

**POWER PURCHASE AGREEMENT**

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## POWER PURCHASE AGREEMENT

THIS AGREEMENT is made as of this 23rd day of May, 1997, by and between Borger Energy Associates, L.P. ("Seller"), a Delaware limited partnership with a principal place of business at Amarillo, Texas, and Southwestern Public Service Company ("Southwestern"), a New Mexico corporation with headquarters in Amarillo, Texas (with Southwestern or Seller sometimes referred to hereinafter as "Party" and Southwestern and Seller sometimes referred to collectively as "Parties"), and is effective as of this date.

WHEREAS, Seller agrees to construct and will own and operate an electric generating plant to be located near Borger, Texas, designed to have a capacity rating of approximately 216 megawatts, as more fully described in Section 2.1, identified as "the Facility"; and

WHEREAS, Seller desires to sell electric energy and capacity to Southwestern and Southwestern desires to buy the same from the Seller; and

WHEREAS, Seller has responded to Southwestern's Request for Proposals issued September 15, 1995, as amended, by which Southwestern requested proposals for supply-side resources and Southwestern has accepted Seller's offer on the terms and conditions set forth in this Agreement;



NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

#### ARTICLE 1

#### DEFINITIONS

The capitalized terms listed in this Article 1 shall have the meanings set forth below whenever such capitalized terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Terms not listed in Article 1 shall have meanings as commonly used in Good Utility Practice or the English language, as appropriate.

"AAA" means the American Arbitration Association or any successor organization.

"Actual Capacity" shall mean, for any given point in time, the net electrical capacity that can be generated by the Facility and delivered to the Interconnection Point.

"Adjusted Non-Firm Energy Cost" means Southwestern's hourly adjusted average avoided energy cost computed in accordance with the PUCT regulation P.U.C. SUBST. R. 23.66(g) in effect on the date of this Agreement as set forth in Schedule F-6.

"AEGIS" means Associated Electric and Gas Insurance Services and all of its affiliates and subsidiaries authorized by law to underwrite and provide insurance and all of their successors.

"Agreement" means this Agreement between Seller and Southwestern, including Attachments A to J and their associated Schedules.

"Appraisal Procedure" shall mean a procedure whereby two independent appraisers, one chosen by Southwestern and one by Seller, shall mutually agree upon the determinations then the subject of appraisal. Southwestern or Seller, as the case may be, shall deliver a written notice to the other appointing its appraiser within fifteen (15) days after receipt from the other of a written notice appointing its appraiser. If within sixty (60) days after appointment of the two appraisers they are unable to agree upon the amount in question, a third independent appraiser shall be chosen within ten (10) days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by the AAA, and shall be a disinterested Person qualified in the matter to be determined. The three appraisers shall make the determination in accordance with the rules of the AAA, and such determination shall be binding and conclusive on Southwestern and Seller. Each Party shall pay the costs of its own appraiser and shall share equally in the costs, if any, of a third appraiser.

"Automatic Generation Control," or "AGC," means the automatic regulation within predetermined limits of the power output of electric generators within a prescribed geographic area in response to changes in system load, system frequency, tie-line interchange, or the relation of these to each other, so as to maintain the scheduled system frequency or the established interchange with other geographic areas or both. This regulation is accomplished by pulses sent (or successor technology) through communication links between the Southwestern System Control Center dispatch computer and each generator equipped for such control to change load on the generator.

"Availability Factor," or "AF " means, for a given period of time, the hours during which the Facility was available for operation divided by the total hours during such

given period of time, expressed as a three-place decimal, as computed in accordance with the following equation:

$$AF = [PH - (\sum_{i=1}^n EDH_i)] / PH$$

Where:

PH = The number of hours in the period of determination exclusive of the equivalent number of hours for which the Facility was not available due to Excused Outage.

EDH<sub>i</sub> = The equivalent derated or outage hours during hour "i." If during hour "i" no derate or outage occurs, or if such derate or outage was an Excused Outage, then for such hour "i," the EDH is equal to zero. For other hours, the EDH is computed as follows:

EDH<sub>i</sub> = SD<sub>i</sub>/UAC<sub>i</sub>, where:

SD<sub>i</sub> = The size of the derate below UAC during hour "i" to the extent that such derate is not an Excused Outage. During hours in which the entire Facility is out of service for reasons other than an Excused Outage, SD shall equal UAC.

UAC<sub>i</sub> = The unimpaired Actual Capacity of the Facility during hour "i" assuming that no the Facility occurred.

i = The summation index for the number of PH hours in the period of determination.

n = The total number of PH hours in the period of determination.

