this Agreement. The Transmission Provider shall charge and the Generator shall pay the actual costs of the Interconnection Facilities Study. Any difference between the initial payment and the actual cost of the study shall be paid by the Generator or refunded by the Transmission Provider, as appropriate.
- 6.0 This Agreement is subject to the provisions the Transmission Provider OATT.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]

[Insert name of Generator]

By _____
Name (typed or printed):
Title

By _____
Name (typed or printed):
Title

APPENDIX 4 OPTIONAL STUDY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and between _____, a corporation organized and existing under the laws of the State of _____, ("Generator,") and _____, a corporation organized and existing under the laws of the State of _____ ("Transmission Provider "). Generator and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, Generator is proposing to develop a ____ MW generation facility or generating capacity addition to an existing generating facility to be located at _____ ("Facility"); and

WHEREAS, the Facility is not connected to the Transmission System; and

WHEREAS, Generator is proposing to establish an interconnection with the Transmission System; and

WHEREAS, Generator has submitted to Transmission Provider an Interconnection Request; and

WHEREAS, Generator has further requested that the Transmission Provider prepare an Optional Study;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

- 1.0 The terms used in this Agreement with initial capitalization shall have the meanings specified in the Transmission Provider OATT.
- 2.0 The Transmission Provider shall cause an Optional Study to be performed in accordance with the Transmission Provider OATT.
- 3.0 The Optional Study shall be based on the assumptions and technical data set forth in Attachment A and Attachment B to the Generator's Interconnection Impact Study Agreement. The Transmission Provider reserves the right to request additional technical information from Generator as may become reasonably necessary consistent with Good Utility Practice during the course of the Optional Study. If Generator's Interconnection Request is modified or the technical information provided in Attachment B to the Interconnection Impact Study is modified, incomplete or inaccurate, the time to complete the Optional Study may be extended and/or the results may be inaccurate.

OPTIONAL STUDY AGREEMENT

Page 2

- 4.0 The Optional Study shall be based on the following assumptions, which have been submitted by Generator: [SUPPLY].

- 5.0 The estimated cost for performance of the Optional Study is \$_____. The Generator shall pay the Transmission Provider that amount when it executes this Agreement. The Transmission Provider shall charge the Generator the actual cost of the Optional Study. Any difference between the initial payment and the actual cost of the study shall be paid by or refunded to the Generator, as appropriate.

- 6.0 This Agreement is subject to the provisions of the Transmission Provider OATT.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Transmission Provider]

[Generator]

By _____
Name (typed or printed):
Title:

By _____
Name (typed or printed):
Title:

APPENDIX 5

INTERCONNECTION AND OPERATING AGREEMENT

Between

[Transmission Provider]

and

[Generator]

Entered into on the ____ day of _____, 20__

INTERCONNECTION AND OPERATING AGREEMENT

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INTERCONNECTION AND OPERATING AGREEMENT

THIS INTERCONNECTION AND OPERATING AGREEMENT ("Agreement") is made and entered into this ____ day of _____ 20__, by and between _____, a corporation organized and existing under the laws of the State of _____ ("Generator"), and _____, a corporation organized and existing under the laws of the State of _____ ("Transmission Provider"). Generator and Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Transmission Provider operates the Transmission System; and

WHEREAS, Generator intends to own and operate the Facility identified in Attachment B; and,

WHEREAS, the Facility is located adjacent to the Transmission System; and,

WHEREAS, Generator and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Facility with the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 DEFINITIONS

When used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization that are not defined in this Article 1 shall have the meanings specified in the Transmission Provider OATT.

1.1 "Abnormal Condition"

Means any condition on the Interconnection Facilities which, determined in accordance with Good Utility Practice, is: (i) outside normal operating parameters such that facilities are operating outside their normal ratings or that reasonable operating limits have been exceeded; and (ii) could reasonably be expected to materially and adversely affect the safe and reliable operation of the Interconnection Facilities; but which, in any case, could reasonably be expected to result in an Emergency Condition. Any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not, standing alone, constitute an Abnormal Condition.

1.2 "Access Party"

Has the meaning set forth in Section 4.1.7.1.

1.3 "Affiliate"

Shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

1.4 "Applicable Laws and Regulations"

Shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties or their respective facilities.

1.5 "Applicable Reliability Council"

Shall mean the regional reliability council of NERC in which the Facility is located.

1.6 "Applicable Standards"

Shall mean the requirements and guidelines of NERC, the Applicable Reliability Council and the Control Area in which the Facility is electrically located.

1.7 "Breach"

Shall mean the failure of a Party to perform or observe any material term or condition of this Agreement as described in Section 16.1.

1.8 "Breaching Party"

Shall mean a Party that is in Breach of this Agreement.

1.9 "Default"

Shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 16.

1.10 "Effective Date"

Shall mean the date on which this Agreement becomes effective in accordance with Section 2.1.

1.11 "Emergency Condition"

Shall mean a condition or situation (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; and (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider Interconnection Facilities or the transmission systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Generator, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Facility or the Generator

Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; *provided*, that Generator is not obligated by this Agreement to possess black start capability. Any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not, standing alone, constitute an Emergency Condition.

1.12 "Environmental Law"

Shall mean Applicable Laws or Regulations relating to pollution or protection of the environment, natural resources or human health and safety.

1.13 "Facility"

Shall mean Generator's electric generating facility, but shall not include the Generator Interconnection Facilities.

1.14 "Federal Power Act"

Shall mean the Federal Power Act, 16 U.S.C. §§ 791a *et seq.* (2001).

1.15 "FERC"

Shall mean the Federal Energy Regulatory Commission or its successor.

1.16 "FERC Interconnection Policy"

Shall have the meaning set forth in Section 23.6.

1.17 "Force Majeure"

Shall mean any cause beyond the control of the Party affected, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. Force Majeure does not include (i) a failure of performance that is due to a Party's own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which a Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of a Party.

1.18 "Generator Interconnection Facilities"

Shall mean all facilities and equipment between the Facility and the Point of Interconnection, as identified in Attachment B, including any modifications, additions or upgrades to such facilities and equipment that are necessary to physically and electrically interconnect the Facility to the Transmission System.

1.19 "Good Utility Practice"

Shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, 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 was made, could have been expected to accomplish the desired result at a reasonable cost 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 to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, compliance with Applicable Laws and Regulations, Applicable Standards, the National Electric Safety Code, and the National Electrical Code, as they may be amended from time to time, including the criteria, rules and standards of any successor organizations.

1.20 "Governmental Authority"

Means any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority with jurisdiction concerning a matter or Party under this Agreement.

1.21 "Granting Party"

Has the meaning set forth in Section 4.1.7.1.

1.22 "Hazardous Substances"

Shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

1.23 "Indemnified Person"

Has the meaning set forth in Section 15.2.

1.24 "Interconnection Facilities"

Shall mean the Transmission Provider Interconnection Facilities and the Generator Interconnection Facilities collectively.

1.25 "Interconnection Guidelines"

Shall mean the technical guidelines established in Attachment D.

1.26 "Interconnection Request"

Shall mean a request, in accordance with the Transmission Provider OATT, to interconnect an electric generator or to the Transmission System or to increase the generating capacity of an existing generator that is interconnected with the Transmission System.

1.27 "Interconnection Service"

Shall mean the interconnection of the Facility to the Transmission System pursuant to Transmission Provider's Generator Interconnection Procedures, as set forth in the Transmission Provider OATT, and this Agreement.

1.28 "Interconnection System Upgrades"

Shall mean the minimum upgrades to the Transmission System that would not have been required but for the Interconnection Request of Generator, including upgrades necessary to remove overloads and voltage criteria violations and upgrades necessary to remedy short-circuit and/or stability problems resulting from the connection of the Facility to the Transmission System. Interconnection System Upgrades shall not include upgrades to the Transmission System that are required solely to provide transmission service from the Point of Interconnection to load and shall not include Transmission Provider Interconnection Facilities. Interconnection System Upgrades are identified in Attachment A.

1.29 "Loss"

Has the meaning set forth in Section 15.1.

1.30 "Metering Equipment"

Shall mean all metering equipment installed at the metering points designated in Attachment A.

1.31 "NERC"

Shall mean the North American Electric Reliability Council or its successor agency assuming or charged with similar responsibilities related to the operation and reliability of the North American interconnected electric transmission grid.

1.32 "Non-Breaching Party"

Shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.

1.33 "Operation Date"

Shall mean the day commencing at 00:01 hours on the day following the day during which all necessary Interconnection Facilities, Interconnection System Upgrades and the Facility have been completed as required by this Agreement and energized in parallel operation with Transmission System as confirmed in a writing substantially in the form shown in Attachment C.

1.34 "Operating Guidelines"

Shall mean the operating guidelines established in Attachment E.

1.35 "Point of Interconnection"

Shall mean the point or points, as set forth in Attachment A, where the Generator Interconnection Facilities interconnect with the Transmission Provider Interconnection Facilities.

1.36 "Reasonable Efforts"

Shall mean, with respect to an action required to be made, attempted, or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

1.37 [Transmission Provider Proposal]¹⁰ "Subsequent Generator"

Shall mean any person other than Generator that enters into an Interconnection and Operating Agreement with or that requests the Transmission Provider to file an unexecuted Interconnection and Operating Agreement with FERC on or after the date on which Generator executes this Agreement or requests the Transmission Provider to file this Agreement with FERC in unexecuted form and before the Interconnection Facilities and the Interconnection System Upgrades have been constructed and paid for hereunder.

1.38 "Switching and Tagging Rules"

Shall mean the switching and tagging procedures of Transmission Provider, and Generator, as set forth in Attachment E, as they may be amended from time to time.

1.39 "System Protection Facilities"

Shall mean the equipment required to protect (i) the Transmission System from faults or other electrical disturbances occurring at the Facility, and (ii) the Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems and/or other generating systems to which the Transmission System is directly connected. System Protection Facilities shall include protective and regulating devices that are identified in the Interconnection Guidelines or that are required by Applicable Laws and Regulations or Applicable Standards.

¹⁰ See notes accompanying Section 4.5.