"Btu" means British thermal unit of heat quantity.

"Buyout Price" shall have the meaning set forth in Section 7.2.

"Capacity" means the amount of net power output of the Facility that can be delivered to the Interconnection Point and measured in whole MW.

"Capacity Payment" means the Payment for Contract Capacity as set forth in Section 5.2.

"Capacity Test" means the test performed in accordance with Section 2.6(C) to determine the Contract Capacity of the Facility.

"Capacity Retest" means the test performed in accordance with Section 2.6(D) to redetermine the Contract Capacity of the Facility.

"Catastrophic Equipment Failure" means a sudden unexpected failure of Seller's equipment which (1) substantially reduces or eliminates the capability of the Facility to produce Capacity and Energy, and (2) is beyond the reasonable control of Seller and could not have been avoided by appropriate design, manufacturing, construction, operating, or maintenance practices, in accordance with Good Utility Practice. Catastrophic Equipment Failure does not include failure of Seller's equipment caused by, or arising from, a mechanical or equipment breakdown attributable to wear and tear normally experienced in power generation materials and equipment and their assembly and operation.

"Ceiling Price" shall have the meaning set forth in Section 7.2.

“Cogeneration Commercial Operation” means that the Facility shall have met all of the conditions specified in Section 4.8.

“Cogeneration Commercial Operation Date” means the first day the Facility achieves Cogeneration Commercial Operation.

“Cogeneration Commercial Operation Deadline Date” means the date twelve (12) months after the Proposed Cogeneration Commercial Operation Date.

“Cogeneration Contract Capacity” means the electrical capacity of the Facility, in whole MW, determined by the most recent Capacity Test, or Capacity Retest, which Seller shall provide and Southwestern shall receive during Phase II in accordance with the terms of this Agreement.

“Combustion Turbine Commercial Operation” means that the Facility shall have met all of the conditions specified in Section 4.7.

“Combustion Turbine Commercial Operation Date” means the first day the Facility achieves Combustion Turbine Commercial Operation.

“Combustion Turbine Commercial Operation Deadline Date” means the date twelve (12) months after the Proposed Combustion Turbine Commercial Operation Date.

“Combustion Turbine Contract Capacity” means the electrical capacity of the Facility, in whole MW, determined by the most recent Capacity Test or Capacity Retest, which Seller shall provide and Southwestern shall receive during Phase I in accordance with the terms of this Agreement.

“Commission(s)” means any of the state or federal regulatory agencies having jurisdiction over Southwestern.

“Committed CT Capacity” means the minimum Capacity expected to be delivered by Seller during Phase I and is equal to 192 MW.

“Committed Cogeneration Capacity” means the minimum Capacity expected to be delivered by Seller during Phase II and is equal to 216 MW, unless adjusted pursuant to Section 6.3(D).

“Completion Security Fund” means the fund maintained by the Seller as provided for in Section 6.1.

“Construction Finance Closing Date” means the date Seller achieves Financial Closing.

“Contract Capacity” means Combustion Turbine Contract Capacity during Phase I and Cogeneration Contract Capacity during Phase II.

“Contract Interest Rate” means a rate of interest per annum (computed on the basis of a year of three hundred sixty-five (365) days) equal to the lower of (a) the interest rate specified in 18 C.F.R. § 35.19a(a)(2)(iii)(A) as the same may be changed from time to time plus one percent (1%) per annum or, if no longer published, another mutually agreed similar rate, or (b) the maximum rate permitted by law.

“Contract Year” means each twelve (12) months that begins on the day after the Cogeneration Commercial Operation Date or its anniversary.

“Contractor Milestone Dates” shall have the meaning set forth in Section 4.5.

“Correction Period” shall have the meaning set forth in Section 9.7(B).

“Cumulative Extended Term Bonus” shall mean the sum of the amounts paid to Seller during each month of the Extended Term under Sections 5.2(C)(ii) or 5.2(C)(iv)(b) that exceed the Capacity Payment that otherwise would have been paid Seller for such month but for the application of such Sections.

“Cumulative Initial Term Bonus” shall mean the sum of the amounts paid to Seller during each month of the Initial Term under Sections 5.2(C)(ii) or 5.2(C)(iv)(b) that

exceed the Capacity Payment that otherwise would have been paid Seller for such month but for the application of such Sections.

“Debt Base Case Proforma” shall mean the base case financial proforma for the Seller as accepted and used by the Senior Lender as of the Construction Finance Closing Date.