1.40 "Transmission Provider"

Shall mean an entity that owns, controls or operates transmission facilities, which may include a Regional Transmission Organization, a transmission owner and/or an Independent System Operator.¹¹

1.41 "Transmission Provider Interconnection Facilities"

Shall mean all facilities and equipment owned and/or controlled, operated and maintained by the Transmission Provider on Transmission Provider's side of the Point of Interconnection as identified in Attachment A, including any modifications, additions or upgrades to such facilities and equipment, that are necessary to physically and electrically interconnect the Facility to the Transmission System. Transmission Provider Interconnection Facilities shall not include Interconnection System Upgrades.

1.42 "Transmission Provider OATT"

Shall mean the open access transmission tariff of Transmission Provider, on file with FERC and in effect, as amended or superseded from time to time.

1.43 "Transmission System"

Shall mean the facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under the Transmission Provider OATT.

**ARTICLE 2
TERM AND TERMINATION**

2.1 Effective Date.

This Agreement shall become effective upon execution by the Parties subject to acceptance by the FERC. Transmission Provider shall promptly file this Agreement with FERC upon execution in accordance with Section 23.1.

2.2 Term.

This Agreement shall continue in full force and effect until the earliest of (i) the date as of which the Parties agree to mutually terminate this Agreement; (ii) the date as of which Generator unilaterally terminates this Agreement pursuant to Applicable Laws and Regulations; or (iii) the date on which a non-defaulting Party provides notice of termination for Default of this Agreement. Notwithstanding the foregoing, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination,

¹¹ The term "Transmission Provider" is intended to include transmission owners where appropriate. The industry is divided on whether and the extent to which transmission owners who are not Transmission Providers should be involved in interconnection studies, interconnection construction and Interconnection Agreements.

including the filing with the FERC of a notice of termination of this Agreement, which notice has been accepted for filing by the FERC.

2.3 Cost Responsibility upon Termination.

Responsibility for costs in the event of termination of this Agreement shall be allocated in accordance with Sections 4.5.3 and 17.1.

2.4 Survival.

This Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments, including billings and payments pursuant to Section 2.3; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to have access to the lands of the other Party pursuant to Section 4.1.7.1(iii) to disconnect, remove or salvage its own facilities and equipment.

**ARTICLE 3
INTERCONNECTION SERVICE**

3.1 Scope of Service.

Transmission Provider shall provide Interconnection Service for the Facility at the Point of Interconnection.

3.2 Limitations on Scope of Service.

Except as otherwise provided in this Agreement, Transmission Provider is not obligated by this Agreement (i) to pay for the transmission of power or energy through the Facility or through the Generator Interconnection Facilities; (ii) to pay for power or energy or ancillary services delivered from the Facility; (iii) to arrange for or pay for power, energy, transmission service or ancillary services associated with the delivery of electricity and ancillary services to or from the Facility; or (iv) to procure electricity or ancillary services to satisfy Generator's station service or other requirements. Generator is not obligated by this Agreement (a) to pay for the transmission of power or energy through the Transmission System or through the Transmission Provider Interconnection Facilities; or (b) to procure electricity or ancillary services to satisfy any Transmission Provider requirements. The Parties may, by separate agreement, agree to terms and conditions for the provision of any services excluded from the Agreement by this Section 3.2.

3.3 Performance Standards.

Each Party shall perform all of its actions under this Agreement in accord, as appropriate, with Applicable Laws and Regulations, Applicable Standards and Good Utility Practice.

3.4 No Transmission Service.

This Agreement does not provide for nor include transmission service. The availability of transmission service on the Transmission System may not be inferred or implied from Transmission Provider's execution of this Agreement. Transmission Service on the Transmission System is available pursuant to the Transmission Provider OATT.

ARTICLE 4

CONSTRUCTION AND MODIFICATION OF FACILITY, INTERCONNECTION FACILITIES AND INTERCONNECTION SYSTEM UPGRADES; INTERCONNECTION COSTS; AND TRANSMISSION CREDITS

4.1 Construction.

4.1.1 Generator Obligations.

Generator shall, at its expense, design, procure, construct, own and install the Facility and the Generator Interconnection Facilities in accordance with Attachment B.¹²

4.1.2 Generator Specifications.

Generator shall submit final specifications for the Generator Interconnection Facilities, including System Protection Facilities, to Transmission Provider for review at least ninety days prior to the Operation Date to enable Transmission Provider to ensure that the Generator Interconnection Facilities are consistent with the requirements of Transmission Provider. Transmission Provider shall review and comment on such specifications within thirty days. All specifications provided hereunder shall be deemed to be confidential.

4.1.3 Transmission Provider Review.

Transmission Provider's review of Generator's final specifications shall not be construed as confirming, endorsing or providing a warranty as to the design, fitness, safety, durability or reliability of the Facility or the Generator Interconnection Facilities. Generator shall make such changes to the Generator Interconnection Facilities as may reasonably be required by Transmission Provider.

4.1.4 Transmission Provider Obligations.

Transmission Provider shall design, procure, construct, install, and own and/or control all Transmission Provider Interconnection Facilities and Interconnection System Upgrades identified in Attachment A. Transmission Provider, in its discretion, may permit Generator to design,

¹² Some of the industry believes that each Interconnection Agreement should include milestones that the Generator must meet. Others assert that so long as the Generator is obligated to pay for System Upgrades, it does not matter when the Generator completes work on its own facilities.

procure and/or install all or a portion of the Transmission Provider Interconnection Facilities.

4.1.5 Suspension of Work.

4.1.5.1 Suspension by Generator.

Generator may at any time by written notice to Transmission Provider request Transmission Provider to suspend further work associated with the construction and installation of the Transmission Provider Interconnection Facilities and/or the Interconnection System Upgrades, including the cancellation of any contracts or orders that Generator specifies. If the suspension does not adversely affect the cost or timing of other generator interconnections, Transmission Provider shall suspend any such work and cancel any such contracts or orders. Generator shall be responsible for costs that Transmission Provider incurs for any suspension hereunder in accordance with Section 4.5.2.

4.1.5.2 Suspension by Transmission Provider.

Upon the occurrence of a Default by Generator, Transmission Provider may by written notice to Generator suspend further work by Transmission Provider associated with the construction and installation of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades. Such suspension shall not affect Transmission Provider's right to terminate this Agreement. In the event of a suspension by Transmission Provider, Generator shall be responsible for costs that Transmission Provider incurs in connection with any suspension hereunder in accordance with Section 4.5.2.

4.1.6 Construction Reports.¹³

Transmission Provider shall inform Generator on a monthly basis, and at such other times as Generator reasonably requests, of the status of the construction and installation of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades, including, but not limited to, the following information: progress to date; an accounting of costs incurred to date; a description of scheduled activities for the next period; and the delivery status of all equipment ordered. Transmission Provider shall promptly identify and notify Generator of any event that Transmission Provider reasonably expects may delay construction of, or may increase or decrease the cost of the Transmission Provider

¹³ Some Transmission Providers believe that monthly reports are unnecessary, provided that the Transmission Provider notifies the Generator of construction delays pursuant to Section 4.1.8.2 and changes in interconnection costs, which could be addressed in Section 4.5.

Interconnection Facilities and/or Interconnection System Upgrades by ten percent or more.

4.1.7 Land Rights.

4.1.7.1 Lands of the Parties.

Upon reasonable notice and supervision by a Party, a Party (“Granting Party”) shall furnish at no cost to the other Party (“Access Party”) any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party and its agents that are necessary to enable the Access Party to obtain access to construct, operate, maintain, test, inspect, replace or remove facilities and equipment (i) to interconnect the Facility with the Transmission System; (ii) to operate and maintain the Facility, the Interconnection Facilities and the Transmission System; and (iii) to disconnect or remove the Access Party’s facilities and equipment upon termination of this Agreement.¹⁴ In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party’s business and shall adhere to the safety rules and procedures established by the Granting Party.

4.1.7.2 Lands of Other Property Owners.

If any part of the Transmission Provider Interconnection Facilities is to be installed on property owned by persons other than Generator or Transmission Provider, the Transmission Provider shall at Generator’s expense procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Provider Interconnection Facilities upon such property. The Transmission Provider shall use its eminent domain authority where it is permitted to do so.

4.1.8 Timely Completion.

4.1.8.1 Generator Obligations.

Generator shall use Reasonable Efforts to design, procure, construct, install, and test the Generator Interconnection Facilities in accordance with the schedule set forth in Attachment A, which schedule may be revised from time to time by mutual agreement of

¹⁴ Many transmission providers assert that Generators should pay fair market value for the grant of any easements other than access rights.

the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.

4.1.8.2 Transmission Provider Obligations.

Transmission Provider shall use Reasonable Efforts to design, procure, construct, install, and test the Transmission Provider Interconnection Facilities and Interconnection System Upgrades in accordance with the schedule set forth in Attachment A, which schedule may be revised from time to time by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed. Transmission Provider shall promptly notify Generator of any event that will affect the time for completion of the Transmission Provider Interconnection Facilities or the Interconnection System Upgrades, or the ability to complete any of them. In such circumstances, Transmission Provider shall, within fifteen days (or such shorter period upon which the Parties may agree, which agreement shall not be unreasonably withheld, conditioned or delayed) after notifying Generator of such an event, convene a technical meeting with Generator to evaluate the alternatives available to Generator. Transmission Provider shall also make available to Generator all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider that Generator reasonably needs to evaluate alternatives. Transmission Provider shall, at Generator's request and expense, use Reasonable Efforts to accelerate its work under this Agreement in order to meet the schedule established in Attachment A.

[Option A]¹⁵ If Transmission Provider fails to procure, construct, install, and test the Transmission Provider Interconnection Facilities and Interconnection System Upgrades by the date established in Attachment A, Transmission Provider shall: (i) pay the Generator liquidated damages as provided in Attachment A; or (ii) grant the Generator step-in rights for the completion of construction, installation, and testing of the Transmission Provider Interconnection Facilities and Interconnection System Upgrades.

¹⁵ Generators are requesting liquidated damages for a failure of the Transmission Provider to meet the agreed-to construction schedule. These damages are intended to cover Generator's delivery obligations under other project agreements. Alternatively, Generators request the option to assert "step-in" rights in order to construct the Transmission Provider Interconnection Facilities and Interconnection System Upgrades. Some Transmission Providers assert that they should not be liable for liquidated damages because they do not earn a sufficient return to justify the assumption of the risk that the facilities will not be completed by a specified date. Other Transmission Providers have taken the position that they are willing to assume liability for liquidated damages for delays in the construction of interconnection facilities and to permit Generator to assert "step-in" rights.