“Delivery Excuse” shall have the meaning set forth in Section 11.5.

“Discharge Notice” means the notice provided by Southwestern to Seller in accordance with Section 3.5.

“Discharge Notice Date” means the date Southwestern provides the Discharge Notice to Seller.

“Dispatch” means the schedule and control by Southwestern, directly or indirectly, manually or automatically, of the generation of the Facility in order to increase or decrease the electrical energy delivered from the Facility to the Interconnection Point, as determined solely by Southwestern.

“Early Termination Date” shall have the meaning set forth in Article 7.

“Emergency” means a condition or situation that, in the sole judgment of either Southwestern or SPP, affects or will affect Southwestern’s ability, or the ability of any member of SPP, to maintain safe, adequate, and continuous electric service.

“Energy” means the amount of electrical output of the Facility delivered to the Interconnection Point and measured in whole MWh.

“Energy Payment” means the Payment for Energy, as set forth in Section 5.4.

“Environmental Contamination” means the presence of hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air, and other hazardous pollutants, and toxic pollutants, as those terms are used in the Resource

Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Oil Pollution and Hazardous Substances Control Act, and any other and all other applicable federal, state, and local laws and regulations as amended, at such levels or quantities or location, or of such form or character, to be in violation of said federal, state, and local laws and regulations.

“EPC Contract” means the contract between Seller and the EPC Contractor for engineering, procurement, and construction of the Facility.

“EPC Contractor” means the Person that Seller contracts with for engineering, procurement, and construction of the Facility.

“Estimated Phase II Actual Capacity” means the maximum Capacity expected to be delivered by Seller during Phase II and is equal to 239 MW.

“Event of Default” means an event as defined in Article 10 that confers a contractual right upon a Party to terminate the Agreement.

“EWG” means an exempt wholesale generator pursuant to 15 U.S.C. § 79z-5a.

“Existing Taxes” shall have the meaning set forth in Section 17.4.

“Excused Outage” means a derate or outage of the Facility caused by Force Majeure or Delivery Excuse.

“Extended Term” shall have the meaning set forth in Section 3.1.

“FERC” means the Federal Energy Regulatory Commission.

“Facility” means all of the following the purpose of which is to produce and sell electricity: Seller’s equipment, property, buildings, generators, transformer(s), boiler(s), breakers, and necessary transmission lines to connect to the Interconnection Point,



protective and associated equipment, improvements, and other tangible and intangible assets, property rights, and contract rights reasonably necessary for the construction, operation, and maintenance of the electric generating facility that is the subject of this Agreement.

“Fair Market Value” of any property as of any date shall mean the cash price obtainable in an arm’s length sale between an informed and willing buyer (under no compulsion to purchase) and an informed and willing seller (under no compulsion to sell) of the property in question. If the Parties are unable to agree upon a determination of Fair Market Value, such Fair Market Value shall be determined in accordance with the Appraisal Procedure.

“Financial Closing” shall have the meaning set forth in Section 4.3(C).

“Financing Documents” means the loan and credit agreements (including the Senior Mortgage), notes, bonds, indentures, security agreements, lease financing agreements, interest rate exchanges, or swap agreements and other documents relating to the development, bridge, construction and/or the permanent financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time.

“Fixed O&M Payment” means the Payment for the Facility’s fixed operation and maintenance expenses, as set forth in Section 5.3.

“Fixed Payment” means the Capacity Payment plus the Fixed O&M Payment.

“Floor Price” shall have the meaning set forth in Section 7.2.

“Force Majeure” shall have the meaning set forth in Section 11.1.

“Fuel Agreements” means the agreements for the delivery or transportation of fuel to the Facility’s combustion turbines, including without limitation, the Gas Supply Agreement between Southwestern Public Service Company and GPM Gas Corporation dated December 1, 1995, as amended from time to time with Southwestern’s approval pursuant to Section 9.1(B).

“Fuel Contract Criteria” shall have the meaning set forth in Section 9.1.

“Fuel Delivery Failure” means any failure of the delivery of fuel to the Facility under any Fuel Agreement to the extent such failure is not caused by Seller.

“Fuel Management Agreement” means the agreement to be negotiated under Section 9.1(B). The Fuel Management Agreement shall not be considered a Fuel Agreement.

“Fuel Price” shall have the meaning set forth in Section 5.4.

“GDPIPD” shall mean the Gross Domestic Product Implicit Price Deflator published in the National Income and Product Account by the U.S. Department of Commerce.

“Good Utility Practice” means any of the practices, methods, and acts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety, and expedition.