[Option B] The Generator shall have the right to procure the construction, installation and testing of the Interconnection Facilities and Interconnection System Upgrades. If Generator does not choose to do so, Transmission Provider shall be responsible for the construction, installation and testing of the Interconnection Facilities and Interconnection System Upgrades but shall not be subject to liquidated damages for the failure to do so by the date specified in this Agreement.

[Option C] Transmission Provider shall not be liable for direct, indirect, consequential or liquidated damages resulting from the failure to complete construction of the Transmission Provider Interconnection Facilities or Interconnection System Upgrades.

4.1.9 Limited Operation.

If any of the Transmission Provider Interconnection Facilities or the Interconnection System Upgrades are not reasonably expected to be completed prior to the commercial operation date of the Facility, Transmission Provider shall, upon the request and at the expense of Generator, perform operating studies on a timely basis to determine the extent to which the Facility and the Generator Interconnection Facilities may operate prior to the completion of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades consistent with Applicable Laws and Regulations, Applicable Standards and Good Utility Practice. Transmission Provider shall permit Generator to operate the Facility and the Generator Interconnection Facilities in accordance with the results of such studies.

4.1.10 Pre-Operation Date Testing and Modifications.

Prior to the Operation Date, the Transmission Provider shall test the Interconnection Facilities and Interconnection System Upgrades and Generator shall test the Facility and the Generator Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Generator shall bear the cost of all such testing and modifications. Generator shall generate test energy at the Facility only if it or some other person has purchased the transmission service under the Transmission Provider OATT for the delivery of the test energy.

4.1.11 Post-Operation Date Testing and Modifications.

The Parties shall test their respective facilities after the Operation Date in accordance with Section 6.4.

4.2 Drawings.

Not later than ninety days after the completion of any construction or modification to the Facility and/or the Generator Interconnection Facilities that may reasonably be expected to affect the Transmission System, Generator shall issue "as built" drawings to Transmission Provider, unless the Parties agree (such agreement not to be unreasonably withheld, conditioned or delayed) that such drawings are not necessary. All such drawings shall be deemed to be confidential hereunder.

4.3 Taxes.

4.3.1 [Option A] Taxes on Contributions in Aid of Construction.¹⁶

The Parties intend that all payments made by Generator to Transmission Provider for the installation of the Transmission Provider Interconnection Facilities and Interconnection System Upgrades shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. Notwithstanding the foregoing, Transmission Provider shall include a gross-up for income taxes in the amount it charges Generator for such contributions. If any Governmental Authority determines that Transmission Provider is not liable for any portion of any tax for which Generator has paid Transmission Provider, Transmission Provider shall promptly refund to Generator any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Provider receives with respect to such payment.

4.3.1 [Option B] Indemnification for Contributions in Aid of Construction.

The Parties intend that all payments made by Generator to Transmission Provider for the installation of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. Transmission Provider shall not include a gross-up for income taxes in the amounts it charges Generator for such contributions. Notwithstanding the foregoing, to the extent that any Governmental Authority determines that Transmission Provider's receipt of such payments constitutes income by Transmission Provider or any

¹⁶ Some Transmission Providers assert that the Generator should pay the cost of the tax gross-up when it pays for the costs of the interconnection, subject to refund if the Internal Revenue Service determines that the payment is not a taxable event. Other Transmission Providers and most Generators assert that the payment of interconnection costs by the Generator is not a taxable event and therefore would require that the Generator pay the tax gross-up only if the Internal Revenue Service rules that such payment is taxable.

Transmission Provider that is subject to taxation, Generator shall protect, indemnify and hold harmless either Transmission Provider or Transmission Provider, as applicable, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Generator's estimated liability for taxes in the event of such determination shall be stated in Attachment A. Transmission Provider shall notify Generator in writing within thirty days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Generator and at Generator's expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim. Transmission Provider shall cooperate and consult in good faith with Generator regarding the conduct of such appeal, protest, abatement or other contest. Generator shall pay to Transmission Provider on a periodic basis as invoiced by Transmission Provider the documented reasonable cost of prosecuting such appeal, protest, abatement or other contest. Generator shall not be required to pay Transmission Provider for the tax, interest and/or penalties prior to the seventh day before the date on which Transmission Provider (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest, (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority, or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. If such appeal, protest, abatement or other contest results in a determination that Transmission Provider is not liable for any portion of any tax, interest and/or penalties for which Generator has already made payment to Transmission Provider, Transmission Provider shall promptly refund to Generator any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Provider receives with respect to such payment.

4.3.2 Private Letter Ruling.

At Generator's request and expense, Transmission Provider shall (or, as applicable, Transmission Provider shall cause Transmission Provider to) file with the Internal Revenue Service a request for a Private Letter Ruling as to whether any of the sums paid, or to be paid, by Generator to Transmission Provider pursuant to this Agreement are subject to federal income taxation. Transmission Provider and Generator shall cooperate in good faith with respect to such request for a Private Letter Ruling. If the Private Letter Ruling concludes that such sums are not subject to federal income taxation, Generator's obligations under this Article and Article 12 shall be reduced accordingly.

4.3.3 Other Taxes.

Transmission Provider and Generator shall cooperate to appeal, protest, seek abatement of, or otherwise contest any tax (other than federal income tax) asserted or assessed against either Party for which the other Party may be required to reimburse the taxed Party pursuant to this Agreement.

4.4 Modifications.

4.4.1 General.

Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed. In the case of Generator modifications that do not require Generator to submit an Interconnection Request, Transmission Provider shall provide, within thirty days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider Interconnection Facilities or Interconnection System Upgrades necessitated by such Generator modification and a good faith estimate of the costs thereof.

4.4.2 Standards.

Any additions, modifications, or replacements made to a Party's facilities shall be constructed and operated in accordance with this Agreement, Applicable Laws and Regulations, Applicable Standards and Good Utility Practice.

4.4.3 Modification Costs.

Generator shall not be responsible for the costs of any additions, modifications, or replacements that Transmission Provider makes to the Transmission Provider Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to the Transmission Provider Interconnection Facilities or the Transmission System, or to provide transmission service under the Transmission Provider OATT. Generator shall be responsible for the costs of any additions, modifications, or replacements to the Generator Interconnection Facilities

that may be necessary to maintain or upgrade such Generator Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Standards or Good Utility Practice.

4.5 Interconnection Costs¹⁷ and Transmission Credits.

4.5.1 Generator Obligation for Interconnection Costs.

[Generator Proposal] Generator shall not be responsible for any costs or expenses associated with the engineering, design, procurement, construction, testing, operation or maintenance of any facilities that are beyond the scope of the facilities described in Attachment B. To the extent that Generator has made payment to Transmission Provider for any such costs and expenses, Transmission Provider shall refund to Generator all such sums, with interest calculated pursuant to Section 12.8, within thirty days of any determination as to the appropriate allocation of the costs for such modifications or upgrades.

[Transmission Provider Proposal] Generator shall be responsible for the costs and expenses associated with the engineering, design, procurement, construction and testing of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades identified in Attachment A and the costs and expenses of the operation and maintenance of the Transmission Provider Interconnection Facilities.¹⁸

4.5.2 Cost Responsibility Upon Suspension.¹⁹

If (a) Generator suspends work under Section 4.1.5.1 or (b) Transmission Provider suspends work under Section 4.1.5.2, then Generator shall be

¹⁷ The responsibility for costs relating to Transmission Provider Interconnection Facilities and Interconnection System Upgrades is a subject of debate. The principal options are direct assignment of these costs to the Generator or the socialization of such costs by rolling them into the Transmission Provider's transmission rates. Direct assignment allocates responsibility for the cost directly to the party but for whose interconnection the Transmission Provider Interconnection Facilities and Interconnection System Upgrades would not be required. It encourages efficient siting decisions and avoids placing the cost burden on customers who do not benefit from the facilities. Socialization spreads these costs across the entire system, reducing the costs of interconnection for generators and encouraging capacity growth, but it could eliminate the incentive to site Generators efficiently and will increase the costs of transmission to load serving entities. Some Transmission Providers assert that while interconnection costs should not be socialized among all transmission customers, they should be shared among Generators that interconnect in the same general timeframe and that make use of the same facilities.

¹⁸ Some Transmission Providers and load serving entities assert that a Generator should be responsible for redispatch costs that the Transmission Provider incurs to interconnect that Generator to the grid. Some Generators disagree, stating that such costs should be borne by the existing Generators and loads.

¹⁹ See the discussion accompanying Section 4.5.3. If Generator's version of Section 4.5.1 is adopted, there will be no need for this provision.

responsible for the reasonable documented costs which Transmission Provider incurs

[Generator Proposal] (i) in accordance with this Agreement prior to the suspension; (ii) to suspend such work including any costs incurred in order to perform work that is necessary to ensure the safety of persons and property and the integrity of the Transmission System and any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Provider cannot reasonably avoid; and (iii) to resume work at the end of the suspension. Transmission Provider shall use Reasonable Efforts to minimize any of its costs hereunder.

[Transmission Provider Proposal] (i) in accordance with this Agreement prior to the suspension; (ii) to suspend such work that is not necessary to implement the interconnection of a Subsequent Generator, including any costs incurred in order to perform work that is necessary to ensure the safety of persons and property and the integrity of the Transmission System and any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Provider cannot reasonably avoid; (iii) to contract Interconnection System Upgrades described in Attachment A there are necessary to implement the interconnection of any Subsequent Generator; *provided that* Transmission Provider shall use its Reasonable Efforts to recover such costs from any person that is not a Subsequent Generator and reimburse Generator to the extent Generator has paid such costs; and (iv) to resume work at the end of the suspension. Transmission Provider shall use Reasonable Efforts to minimize any of its costs hereunder.

4.5.3 Cost Responsibility Upon Termination.

If (a) Generator terminates this Agreement (other than due to an Transmission Provider Default) or (b) Transmission Provider elects to terminate this Agreement due to a Generator Default, then Generator shall be responsible for the reasonable documented costs which Transmission Provider incurs

[Generator Proposal] in the performance of the actions required or permitted by Section 17.1.1. Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable.

[Transmission Provider Proposal] in the performance of the actions required or permitted by Section 17.1.1 and for the cost of any Interconnection System Upgrades described in Attachment A that are necessary for the provision of Interconnection Service to any Subsequent Generator. Transmission Provider shall use Reasonable Efforts to

minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable.²⁰

4.5.4 Transmission Credits.²¹

4.5.4.1 Generator is entitled to a credit, equal to the total amount paid to Transmission Provider for Interconnection System Upgrades and not refunded to Generator pursuant to Sections 4.3.1 or 4.5.4.3, against the cost of firm and non-firm transmission service reserved under the Transmission Provider OATT for delivery of electricity from the Facility. Such credit shall include a time value of money component calculated from the date of any payment for Interconnection System Upgrades through the date on which the Generator receives a credit against such payment pursuant to this subsection. Generator may assign such credit to any person who takes energy from the Facility.²² At the request of the entity that is entitled to such credit, Transmission Provider shall provide a credit against charges for transmission service from the Facility, on a dollar-for-dollar basis, in an aggregate amount equal to the cost of all Interconnection System Upgrades paid for by Generator. The rights to which Generator is entitled hereunder shall have no expiration date.

²⁰ Some Transmission Providers and Generators have expressed the opinion that a Generator should be insulated from changes in interconnection costs after it executes an Interconnection Agreement, but should be responsible for the costs of any Interconnection System Upgrades identified in its Interconnection Agreement on which other Generators with executed Interconnection Agreements are relying. Other Transmission Providers and Generators have expressed the view that a Generator should be responsible for whatever costs are necessary to complete its interconnection, including cost increases caused by changes in higher queued Interconnection Requests. If the latter alternative is adopted it would be necessary to modify Section 4.5.1 to provide that the Generator is responsible for such Interconnection System Upgrades. Transmission Providers should be economically indifferent to which option is chosen, provided that they recover all interconnection costs.

²¹ If Generators' version of Section 4.5.1 is adopted, there is no need for this provision. If Transmission Providers' version of Section 4.5.1 is adopted, some Generators assert that credits should be available for the costs of Transmission Provider Interconnection Facilities and Interconnection System Upgrades. Some Transmission Providers assert that Generators should receive other benefits such as FTRs instead of credits.

²² Some Generators argue that transmission credits should be provided as a cash payment rather than as a credit against charges for transmission service. Furthermore, some Generators argue that the entitlement to such credits/payment shall be applicable even if the Generator never commences operation or ceases operation.

- 4.5.4.2 Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, or transmission credits, that the Generator, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Interconnection System Upgrades.
- 4.5.4.3 If the FERC determines that any costs associated with the design, engineering, construction, procurement, or installation of any of the Interconnection Facilities or Interconnection System Upgrades paid for by Generator pursuant to this Agreement should not be directly assigned to Generator, Transmission Provider will refund such costs to Generator in accordance with applicable FERC requirements.

ARTICLE 5 OPERATIONS

5.1 General.

Each Party shall operate, or cause to be operated, its facilities in accord with Applicable Laws and Regulations, the Applicable Standards and Good Utility Practice. Each Party shall comply with the Interconnection Guidelines set out in Attachment D to this Agreement. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with the Applicable Laws and Regulations and Applicable Standards.

5.2 Coordination Contact.

Each Party shall notify the other Party in writing of the identity of the person that it designates as the point of contact with respect to the implementation of this Agreement.

5.3 Transmission Provider Obligations.

Transmission Provider shall cause the Transmission System and the Transmission Provider Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this Agreement. Transmission Provider may from time to time provide operating instructions to Generator consistent with this Agreement. Transmission Provider and Generator shall establish normal operating procedures and protocols to be observed prior to the Operation Date. Generator shall inform Transmission Provider of any adverse impacts on the Facility or the Generator Interconnection Facilities of the operating instructions that Transmission Provider provides to Generator. Transmission Provider shall factor these impacts into the operating instructions it actually provides to Generator. Any operating instructions that Transmission

Provider provides to Generator shall take account of the manufacturer's design limitations and equipment warranties of the Facility and the Generator Interconnection Facilities and be consistent with this Agreement and Good Utility Practice. To the extent that the actual operating instructions ultimately provided to Generator by Transmission Provider have an adverse impact on either reliability or the operational capability of the Facility or the Generator Interconnection Facilities, Transmission Provider shall compensate Generator in accordance with Generator's FERC tariff then in effect or rates negotiated in advance with Transmission Provider, as applicable, except that if such operating instructions are required due to any Default or Breach by Generator under this Agreement, Transmission Provider shall not be obligated to pay compensation.

5.4 Generator Obligations.

Generator shall at its own expense operate, maintain and control the Facility and the Generation Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement. Generator is not required to operate the Facility or the Generation Interconnection Facilities as part of any Control Area operated by a Transmission Provider Owner or by the Transmission Provider. Generator shall operate the Facility and the Generation Interconnection Facilities in accordance with the requirements of the Control Area of which it is part and in accordance with all directives of its Control Area operator, *provided* that such requirements and directives are not inconsistent with this Agreement, the Transmission Provider OATT, Good Utility Practice, or Applicable Standards.

5.5 Ancillary Services.

Except as otherwise provided in this Agreement, Generator is not obligated under this Agreement to provide Ancillary Services to Transmission Provider. Any such obligation shall be established by separate agreement pursuant to terms and conditions mutually agreed to by the Parties. Generator specifically reserves the right and option, but not the obligation, to provide Ancillary Services into any Ancillary Services market, whether or not such Ancillary Services are also being provided, by separate agreement, to Transmission Provider.

5.6 Reactive Power.**5.6.1 Reactive Power Design Criteria.**

Generator shall design the Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor of at least 0.95 leading to 0.90 lagging.

5.6.2 Obligation to Supply Reactive Power.

Transmission Provider may require Generator to operate the Facility to produce reactive power within the design limitations of the Facility pursuant to voltage schedules, reactive power schedules or power factor schedules. Transmission Provider's schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly

discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Generator with such schedules at least one day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System.

5.6.3 Payment for Reactive Power.

Any obligation of Transmission Provider to pay Generator for reactive power that Generator provides from the Facility shall be established pursuant to the terms of Generator's rate schedule then in effect.²³

5.7 Outages and Disconnection.

5.7.1 Outages

5.7.1.1 Outage Authority and Coordination.

Each Party may in accordance with Good Utility Practice remove from service its facilities that may impact the other Party's facilities to perform maintenance or testing or to install or replace equipment. Except in the event of Emergency Conditions such Party shall provide prior notice to the other Party and coordinate its activities. The Party planning to remove a facility from service shall use Reasonable Efforts to schedule such removal on non-peak periods.

5.7.1.2 Outage Schedules.

The Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Generator shall submit its planned maintenance schedules for the Facility to Transmission Provider for a minimum of a rolling twelve month period. Generator shall update its planned maintenance schedules as necessary. Transmission Provider may require Generator to reschedule its maintenance as necessary to maintain the reliability of the Transmission System. Transmission Provider shall compensate Generator for any costs of rescheduling such maintenance.

²³ Some Transmission Providers assert that a Generator should not be paid for the supply of reactive power within the design criteria of the unit. Generators assert that they should be paid for reactive power under all circumstances. However, there is no industry standard for the calculation of payments for reactive power. Some Generators assert that any compensation under the Interconnection Agreement for services a Generator provides to the Transmission Provider should be at market-based rates. They also assert that paying Generators that do not have rate schedules only their costs potentially disadvantages several important constituencies, such as municipals, cooperatives and qualifying facilities who do not typically have FERC rate schedules.

5.7.1.3 Outage Restoration.

If an outage on a Party's facility adversely affects the other Party's facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore that facility to service.

5.7.2 Disconnection.

5.7.2.1 Disconnection after Agreement Terminates.

Transmission Provider may disconnect the Facility from the Transmission System upon termination of this Agreement.

5.7.2.2 Disconnection after Under-Frequency Load Shed Event.

The Transmission System is designed to automatically activate a load-shed program as described in the Interconnection Guidelines in the event of an under-frequency system disturbance. Generator shall implement an under-frequency relay set point for the Facility as described in the Interconnection Guidelines to ensure "ride through" capability of the Transmission System.

5.7.2.3 Disconnection in Emergency Conditions.

Either Party may disconnect the Facility from the Transmission System in an Emergency Condition. Disconnection of the Facility by Transmission Provider under Emergency Conditions shall be in accordance with Section 7.4.2.

5.8 Protection and System Quality.

Generator shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Facility and the Generator Interconnection Facilities. Transmission Provider shall install at Generator's own expense any System Protection Facilities that may be required on the Transmission Provider Interconnection Facilities or the Transmission System in connection with the operation of the Facility and the Generator Interconnection Facilities.

5.8.1 Requirements for Protection.

In compliance with the Interconnection Guidelines and Applicable Standards, Generator shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to promptly remove any fault contribution of the Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider equipment. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Generator shall be responsible for protection of the Facility and Generator's other equipment from such conditions as

negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Generator shall be solely responsible to disconnect the Facility and Generator's other equipment if conditions on the Transmission System could adversely affect the Facility.

5.8.2 System Quality.

Generator shall not design or operate the Facility to cause excessive voltage excursions or cause the voltage to drop below or rise above the range specified in the planning criteria defined in the Interconnection Guidelines and Transmission Provider's voltage schedules.

5.8.3 Right to Inspect.

Each Party shall have the right, but shall have no obligation to (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, (ii) review the settings of the other Party's System Protection Facilities and other protective equipment, and (iii) review the other Party's maintenance records relative to the Facility, the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Facility, the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that Transmission Provider obtains through the exercise of any of its rights under this Section 5.8.3 shall be deemed to be confidential hereunder.

5.9 Access Rights.

Each Party shall provide the other Party access to its property to permit the other Party to perform its obligations under this Agreement, including operation and maintenance obligations. A Party that obtains access to the other Party's property shall comply with the rules applicable to that property.