“Guaranteed Heat Rate” means the heat rates set forth on Schedule F-4.

“Hazardous Materials” shall have the meaning set forth in Section 4.3(B).

“Initial Term” shall have the meaning set forth in Section 3.1.

“Interconnection Facilities” means all the land, easements, materials, equipment, and facilities installed for the purpose of interconnecting the Facility and Southwestern’s electric system so as to permit the transfer of electric energy and capacity in either direction, including but not limited to connection, transformation, switching, metering, relaying, and communication and safety equipment, and any necessary additions and reinforcements to Southwestern’s system required for safety or system security as a direct result of the interconnection between the Facility and Southwestern’s system.

“Interconnection Point” shall have the meaning set forth in Section 2.3.

“Issuer” means the financial institution or company that issues or maintains the Completion Security Fund in accordance with Section 6.1(B).

“Junior Debt” means obligations of Seller to any Person, which obligations are subordinate in priority, right of payment, and remedies to the subordinate debt secured by the Subordinated Mortgage.

“kW” shall mean kilowatt.

“Lender’s Possession Right Period” means the period of time specified in Section 10.6(B).

“Lloyds Companies” means one or more Lloyds insuring syndicates which are participants in good standing in the London insurance market, provided that such insuring syndicate sells policies providing the type of coverages required under Article 13 and Attachment I through an authorized United States agent or broker in compliance with Texas law.

“Major Maintenance Outage” means an outage resulting from scheduled major maintenance, which shall not occur more frequently than every fifth year.

"Metering Device(s)" means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the electric energy or capacity of the Facility.

"Milestone Deadline Date" means the date twelve (12) months after the Proposed Milestone Date.

"Minimum Load Level" means 75.3% of Actual Capacity on a per generating unit basis during Phase I and the level of Non-Dispatchable Capacity and Energy during Phase II.

"Minimum Steam Quantity" shall mean the maximum quantity of steam, in pounds per hour, capable of being produced by the Facility for delivery to Phillips when Facility combustion turbines are operated, without the use of duct firing, at a one hundred percent (100%) load level, as established by the testing for the Cogeneration Commercial Operation Date.

"MMBtu" means millions of Btus.

"MVAR" means megavolt-ampere reactive.

"MW" means megawatt.

"MWh" means megawatt-hour.

"NERC" means the North American Electric Reliability Council or any successor organization.

"Net Electrical Output" means all of the Facility's electric generating output (which shall not include any amount of generating output for the use of any other party, unless otherwise agreed to by Southwestern) net of the Facility's own auxiliary electrical requirements and any transmission losses between the Facility and the Interconnection Point, as measured by meters owned by Southwestern.

"Net Heat Rate" means the Net Electrical Output divided by the total fuel consumed to produce the Net Electrical Output, expressed in MMBtu per MWh.

"Net Pretax Cash Flow" shall mean, for any period, the Project Revenues less Project Expenses, with such changes in the definition of such term for the purposes of this Agreement as are set forth, consistent with the definition of Project Expenses and Project Revenues, in the Financing Documents for the Senior Debt, which changes Southwestern shall approve, such approval not to be unreasonably withheld.

"NMPUC" means the New Mexico Public Utility Commission.

"Non-Dispatchable Capacity and Energy" means that portion of the Facility's Capacity and Energy that is not subject to scheduling or control by Southwestern.

"Notice of Arbitration" means the notice given to the other Party by the Party submitting a disputed matter to arbitration.

"Offered Price" shall have the meaning set forth in Section 7.4.

"Off-Peak Hours" means all hours of a calendar day that are not On-Peak Hours.

"Off-Peak Month" means any calendar month that is not an On-Peak Month.

"On-Peak Hours" means the hour ending 0700 through the hour ending 2200 (Central Standard Time or Central Daylight Time as applicable), Monday through Saturday. Hours occurring on holidays, as observed, shall not be considered On-Peak Hours.

"On-Peak Month" means the calendar months of May, June, July, August, and September.

"Operating Committee" means one representative each from Southwestern and Seller pursuant to Section 9.2.

"Operating Records" means all agreements associated with the plant, operating logs, blueprints for construction, invoices for all equipment in the plant, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that the Seller uses or maintains for the operation of the plant.

"Payment" means the transfer of money from Southwestern to the Seller under this Agreement.