5.10 Switching and Tagging Rules.

The Parties shall comply with applicable Switching and Tagging Rules as established in Attachment E in obtaining clearances for work or for switching operations on equipment. Such Switching and Tagging Rules shall be developed in accordance with OSHA standards codified at 29 CFR Part 1910, or successor standards. Each Party shall provide the other Party a copy of its Switching and Tagging Rules that are applicable to the other Party's activities.

5.11 Use of Interconnection Facilities by Third Parties.

5.11.1 Purpose of Interconnection Facilities.

Except as may be required by Applicable Laws or Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be dedicated to the sole purpose of interconnecting the Facility to the Transmission System and shall be used for no other purpose.

5.11.2 Third Party Users.

If required by Applicable Laws or Regulations or if the Parties mutually agree to allow one or more third parties to use the Interconnection Facilities, or any part thereof, Generator will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Generator, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to the FERC for resolution.

**ARTICLE 6
MAINTENANCE**

6.1 Transmission Provider Obligations.

Transmission Provider shall maintain the Transmission System and the Transmission Provider Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement.

6.2 Generator Obligations.

Generator shall maintain the Facility and the Generator Interconnection Facilities in a safe and reliable manner and in accordance with this Agreement.

6.3 Coordination.

The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Facility and the Interconnection Facilities.

6.4 Inspections and Testing.

Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

6.5 Right to Observe Testing.

Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.6 Secondary Systems.

Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

6.7 Notice of Abnormal Conditions.

If a Party observes any Abnormal Conditions on, or becomes aware of a lack of scheduled maintenance and testing with respect to, the other Party's facilities and equipment that might reasonably be expected to adversely affect the observing Party's facilities and equipment, the observing Party shall provide prompt notice under the circumstances to the other Party, and the other Party shall consider such notice in accordance with Good Utility Practice. A Party's review, inspection, and approval related to the other Party's facilities and equipment shall be limited to the purpose of assessing the safety, reliability, protection and control of the Transmission System, the Facility and the Interconnection Facilities, and shall not be construed as confirming or endorsing the design of such facilities and equipment, or as a warranty of any type, including safety, durability or reliability. The inspecting Party shall have no liability whatsoever for failure to give notice of an Abnormal Condition to the other Party and the Party owning the facilities shall remain fully liable for its failure to determine and correct Abnormal Conditions in its facilities and equipment.

**ARTICLE 7
EMERGENCY CONDITIONS**

7.1 Obligations.

Each Party shall comply with the Emergency Condition procedures of NERC, the Applicable Reliability Council, Transmission Provider and Generator.

7.2 Notice.

Transmission Provider shall notify Generator promptly when it becomes aware of an Emergency Condition that affects the Transmission Provider Interconnection Facilities or the Transmission System that may reasonably be expected to affect Generator's operation of the Facility or the Generator Interconnection Facilities.

Generator shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Facility or the Generator Interconnection Facilities that may reasonably be expected to affect the Transmission System or the Transmission Provider Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Generator's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

7.3 Immediate Action.

A Party becoming aware of an Emergency Condition may take such action as is reasonable and necessary to prevent, avoid, or mitigate injury, danger to or loss of life or property, including disconnection of the Facility from the Transmission System. Unless, in Generator's reasonable judgment, immediate action is required, Generator shall obtain the consent of Transmission Provider prior to performing any manual switching operations at the Facility or the Generation Interconnection Facilities. Each Party shall restore its facilities to normal as promptly as possible after the cessation of the Emergency Condition, consistent with Good Utility Practice.

7.4 Transmission Provider Authority.

7.4.1 General.

Transmission Provider may take whatever actions or inactions with regard to the Transmission System or the Transmission Provider Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or the Transmission Provider Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Facility or the Generation Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Facility to mitigate a potential or an actual Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Generator to start-up, shut-down, increase or decrease the real or reactive power output of the Facility; implementing a curtailment, reduction or disconnection pursuant to Section 7.4.2; directing the Generator to assist with black start (if available) or restoration efforts; or altering the outage schedules of the Facility and the Generator Interconnection Facilities. Generator shall comply with all of Transmission Provider's operating instructions concerning Facility real power and/or reactive power output within the manufacturer's design limitations of the Facility's equipment that is in service and physically available for operation at the time.

7.4.2 Curtailment, Reduction, and Disconnection.

Transmission Provider may curtail or reduce Interconnection Service or disconnect the Facility or the Generation Interconnection Facilities, when such curtailment, reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of the Transmission Provider pursuant to the Transmission Provider OATT. When the Transmission Provider can schedule the curtailment, reduction or disconnection in advance, Transmission Provider shall notify Generator of the reasons, timing and expected duration of the curtailment, reduction or disconnection. Transmission Provider shall attempt to schedule such curtailment, reduction or disconnection to coincide with the scheduled outages of the Facility or, if that is not possible, to schedule such curtailment, reduction or disconnection during non-peak load periods. Any curtailment, reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

7.5 Generator Authority.

Generator may take whatever actions or inactions with regard to the Facility or the Generator Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Facility or the Generator Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Generator shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and the Transmission Provider Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Generator in such actions.

7.6 Generator Compensation for Actions During Emergency Condition.

Transmission Provider shall compensate Generator for its provision of real and reactive power, any reasonable documented costs related to changes in maintenance and outage schedules directed by Transmission Provider for Emergency Condition purposes and other Emergency Condition services that Transmission Provider directs Generator to provide to support the Transmission System during an Emergency Condition in accordance with Generator's rate schedule then in effect. If Generator does not have such a rate schedule in effect, Transmission Provider shall compensate Generator for the documented costs that Generator incurred in complying with the Transmission Provider's operating instructions.

7.7 Inoperative System Protection Facilities.

Transmission Provider shall have the right to declare an Emergency Condition if it determines that the System Protection Facilities are not operational. For

purposes of this Section 7.7, Transmission Provider may deem the System Protection Facilities to be not operating if Transmission Provider's review under Section 6.7 discloses that maintenance on the System Protection Facilities is not in accordance with Good Utility Practice or that maintenance records do not exist or are otherwise not in accordance with Good Utility Practice. In such event, Generator shall have a reasonable opportunity, prior to the declaration of an Emergency Condition to the extent feasible, to demonstrate to the reasonable satisfaction of Transmission Provider, that the System Protection Facilities are operating in conformance with Good Utility Practice.

7.8 Limited Liability.

Except as otherwise provided in Section 7.6 of this Agreement, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

**ARTICLE 8
SAFETY**

8.1 General.

Each Party shall perform all work hereunder that may reasonably be expected to affect the other Party in accordance with Good Utility Practice, Applicable Standards and Applicable Laws and Regulations pertaining to the safety of persons or property. A Party performing work within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site.

8.2 Environmental Releases.

Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as possible; (ii) make a good faith effort to provide the notice within twenty-four hours after the Party becomes aware of the occurrence; and (iii) promptly furnish to the other Party copies of any publicly available reports filed with any governmental agencies addressing such events.

**ARTICLE 9
METERING**

9.1 General.

Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission

Provider shall provide metering quantities, in analog and/or digital form, to Generator upon request. Generator shall bear all reasonable documented costs associated with the installation, operation, testing and maintenance of the Metering Equipment.

9.2 Standards.

Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards. To the extent this Article 9 conflicts with the manuals, standards or guidelines of the Applicable Reliability Council regarding interchange metering and transactions, the manuals, standards and guidelines of such Applicable Reliability Council shall control.

9.3 Testing of Metering Equipment.

Transmission Provider shall inspect and test all Transmission Provider -owned Metering Equipment upon installation and at least once every two years thereafter. If requested to do so by Generator, Transmission Provider shall, at Generator's expense, inspect or test Metering Equipment more frequently than every two years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Generator may have representatives present at the test or inspection. If Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Generator's expense, in order to provide accurate metering. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than [one percent]²⁴ from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the data by correcting all measurements made by the inaccurate meter for the period during which the inaccurate measurements were made, if the period can be determined. If the period cannot be determined, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

9.4 Metering Data.

At Generator's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Generator. The metered data provided by Generator shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Facility to the Point of Interconnection.

9.5 Communications.

9.5.1 Generator Obligations.

Generator shall maintain satisfactory operating communications with Transmission Provider's system dispatcher or representative designated

²⁴ There is no agreement on what the accuracy tolerance of the meter should be.

by Transmission Provider. Generator shall provide standard voice line, dedicated voice line and facsimile communications at its Facility control room or central dispatch facility through use of the public telephone system. Generator shall also provide the dedicated data circuit(s) necessary to provide Generator data to Transmission Provider as set forth in Attachment E. The data circuit(s) shall extend from the Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Generator. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

9.5.2 Remote Terminal Unit.

Prior to any operation of the Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to both Parties, shall be installed by Generator, or by Transmission Provider at Generator's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Section 9.5.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

**ARTICLE 10
FORCE MAJEURE**

10.1 Notice.

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.

10.2 Duration of Force Majeure.

A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement due to Force Majeure occurring on or at the Transmission System, the Facility or the Interconnection Facilities. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to the other Party.

10.3 Obligation to Make Payments.

Any Party's obligation to make payments for services provided prior to the occurrence of a Force Majeure event shall not be suspended by Force Majeure.

**ARTICLE 11
INFORMATION REPORTING**

Each Party shall promptly provide to the other Party all relevant information, documents, or data regarding the Party's facilities and equipment which pertain to the reliability of the other Party's facilities and equipment, and which has been reasonably requested by the other Party. Such information shall be deemed to be confidential hereunder.

**ARTICLE 12
CREDITWORTHINESS, BILLING AND PAYMENTS**

12.1 *[Transmission Provider Proposal]*²⁵ Security for Payment.

Within thirty days after the execution of this Agreement, Generator shall provide Transmission Provider, at Generator's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Section 23.3. Such security for payment shall be in an amount sufficient to satisfy Generator's obligation to pay for the construction and installation of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this Agreement during its term. In addition:

12.1.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Generator, up to an agreed-to maximum amount.

12.1.2 The letter of credit must be issued by a bank reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

12.1.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

²⁵ If Generator's version of Section 4.5.1 is adopted, this provision will not be necessary. Generators also assert that if a guarantee is required, it should not be due until shortly before the Transmission Provider incurs costs. Transmission Providers are concerned about delayed guarantees, which may expose them to unrecoverable costs.

12.2 Invoice.

Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.3 [Transmission Provider Proposal]²⁶ Final Invoice.

Within six months after completion of the construction of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades and shall set forth such costs in sufficient detail to enable Generator to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Generator any amount by which the actual payment by Generator for estimated costs exceeds the actual costs of construction within thirty days of the issuance of such final construction invoice.

12.4 Payment.

The Party receiving the invoice shall pay the invoice within thirty days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by Generator will not constitute a waiver of any rights or claims Generator may have under this Agreement.

12.5 Disputes.

In the event of a billing dispute between Transmission Provider and Generator, Transmission Provider shall continue to provide interconnection service under this Agreement as long as Generator: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Generator fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Generator of a Breach pursuant to Article 16. Within thirty days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with Section 12.7.

²⁶ If Generator's version of Section 4.5.1 is adopted, this provision will not be necessary.

12.6 Waiver.

Payment of an invoice shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.

12.7 Interest.

Interest on any unpaid amounts shall be calculated in accordance with the methodology specified for interest on refunds in the FERC's regulations at 18 C.F.R. Section 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment.

**ARTICLE 13
ASSIGNMENT**

13.1 Assignment with Prior Consent.

Except as provided in Section 13.2, neither Party shall voluntarily assign its rights or delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent shall be null and void. A Party may make an assignment in connection with the sale, merger, or transfer of a substantial portion or all of its properties (or in the case of Transmission Provider, the Transmission System) including the Interconnection Facilities which it owns so long as the assignee in such a sale, merger, or transfer directly assumes in writing all rights, duties and obligations arising under this Agreement and such assignor shall be, without further action, released from its obligation hereunder. In addition, Transmission Provider shall be entitled to assign this Agreement to any wholly-owned direct or indirect subsidiary of Transmission Provider. Notwithstanding the foregoing, prior to the effective date of any assignment by Transmission Provider, the assignee shall demonstrate to Generator that the assignee has the technical and operational competence to comply with the requirements of this Agreement on the effective date of the assignment and assumes all rights, duties, and obligations arising under this Agreement in a writing provided to Generator.

13.2 Assignment Without Prior Consent.

13.2.1 Assignment to Owners.

Generator may assign this Agreement without Transmission Provider's prior consent to any Affiliate or person that purchases or otherwise acquires, directly or indirectly, all or substantially all of the Facility and the Generator Interconnection Facilities, *provided* that prior to the effective date of any such assignment, the assignee shall demonstrate that, as of the effective date of the assignment, the assignee has the technical and operational competence to comply with the requirements of this Agreement and will comply with the requirements of Section 12.1; and

assumes in a writing provided to the Transmission Provider all rights, duties, and obligations arising under this Agreement. Effective upon such assignment, Generator shall be released from all obligations under this Agreement.

13.2.2 Assignment to Lenders.

Generator may, without the consent of Transmission Provider, assign this Agreement to the persons, entities or institutions providing financing or refinancing for the development, design, construction or operation of all or any part of the Facility and the Generator Interconnection Facilities, *provided* that such assignment does not affect compliance with Article 12 or with all other rights, duties and obligations arising under this Agreement. If Generator provides notice of assignment to Transmission Provider, Transmission Provider shall provide notice and reasonable opportunity for such lenders to cure any Beach or Default under this Agreement. Transmission Provider shall, if requested by such lenders, provide such customary documents, including financial statements, legal opinions, consents to assignment and certificates as may be requested with respect to the assignment and status of this Agreement, *provided* such documents do not change the rights of Transmission Provider under this Agreement except with respect to providing notice and reasonable opportunity to cure Breach or Default. Such customary documents and certificates shall include among other customary terms and conditions, if true at the time the statement is to be made, representations that (i) this Agreement is in full force and effect and that neither Generator nor Transmission Provider is in Default, (ii) all representations made by Transmission Provider in this Agreement are true and complete as of the specified date, and (iii) all conditions to be satisfied by Transmission Provider on or prior to the specified date have been satisfied. In the event of any foreclosure by such lenders, the purchasers at such foreclosure or any subsequent purchaser, shall upon request, be entitled to the rights and benefits of (and be bound by) this Agreement so long as it is an entity entitled to interconnect with the Transmission System. Transmission Provider may bill Generator for the reasonable documented cost of providing such documents and certificates.

**ARTICLE 14
INSURANCE**

14.1 Generator Insurance.

Without limiting any obligations or liabilities under this Agreement, Generator shall, at its expense, provide and maintain in effect for the life of this Agreement minimum insurance coverage (in any combination of primary and excess layers), as follows:

14.1.1 Workers' Compensation.

Workers' compensation insurance in accordance with all applicable state, federal, and maritime laws, including employer's liability insurance in the amount of \$1,000,000 per accident. The policy shall be endorsed to include a waiver of subrogation in favor of Transmission Provider and its Affiliates.

14.1.2 Commercial General Liability.

Commercial general liability insurance, including contractual liability coverage for liabilities assumed under this Agreement, and personal injury coverage in the amount of \$25,000,000 per occurrence for bodily injury and property damage. The policy shall be endorsed to include Transmission Provider and its Affiliates as additional insureds with a provision substantially in the form of the following:

In consideration of the premium charged, Transmission Provider and its Affiliates are named as additional insureds with respect to liabilities arising out of Transmission Provider's use and ownership of the Transmission System and/or the Transmission Provider Interconnection Facilities and Transmission Provider's use of the Generator Interconnection Facilities. The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limits of the carrier's liability. Transmission Provider will not, because of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

14.2 Generator Self-Insurance.

At its option, Generator may, with adequate credit assurance provided to Transmission Provider, self-insure all or part of the insurance required in this Article 14; *provided*, however, that all other provisions of this Article 14, including, but not limited to, waiver of subrogation, waiver of rights of recourse, and additional insured status, which provide or are intended to provide protection for Transmission Provider and its Affiliates under this Agreement, shall remain enforceable. Generator's election to self-insure shall not in any manner result in a reduction of rights and/or benefits otherwise available to Transmission Provider and its Affiliates through formal insurance policies and endorsements as specified in Section 14.1. Generator shall be responsible for amounts of self-insurance, retentions and/or deductibles.

14.3 Transmission Provider Insurance.

Transmission Provider shall, at its expense, provide and maintain in effect for the life of this Agreement, minimum insurance coverage (in any combination of primary and excess layers), as follows:

14.3.1 Workers' Compensation.

Workers' compensation insurance in accordance with all applicable state, federal, and maritime laws, including employer's liability insurance in the amount of \$1,000,000 per accident. The policy shall be endorsed to include a waiver of subrogation in favor of Generator and its Affiliates.

14.3.2 Commercial General Liability.

Commercial general liability insurance, including contractual liability coverage for liabilities assumed under this Agreement, and personal injury coverage in the amount of \$25,000,000 per occurrence for bodily injury and property damage. The policy shall be endorsed to include Generator and its Affiliates as additional insureds with a provision substantially in the form of the following:

In consideration of the premium charged, Generator and its Affiliates are named as additional insureds with respect to liabilities arising out of Generator's use and ownership of the Facility and/or the Generator Interconnection Facilities and Generator's use of the Transmission System and/or the Transmission Provider Interconnection Facilities. The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limits of the carrier's liability. Generator will not, because of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

14.4 Transmission Provider Self-Insurance.

At its option, Transmission Provider may, with adequate credit assurance provided to Generator, self-insure all or part of the insurance required in this Article 14; *provided*, however, that all other provisions of this Article 14, including, but not limited to, waiver of subrogation, waiver of rights of recourse, and additional insured status, which provide or are intended to provide protection for Generator and its Affiliates under this Agreement, shall remain enforceable. Transmission Provider's election to self-insure shall not in any manner result in a reduction of rights and/or benefits otherwise available to Generator and its Affiliates through formal insurance policies and endorsements as specified in Section 14.3. Transmission Provider shall be responsible for all amounts of self-insurance, retentions and/or deductibles.

14.5 Notices and Certificates of Insurance.

All policies of insurance shall provide for thirty days prior written notice of cancellation or material adverse change. Prior to the Operation Date and annually thereafter during the term of this Agreement, each Party shall furnish, certificates of insurance to each other.

**ARTICLE 15
INDEMNITY**

15.1 Indemnity.

Each Party shall indemnify and hold harmless the other Party, and the other Party's officers, shareholders, stakeholders, members, managers, representatives, directors, agents and employees, and Affiliates, from and against any and all loss, liability, damage, cost or expense, including damage and liability for bodily injury to or death of persons, or damage to property of persons (including reasonable attorneys' fees and expenses, litigation costs, consultant fees, investigation fees, sums paid in settlements of claims, penalties or fines imposed under Applicable Laws and Regulations, and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "Loss") to the extent arising out of, in connection with or resulting from (i) the indemnifying Party's breach of any of the representations or warranties made in, or failure to perform any of its obligations under, this Agreement, or (ii) the negligence or willful misconduct of the indemnifying Party or, in the case of Transmission Provider or contractor; *provided*, however, that neither Party shall have any indemnification obligations under this Section 15.1 in respect of any Loss to the extent the Loss results from the negligence or willful misconduct of the Party seeking indemnity.

15.2 Indemnity Procedures.

Promptly after receipt by a Person entitled to indemnity ("Indemnified Person") of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 15.1 may apply, the Indemnified Person shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party. The indemnifying Party shall have the right to assume the defense thereof with counsel designated by such indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or

Indemnified Persons having such differing or additional legal defenses. The Indemnified Person shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the indemnifying Party. Notwithstanding the foregoing, the indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the indemnifying Party, in such event the indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld, conditioned or delayed.

15.3 Indemnified Person.

If an Indemnified Person is entitled to indemnification under this Article 15 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Section 15.1, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

15.4 Indemnifying Party.

If an indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 15, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

15.5 Limitation on Damages.

Notwithstanding any other provision of this Agreement, the liability of a Party under this Article 15 shall be limited to direct actual damages, and all other damages at law or in equity are waived. Under no circumstances shall either Party or its Affiliates, directors, officers, employees and agents, or any of them, be liable to the other Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The limitations on damages specified in this Section 15.5 are 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. The provisions of this Section 15.5 shall survive the termination or expiration of this Agreement. This Section 15.5 shall not be interpreted in any way to override the provisions of Sections 15.1 through 15.4.