"Permitted Delay" means the sum of (i) the period of time Seller's performance or the performance of Seller's third-party contractor is delayed by any events of Force Majeure or Delivery Excuse, and (ii) the number of days after September 30, 1997, and before the Discharge Notice Date, exclusive of the number of days, if any, for which Southwestern funds construction of the Facility after September 30, 1997, pursuant to the Partial Assignment dated February 26, 1997, as amended.

"Permitted Encumbrance" means:

- (a) liens specifically permitted or required by, or created by, any Financing Document for the Senior Debt;
- (b) liens with respect to purchase money or capital lease obligations to finance Facility assets that are readily replaceable personal property with a principal balance not to exceed \$5,000,000 in the aggregate outstanding;
- (c) liens on cash collateral and related investments held as cash cover with respect to debt covered by item (b) above;
- (d) liens for taxes which are either not yet due or are the subject of a good faith contest by the Partnership;
- (e) any exceptions to title which are contained in the title policy delivered to the Senior Lender on the Construction Finance Closing Date;

(f) liens in connection with workmen's compensation, unemployment insurance, or other social security or pension obligations;

(g) mechanic's, workmen's, materialmen's, supplier's, construction or other like liens arising in the ordinary course of business or incident to the construction or imposed by law, operation, repair or restoration of the Facility (i) in respect of obligations which are not yet due or which are the subject of a good faith contest or (ii) which are subject in full to bonding arrangements or fully insured by the Facility title policy;

(h) deposits or pledges to secure statutory obligations or appeals; releases of attachments, stays of execution or injunctions; performance bids, contracts (other than for the repayment of borrowed money) or leases; or for purposes of like general nature arising in the ordinary course of business;

(i) liens provided pursuant to the Subordinated Mortgage; and

(j) liens substantially similar to any of the foregoing liens (other than in clause (e)), provided that any such lien shall not constitute a material adverse effect on the Seller or the Facility.

"Person" shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, or other entity of whatever nature.

"Phase I" means the period starting with the day after the Combustion Turbine Commercial Operation Date and ending on the Cogeneration Commercial Operation Date.

"Phase II" means the remaining Term (including, if applicable, any Extended Term) commencing the day after the Cogeneration Commercial Operation Date.

"Phillips Initial Term" shall mean the term of the Phillips Steam Agreement exclusive of any extensions or renewals of such term.

"Phillips Steam Agreement" shall mean the Steam Sales and Operating Agreement between Seller and Phillips Petroleum Company, a draft of which, dated May 7, 1997, has been provided to Southwestern, and an executed version of which is to be provided to Southwestern in accordance with Section 3.6.

"Project Debt Service" shall mean, for any period, the sum of all regularly scheduled payments due any Senior Lender with respect to the Senior Debt and any junior lender with respect to any Junior Debt (including without limitation, principle, interest, and interest rate hedging fees) with such changes in the definition of such term for the purposes of this Agreement as are set forth in the Financing Documents for the Senior Debt or Junior Debt, as applicable; which changes Southwestern shall approve, such approval not to be unreasonably withheld.

"Project Expenses" shall mean, for any period, all payments made for the debt interest and debt repayment, operation or maintenance of the Facility including, without limitation, (i) payments for Project Debt Service; (ii) payments due and payable in connection with the Facility Site; (iii) expenses of managing, administering and operating the Facility (including without limitation any management fees payable to Seller or its Affiliates), and of maintaining it in good repair and operating condition; (iv) fuel purchase procurement and transportation costs; (v) direct operating and maintenance costs of the Facility associated with the production of electricity for Southwestern (including without limitation, all payments due and payable under the Facility's operations and maintenance contract); (vi) insurance costs; (vii) all taxes payable by Seller (including, without limitation, sales and excise taxes payable by Seller with respect to the sale of electric



energy and process steam, franchise taxes payable by Seller but excluding federal, state and local income taxes payable by Seller); (viii) costs and fees incurred in connection with the obtaining and maintaining in effect any governmental approval; (ix) legal, accounting, and other professional fees incurred in connection with any of the foregoing items; (x) Facility capital expenditures made by Seller; (xi) the net amounts payable (or minus the net amounts receivable) under any foreign exchange protection agreements; and (xii) all amounts paid or contributed to a reserve account with respect to any of the foregoing or otherwise required or permitted by the Financing Documents with the Senior Lender; and any other payments reasonably consistent with the above listing, payable by Seller with a normal payment priority pursuant to the Financing Documents for the Senior Debt greater than or equal to Project Debt Service for such period, with such changes in the definition of such term for the purposes of this Agreement as shall be set forth in the Financing Documents for the Senior Debt, which changes Southwestern shall approve, such approval not to be unreasonably withheld.

“Project Lender(s)” means the lender(s) providing the initial construction and/or permanent debt financing for the Facility, and any fiscal agents, trustees, or other nominees acting on their behalf.

“Project Permits” means the authorizations, permits, approvals, and other requirements of law with which Seller must comply pursuant to Section 14.5.

“Project Revenues” shall mean, for any period, the sums of all revenue received by the Facility from any source.

“Proposed Cogeneration Commercial Operation Date” means the date set forth in Section 4.1 of this Agreement, as such date may be revised pursuant to Section 4.1

"Proposed Combustion Turbine Commercial Operation Date" means the date set forth in Section 4.1 of this Agreement, as such date may be revised pursuant to Section 4.1.

"Proposed Milestone Date" means, for the milestones set forth in Section 4.3, the date set forth by which Seller is required to achieve the specified milestone in the development of the Facility, as such date may be adjusted in accordance with the terms hereof.

"PUCT" means Public Utility Commission of Texas.

"PUHCA" means the Public Utility Holding Company Act, 15 U.S.C. Section 79 et seq.

"Qualifying Facility" or "QF" means a facility certified as a qualifying facility pursuant to § 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C.A. § 824a-3, and 18 CFR § 292.207, and their successor provisions, if any.

"RTU" means Remote Terminal Unit.

"Scheduled Outage" means any planned removal of the Facility from service or reduction in the Facility's Actual Capacity for the purpose of performing any maintenance or inspection set forth in the maintenance schedule in Section 9.3 and provided that the duration of such outage does not exceed the limits set forth in Section 9.3.

"Seller" means the owner of the Facility as designated in the first paragraph of this Agreement.

"Seller's Backup Metering" means meters maintained by the Seller that, in the event of a failure of primary Metering Devices, may be used to verify Energy and Capacity produced by the Facility.

"Seller Financing Documents" shall mean those Financing Documents executed by the Seller.

"Seller's Interconnection Facilities" means all Interconnection Facilities on Seller's side of the Interconnection Point.

"Seller's Minimum Equity Commitment" means the equity contribution described in Section 6.6.

"Senior Debt" means the obligations of the Seller to any lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing, but not any obligations with respect to the Subordinated Mortgage, Junior Debt or any portion of Seller's Minimum Equity Commitment. Whenever used in this Agreement, "Senior Debt" shall also mean the debt incurred by any transferee of Seller's interest in the Facility for the purpose of acquiring such interest, to the extent such replacement debt effectuates a refinancing of the previously outstanding Senior Debt and does not violate the restrictions on refinancing set forth in Section 6.7 of this Agreement.

"Senior Financing Documents" means Financing Documents executed by Senior Lender relating to the provision of Senior Debt.

"Senior Lender" means, collectively, any lender(s) providing any Senior Debt and any successor(s) or assigns thereto.

"Site" means the real estate upon which the Facility is to be located, as set forth in Section 2.2 and Attachment B.

"Southwestern" means Southwestern Public Service Company.

“Southwestern Disconnection” means any disconnection of the Facility by Southwestern pursuant to Section 3.3(D), other than by reason of Section 3.3(D)(6).

“Southwest Power Pool,” or “SPP,” means the regional electric reliability council (one of the nine regional councils of NERC) of which Southwestern is a member.

“Southwestern’s Interconnection Facilities” means all Interconnection Facilities on Southwestern’s side of the Interconnection Point.

“Start Payment” means the Payment for each instance Southwestern requests the facility to start up from a shut-down state, as set forth in Section 5.7, provided that such a Start Payment shall only be payable if such shut-down state was requested or solely caused by Southwestern.

“Steam Delivery Reduction” shall have the meaning set forth in Section 11.6.

“Steam Force Majeure” shall have the meaning set forth in Section 11.6

“Steam Loss Event” means the occurrence and continuation of one or more of the events described in Section 18.1.

“Steam Host Escrow Accounts” means the accounts established in accordance with Section 18.2(A), (B), and (C).

“Subsequent Steam Host” shall have the meaning set forth in Section 18.2.

“Subordinated Mortgage” shall have the meaning set forth in Section 6.5.

“Summer Capacity” shall mean the Actual Capacity of the Facility as determined for any day during an On-Peak Month pursuant to this Agreement and adjusted to reflect the Summer Temperature Adjustment.

“Summer Temperature Adjustment” shall mean the adjustment to reflect ambient temperature based upon the highest one percent (1%) of summer temperatures at the Site

as stated in the SPP Procedures for Testing and Rating of Generating Equipment as set forth in Schedule C-2.

“System Control Center,” or “SCC ” means Southwestern’s facility responsible for centralized dispatch of generating units within its control area and control of tie-line power flows.

“Term” means the period defined in Article 3.

“Termination Payment” means the Payment under Section 3.1 or Section 7.1 made in connection with Southwestern’s termination of this Agreement.

“Transmission Adder” means the increase in Capacity Payments described in Section 3.5(C)(4).

“Transmission CCN” shall have the meaning set forth in Section 3.5(C).

“Utility Grade Equipment” means equipment or components that are manufactured to a standard of durability consistent with Good Utility Practice.

“VAR” means volt-ampere reactive.

“Variable O&M Payment” means the Payment for the Facility’s variable operation and maintenance expenses as set forth in Section 5.5.

ARTICLE 2

DESCRIPTION OF THE FACILITY

2.1 Summary Description. Seller intends to construct, own, operate, and maintain an electric generating facility on a Site located near Borger, Texas, consisting of two generating units, each with a heat recovery steam generator ("HRSG"), having a combined installed electric generating capacity of approximately 216 MW and consisting of the equipment and components identified in Attachment A ("the Facility"). Capacity and Energy from the Facility will be made available to Southwestern in two phases. During Phase I, Capacity and Energy from the Facility, without the use of the HRSGs, shall be deliverable to Southwestern at the Interconnection Point. During Phase II, the Facility will be capable of functioning in a cogeneration status, and Capacity and Energy from the Facility, including the HRSGs, shall be deliverable to Southwestern at the Interconnection Point. To the extent that an expansion of the Facility involves the use of equipment or components used to provide the Capacity and Energy under this Agreement ("Common Components"), the use of such Common Components for the Facility expansion shall be on terms and conditions which shall not materially adversely affect the delivery of the Capacity and Energy to Southwestern under the terms of this Agreement, as approved by Southwestern, such approval not to be unreasonably withheld, or on such other terms and conditions as provided in the Subordinated Mortgage.

2.2 Site. The Facility shall be located at the address set forth in Schedule B-1. A Site description is set forth in Schedule B-2.

A scaled U.S.G.S. map that identifies the Facility location, the location of the thermal user, the location of the Interconnection Point identified in Section 2.3, and the location of the important ancillary facilities (e.g., transmission line(s), natural gas pipeline), is attached as Schedule B-3.

2.3 Interconnection Point. The Interconnection Point shall be located at the 115 KV bus of each generating unit's step-up transformer. The Interconnection Point shall be the point at which deliveries of Capacity and Energy under this Agreement are required to be made and measured.

2.4 Design and Construction of the Facility. The Facility shall be constructed according to Good Utility Practice and in a workmanlike, professional manner. Seller shall utilize in all respects Utility Grade Equipment. Seller's selection of any major contractors for engineering, procurement, or construction services shall be made from a list of permitted providers of such services to be approved by Southwestern, which approval shall not be unreasonably withheld.

2.5 Technical Specifications. The Facility shall be:

- (A) capable of dispatch by Automatic Generation Control;
- (B) capable of supplying power without harmonic distortion in excess of that permitted by IEEE Harmonic Standard 519;
- (C) capable of operating at an eighty-five percent (85%) lagging power factor at the Contract Capacity;
- (D) equipped with a generator excitation system with automatic voltage regulators, which shall include an over-excitation limiter;
- (E) equipped, as long as the Facility remains interconnected with Southwestern's system, with communication circuits from the Facility to Southwestern's

SCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as specified by Southwestern in accordance with Good Utility Practice;

(F) equipped with protective systems for the Facility designed in accordance with Southwestern's specifications and Good Utility Practice as required pursuant to this Agreement; and

(G) capable of providing an immediate and sustained response to abnormal frequency excursions consistent with Good Utility Practice for other plants similar to the Facility.

2.6 Contract Capacity.

(A) The Combustion Turbine Contract Capacity is the Contract Capacity, determined in accordance with this Section 2.6, that is available to Southwestern during Phase I. The Facility will be designed to have a Combustion Turbine Contract Capacity of approximately 192 MW (Net).

(B) The Cogeneration Contract Capacity is the Contract Capacity, determined in accordance with this Section 2.6, that is available to Southwestern during Phase II. The Facility will be designed to have a Cogeneration Contract Capacity of approximately 216 MW (Net).

(C) As part of the determination of whether the Combustion Turbine Commercial Operation Date and the Cogeneration Commercial Operation Date have been achieved, and at least once during every Contract Year thereafter, a capability test shall be conducted to determine the net capability of the Facility in accordance with procedures identified in Attachment C as such may be modified from time to time by mutual, written agreement of both Parties ("Capacity Test"). The results of the Capacity Test shall be adjusted to reflect ambient temperature based on the highest one percent



(1%) of Summer temperatures at the Site as stated in the SPP Procedures for Testing and Rating of Generating Equipment set forth in Schedule C-2 ("Summer Temperature Adjustment"). The results of the Capacity Test, as so adjusted, shall be the Contract Capacity of the Facility beginning on the day following any such Capacity Test and until the next subsequent Capacity Test or Capacity Retest permitted pursuant to Section 2.6(D). If, at the time of a scheduled Capacity Test, the Facility is inoperable, as a result of Force Majeure or otherwise, so that no electricity can be produced, the attempt shall nevertheless constitute a test, and the test result shall be 0 MW.

(D) By notice given to the other Party within three (3) business days after a Capacity Test, either Party may require a retest of the Capacity Test (a "Capacity Retest") upon reasonably satisfactory evidence that the actual capability of the Facility is materially different than as reflected by such Capacity Test or Capacity Retest, provided neither Party may request more than five (5) such Capacity Retests during Phase I or in any Contract Year thereafter. If, for any reason other than Excused Outage, the Actual Capacity of the Project adjusted to reflect Summer Temperature Adjustment shall be less than eighty percent (80%) of the Contract Capacity for any continuous six (6) week period, Southwestern may require a Capacity Retest. If, at the time of any scheduled or proposed Capacity Test or Capacity Retest, the Facility is not operable, or its output is materially affected by any condition which can be remedied by maintenance, repair or reconstruction, which can be accomplished before the next scheduled Capacity Test, a Capacity Retest shall be conducted as promptly as practicable after Seller notifies Southwestern that the condition has been corrected. Capacity Retests in any Contract Year shall be performed without peak firing of the Facility so long as the initial Capacity Test for the Contract Year did not evidence any material misperformance of the Facility's

peak firing capability. In determining Contract Capacity from a Capacity Retest performed without peak firing, the net capability of the Facility shall be adjusted to reflect the net capability that would have resulted if the Facility had been tested with peak firing. The results of a Capacity Retest (as also adjusted in accordance with Section 2.6(C)) shall be the Contract Capacity of the Facility beginning on the day following any such Capacity Retest until the next subsequent Capacity Test or permitted Capacity Retest.

(E) After the Cogeneration Commercial Operation Date, the scheduled date for the annual Capacity Test shall be set by Southwestern, with Seller's approval, not to be unreasonably withheld, so as to occur approximately one (1) year apart. Seller shall cause each such annual Capacity Test to be conducted within fourteen (14) business days of the date scheduled by Southwestern. Any Capacity Test or Capacity Retest shall be made upon no less than two (2) business days prior notice to the other Party. The cost of the initial Capacity Tests in connection with achieving Combustion Turbine Commercial Operation and Cogeneration Commercial Operation and the Capacity Test in any Contract Year thereafter shall be borne by the Seller, with the cost of any Capacity Retest borne by the requesting Party.

(F) Notwithstanding any expansion of the Facility by Seller, in no event shall the Contract Capacity exceed the approximately 216 MW that the Facility initially is being designed to produce, unless Southwestern consents to a greater Contract Capacity, such consent not to be unreasonably withheld. If Southwestern does not consent to such greater Contract Capacity, the parties will negotiate such amendments to this Agreement as are necessary to reflect the Facility's ability to produce capacity greater than approximately 216 MW as to which Southwestern is not obligated to purchase.

(G) Southwestern may Dispatch the Facility up to its Actual Capacity, even if the Actual Capacity exceeds the Contract Capacity.

2.7 Performance Requirements. The Seller intends to cause the Facility's AF on a twelve (12) month rolling average basis to meet or exceed 0.920 (measured over all hours) and, on the basis of a five (5) month rolling average of only the On-Peak Months, to meet or exceed 0.950 (measured over only On-Peak Hours). Seller shall use reasonable efforts to maintain an AF above the minimum thresholds given in this Section 2.7.

2.8 Fuels. The primary fuel that shall be burned by the Facility is natural gas.

ARTICLE 3

OBLIGATION TO PURCHASE

3.1 Term. The term of this Agreement ("Term") shall commence on the execution of this Agreement and shall continue for a period of twenty-five (25) years from the Cogeneration Commercial Operation Date ("Initial Term") subject to termination or extension