**ARTICLE 16
BREACH, CURE AND DEFAULT**

16.1 Events of Breach.

A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material breach of a representation, warranty or covenant (other than in Sections 16.1(a) and (d)-(f) hereof) made in this Agreement;
- (c) A Party (i) is adjudicated bankrupt, (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against it under any similar law, (iii) makes a general assignment for the benefit of its creditors, or (iv) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are provided under this Agreement; or
- (f) Failure of a Party to provide to the other Party information or data that the other Party requires to satisfy its obligations under this Agreement.

16.2 Continued Operation.

In the event of a Breach or Default by either Party, the Parties shall continue to operate and maintain, as applicable, such DC power systems, protection and Metering Equipment, telemetering equipment, SCADA equipment, transformers, secondary systems, communications equipment, building facilities, software, documentation, structural components, and other facilities and appurtenances that are reasonably necessary for Transmission Provider to operate and maintain the Transmission System and the Transmission Provider Interconnection Facilities and for Generator to operate and maintain the Facility and the Generator Interconnection Facilities, in a safe and reliable manner.

16.3 Notice of Breach.

The Party not in Breach of this Agreement shall give written notice of the Breach to the Breaching Party and to any other person that the Breaching Party identifies in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

16.4 Cure and Default.

A Party that commits a Breach and does not take steps to cure the Breach pursuant to this Section 16.4 is in Default of this Agreement.

16.4.1 Cure of Breach Other than Bankruptcy.

If the Breach is not due to a bankruptcy or other event described in Section 16.1(c), the Breaching Party (a) may cure the Breach within thirty days from the receipt of such notice; or, (b) if the Breach cannot be cured within thirty days, may commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty day time period and thereafter diligently pursue such action to completion.

16.4.2 Cure of Breach Due to Bankruptcy.

If the Breach is due to a bankruptcy or other event described in Section 16.1(c), the Breaching Party may provide an assurance of payment reasonably acceptable to the Non-Breaching Party of any amounts due to the Non-Breaching Party, including any damages that the Non-Breaching Party incurs because of the Breach.

16.5 Right to Compel Performance.

Notwithstanding the foregoing, upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to (a) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, (b) withhold payments, (c) suspend performance hereunder, and (d) exercise such other rights and remedies as it may have in equity or at law; *provided*, however, that Transmission Provider shall not terminate this Agreement due to the failure of Generator to make a payment hereunder unless such failure could reasonably be expected to have a material adverse effect on the Transmission System.

**ARTICLE 17
TERMINATION OF INTERCONNECTION SERVICE**

17.1 Disposition of Facilities Upon Termination of Agreement.

17.1.1 Transmission Provider Obligations.

Upon termination of this Agreement, Transmission Provider shall take the following steps:

- (a) If termination occurs prior to the construction and installation of any portion of the Transmission Provider Interconnection Facilities or Interconnection System Upgrades, Transmission Provider shall, to the extent possible, cancel any pending orders of, or return such facilities. Transmission Provider may, at its option, retain any portion of such facilities not cancelled or returned, in which case Transmission Provider shall be responsible for all costs associated

with procuring, constructing and installing such facilities, except as provided in Section 4.5.3. Transmission Provider shall refund to Generator any portion of such costs for which Generator has already paid.

- (b) Transmission Provider shall keep in place any portion of the Interconnection System Upgrades already constructed and installed. Transmission Provider may, in its discretion, remove the Transmission Provider Interconnection Facilities at Generator's expense.
- (c) Transmission Provider shall perform any work that may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (e.g., construction demobilization and wind-up work).

17.1.2 Generator Obligations.

Upon billing by Transmission Provider, Generator shall reimburse Transmission Provider for any costs in accordance with Section 4.5.3.

17.2 Survival of Rights.

Termination of this Agreement shall not relieve either Party of any of its liabilities and obligations arising hereunder prior to the date on which termination becomes effective, and each Party may take whatever judicial or administrative actions necessary to enforce its rights hereunder.

**ARTICLE 18
SUBCONTRACTORS**

18.1 Subcontractors.

Either Party may utilize the services of one or more subcontractors, including owners of transmission facilities under its control, as it deems appropriate, to perform its obligations under this Agreement. Such Party shall require such subcontractor to comply with this Agreement in performing those obligations. Nothing in this Agreement shall be construed to cause Generator, Transmission Provider and/or subcontractors to be considered partners, joint venturers, employer and employee, principal and agent, or any other business association.

18.2 Responsibility of Principal.

The creation of a subcontractual relationship shall not relieve the hiring Party of any of its obligations under this Agreement. Each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

18.3 No Third-Party Beneficiary.

Except as specifically set forth herein, no owner of transmission facilities under the control of the Transmission Provider or subcontractor or any other party is intended to be, nor will be deemed, a third-party beneficiary of this Agreement.

18.4 No Limitation by Insurance.

The obligations under this Article 18 shall not be limited in any way by any limitation of subcontractor's insurance.

**ARTICLE 19
CONFIDENTIALITY**

19.1 Designation of Confidential Information.²⁷

Generator may designate any written information concerning the Facility or the Generator Interconnection Facilities as confidential by marking it on the face of the document and may designate oral information concerning the Facility or the Generator Interconnection Facilities as confidential by informing Transmission Provider at the time it conveys the information to Transmission Provider.

19.2 Transmission Provider Obligations.

Transmission Provider shall not use information that Generator designates as confidential for any purpose other than to fulfill Transmission Provider's obligations under this Agreement or to meet its obligations to the Applicable Reliability Council or regional transmission organization. Transmission Provider shall keep confidential any information that Generator designates as confidential for three years after the termination of this Agreement unless Transmission Provider is required by Applicable Laws and Regulations or Applicable Standards to disclose the information prior to that date. Transmission Provider will provide Generator as much notice as is reasonably practicable before disclosing such information.

19.3 Return or Destruction of Confidential Information.

If Generator provides any information to Transmission Provider in the course of an audit or inspection of the Facility or the Generator Interconnection Facilities that Generator designates as confidential information, Generator may request Transmission Provider to return or destroy such information after the termination of the audit period and the resolution of all matters relating to that audit. Transmission Provider shall make reasonable efforts to comply with the request for return or destruction within ten days of receiving the request and shall certify in writing to Generator that it has complied with Generator's request.

²⁷ Some Transmission Providers assert that this Section should be modified to permit a Transmission Provider to designate confidential information. Other market participants assert that Transmission Providers should not have an interest in preserving the confidentiality of information developed in the course of providing interconnection service.

**ARTICLE 20
INFORMATION ACCESS AND AUDIT RIGHTS**

20.1 Information Access.

Each Party shall make available to the other Party information necessary to: (i) verify the costs incurred by the other Party for which the requesting Party is responsible under this Agreement; and (ii) carry out obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Section 20.1 and to enforce their rights under this Agreement.

20.2 Reporting of Non-Force Majeure Events.

Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Section shall not entitle the receiving Party to allege a cause for anticipatory breach of this Agreement.

20.3 Audit Rights.

Subject to the requirements of confidentiality under Article 19 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance and/or satisfaction of obligations arising under this Agreement. Such audit rights shall include, but not be limited to, audits of the other Party's costs, calculation of invoiced amounts, the Transmission Provider's efforts to allocate responsibility for the generation of reactive support, the Transmission Provider's efforts to allocate responsibility for curtailment or reduction pursuant to Section 4.10.2 and each Party's actions in an Emergency Condition. Any audit authorized by this Section shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement. Any request for audit shall be presented to the other Party not later than twenty-four months after the event as to which the audit is sought. Each Party shall preserve all records held by it for the duration of the audit period.

**ARTICLE 21
DISPUTES**

21.1 Resolution of Disputes.

Any claim or dispute that either Party may have against the other arising out of this Agreement shall be submitted for resolution in accordance with the dispute

resolution provisions of the Transmission Provider OATT. Failure to comply with a provision of this Agreement that is the subject of a good faith dispute shall not constitute a Breach of this Agreement.

21.2 Rights under The Federal Power Act.

Nothing in this Article shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.

21.3 Equitable Remedies.

Nothing in this Article shall prevent either Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, except as set forth in Section 15.5.

**ARTICLE 22
NOTICES**

22.1 General.

Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

To Transmission Provider:
[To be supplied]

To Generator:
[To be supplied]

22.2 Billings and Payments.

Billings and payments shall be sent to the addresses shown in Section 22.1.

22.3 Alternative Forms of Notice.

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:
[To be supplied]

To Generator:
[To be supplied]

**ARTICLE 23
MISCELLANEOUS**

23.1 Regulatory Filing.

Transmission Provider shall file this Agreement and any amendment to this Agreement with FERC as a Service Schedule under the Transmission Provider OATT within fifteen days after its execution. Transmission Provider shall include sufficient information for FERC to determine: 1) the reasonableness of any costs associated with the Agreement, 2) that any direct assignment of costs is appropriate, and 3) the basis for assigning or not assigning any transmission credits for any Interconnection System Upgrades to be constructed. If Generator has executed this Agreement or any amendment to this Agreement, Generator shall, subject to Section 23.6, not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony reasonably requested by Transmission Provider, to the extent reasonably needed to comply with Applicable Laws and Regulations.

23.2 Waiver.

Any waiver at any time by either Party of its rights with respect to a Breach or Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter.

23.3 Governing Law.

The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State where the Interconnection Facilities are located, without regard to its conflicts of law principles.

23.4 Headings not to Affect Meaning.

The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

23.5 Amendments and Rights under the Federal Power Act.

23.5.1 Modification by the Parties.

The Parties may by mutual agreement amend Attachments A, B, C, D and E to this Agreement by a written instrument duly executed by both of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations. Each Party retains its rights to unilaterally seek modification of the Attachments to this Agreement pursuant to Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder.

23.5.2 Modification to Comply with FERC Interconnection Policy.

During the term of this Agreement, the FERC may establish generally applicable regulations, policies, standards, tariffs, rates, terms and/or conditions with respect to interconnection of wholesale generators to transmission systems (hereinafter referred to as "FERC Interconnection Policy"). The Parties shall make any amendment to this Agreement required by FERC Interconnection Policy, as it may be amended from time to time and as finally established after rehearing and judicial review, if any. Upon notice by either Party, the Parties shall commence negotiations in good faith of amendments required by FERC Interconnection Policy. If the Parties cannot agree on amendments to this Agreement within sixty days after the notice referenced in the immediately preceding sentence, then notwithstanding any other provision of this Agreement, the Parties may exercise any and all rights they may have under the Federal Power Act.²⁸

23.6 Severability.

If any provision in this Agreement is determined to be invalid, void or unenforceable by final order of any Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision of this Agreement.

23.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with reference to the subject matter hereof and no modification as to any of the provisions hereof shall be binding on either Party unless reduced to writing and made effective pursuant to Section 23.5. The terms and conditions of this Agreement and every Attachment referred to herein shall be amended, as mutually agreed to by the Parties, to comply with changes or alterations made necessary by a valid applicable order of any Governmental Authority having jurisdiction hereof.

23.8 Counterparts.

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

²⁸ Some market participants assert that the Interconnection Agreement should be modified only in certain limited circumstances, such as reliability, saying that doing more could jeopardize the economics of the transaction. Others assert that Interconnection Agreements always should be modified to conform to current policy. Still others believe that FERC should impose a "sunset" deadline on any Interconnection Agreement that is inconsistent with then current FERC Interconnection Policy, after which service would be taken under the pro forma Interconnection Agreement.

23.9 Binding Effect.

This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

23.10 Conflicts.

In the event of a conflict between the body of this Agreement and any Attachment or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.

23.11 Regulatory Requirements.

Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require Generator to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Company Holding Act of 1935, as amended.

23.12 No Third Party Beneficiaries.

This Agreement does not create any rights, remedies or benefits in favor of any persons, corporations or entities other than the Parties. The rights and obligations created by this Agreement are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

**ARTICLE 24
REPRESENTATIONS AND WARRANTIES**

24.1 General.

Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:

24.1.1 Good Standing.

Such Party is duly organized or formed, as applicable, validly existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective State(s) in which it is incorporated and operates as stated in the preamble of this Agreement.

24.1.2 Authority.

Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the

enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

24.1.3 No Conflict.

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of either Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon either Party or any of its assets.

24.1.4 Consent and Approval.

Such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Transmission Provider]

[Generator]

By _____
Name: _____
Title _____

By _____
Name: _____
Title _____

**ATTACHMENT A
POINT OF INTERCONNECTION, TRANSMISSION PROVIDER INTERCONNECTION
FACILITIES, INTERCONNECTION SYSTEM UPGRADES, COST ESTIMATES AND
RESPONSIBILITY, CONSTRUCTION SCHEDULE, PAYMENT SCHEDULE**

This Attachment A is a part of the Interconnection and Operating Agreement between Generator and Transmission Provider dated [Supply]

- 1.1 Point of Interconnection: [Supply]
See Drawing No. [Supply] dated [Supply] which drawing is attached hereto and made a part hereof.
- 1.2 Metering points: [Supply]
- 1.3 Transmission Provider Interconnection Facilities (including metering equipment) to be constructed by Transmission Provider: [Supply]
- 1.4 Transmission Provider Interconnection Facilities (including metering equipment) to be constructed by Generator: [Supply]
- 1.5 Interconnection System Upgrades to be installed by Transmission Provider: [Supply]
- 1.6 ***[Transmission Provider Proposal]***²⁹ Cost Estimates and Responsibility. The costs indicated below are only estimates. Generator shall reimburse Transmission Provider for all actual costs, including any applicable income tax gross-up as determined pursuant to Section 4.3 of this Agreement, associated with the construction and installation of the Transmission Provider Interconnection Facilities and the Interconnection System Upgrades.
 - 1.6.1 Cost of the Transmission Provider Interconnection Facilities to be constructed by Transmission Provider: [Supply]
 - 1.6.2 Cost for the Transmission Provider Interconnection Facilities to be constructed by Generator: [Supply]
 - 1.6.3 Cost of the Interconnection System Upgrades: [Supply]
 - 1.6.4 Total cost of Transmission Provider Interconnection Facilities and Interconnection System Upgrades: [Supply]
 - 1.6.5 Generator's liability for reimbursement of Transmission Provider for taxes, interest and/or penalties under Section 4.3.1: [Supply]

²⁹ If Generator's version of Section 4.5.1 is adopted, this provision will not be necessary.

- 1.7 First Equipment Order. The first date for the ordering of equipment by Transmission Provider for installing the Transmission Provider Interconnection Facilities and/or Interconnection System Upgrades is expected to be: [Supply]
- 1.8 Construction Schedule. Construction of the Facility, Generator Interconnection Facilities, Transmission Provider Interconnection Facilities and Interconnection System Upgrades is scheduled as follows: [Supply]
- 1.9 ***[Transmission Provider Proposal]***³⁰ Payment Schedule. Generator shall pay Transmission Provider for the installation of Transmission Provider Interconnection Facilities and Interconnection System Upgrades in accordance with the following schedule:

<u>Date Due</u>	<u>Amount Due</u>
-----------------	-------------------

Total Amount Due

- 1.10 ***[Transmission Provider Proposal]***³¹ Creditworthiness. Pursuant to Section 12.1 of this Agreement, Generator shall maintain a guarantee, surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code in the jurisdiction identified in Section 23.3 in an amount equal to the Total Amount Due stated in Section 1.9 of this Attachment A, subject to reduction on a monthly basis for uncontested amounts actually paid by Generator pursuant to Section 1.9 of this Attachment A.
- 1.11 Permits, Licenses and Authorizations. Transmission Provider shall obtain the following permits, licenses and authorizations: [Supply]

³⁰ If Generator's version of Section 4.5.1 is adopted, this provision will not be necessary.

³¹ If Generator's version of Section 4.5.1 is adopted, this provision will not be necessary.

**ATTACHMENT B
FACILITY AND GENERATOR INTERCONNECTION FACILITIES**

This Attachment B is a part of the Interconnection and Operating Agreement between Generator and Transmission Provider dated [Supply].

- 1.1 Facility. Generator intends to own and operate a [Supply] MW electric generating facility located in [Supply] and more specifically described as follows: [Supply]
- 1.2 Generator Interconnection Facilities to be constructed by Generator: [Supply]
- 1.3 Permits, Licenses and Authorizations. Generator shall obtain the following permits, licenses and authorizations: [Supply]

ATTACHMENT C - OPERATION DATE

This Attachment C is a part of the Interconnection and Operating Agreement between Generator and Transmission Provider dated [Supply].

[Generator]

[Address]

[Address]

[Address]

Re: [Facility]

Dear _____

On [Date], _____ ("Transmission Provider") and _____ ("Generator") completed to their mutual satisfaction all work on the [Facility] and associated interconnection facilities and related equipment required to interconnect the Facility with Transmission Provider's Transmission System and have energized the Facility in parallel operation with the Transmission Provider's Transmission System.

Thank you.

[Signature]

[Transmission Provider Representative]

ATTACHMENT D - INTERCONNECTION GUIDELINES

This Attachment D is a part of the Interconnection and Operating Agreement between Generator and Transmission Provider dated [Supply].

The unique requirements of each generation interconnection will dictate the establishment of mutually agreeable Interconnection Guidelines that implement this Interconnection and Operating Agreement. The Interconnection Guidelines will address, but not be limited to, the following:

- (a) System Protection Facilities;
- (b) Communication requirements;
- (c) Metering requirement;
- (d) Grounding requirements;
- (e) Transmission line and substation connection configurations;
- (f) Unit stability requirements;
- (g) Equipment ratings;
- (h) Short circuit requirements;
- i) Synchronizing requirements;
- (j) Generation control requirements;
- (k) Data provisions;
- (l) Energization inspection and testing requirements;
- (m) Any unique requirements of the Transmission Provider to which the Facility will be physically interconnected.

ATTACHMENT E - OPERATING GUIDELINES

This Attachment E is a part of the Interconnection and Operating Agreement between Generator and Transmission Provider dated [Supply].

The unique requirements of each generation interconnection will dictate the establishment of mutually agreeable Operational Guidelines that implement this Interconnection and Operating Agreement. These guidelines will address, but not be limited to, the following:

- (a) System Protection Facilities;
- (b) Switching and tagging;
- (c) Communication requirements;
- (d) Metering requirements, including meter data reporting;
- (e) Data reporting requirements;
- (f) Training;
- (g) Capacity determination and verification (including Ancillary Services and certification);
- (h) Emergency operations, including system restoration and black start arrangements;
- (i) Any must-run conditions;
- (j) Stability requirements, including generation short circuit ratio considerations;
- (k) Limitations of operations in support of emergency response;
- (l) Maintenance and testing;
- (m) Generation and operation control.

APPENDIX 6

AGREEMENT PROVIDING FOR THE COMMENCEMENT OF INTERCONNECTION ACTIVITIES

THIS AGREEMENT is made and entered into this ____ day of _____, 20__ by and between _____, a corporation organized and existing under the laws of the State of _____, ("Generator,") and _____, a corporation organized and existing under the laws of the State of _____ ("Transmission Provider"). Generator and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, Generator is proposing to develop a __ MW generating facility or generating capacity addition to an existing generating facility to be located at _____ ("Facility"); and

WHEREAS, the Facility is not connected to the Transmission System; and

WHEREAS, Generator is proposing to establish an interconnection with the Transmission System; and

WHEREAS, Generator has requested that the Transmission Provider file an unexecuted Interconnection and Operating Agreement with FERC;

NOW THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

- 1.0 The terms used in this Agreement with initial capitalization shall have the meanings specified in the Transmission Provider OATT.
- 2.0 The Parties agree that they will be bound by the terms and conditions of the unexecuted Interconnection and Operating Agreement that is Appendix A to this Agreement and will continue to be bound by the Agreement as it may be modified by final order of the FERC.
- 3.0 Generator may in its discretion terminate this Letter Agreement at any time pursuant to written notice to the Transmission Provider. Notwithstanding such termination, Generator shall pay to the Transmission Provider all costs that the Transmission Provider prudently incurs in performing under this Agreement and the unexecuted Interconnection and Operating Agreement prior to the Transmission Provider's receipt of the Generator's notification of such termination.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Transmission Provider]

[Generator]

By _____

Name (typed or printed):

Title:

By _____

Name (typed or printed):

Title: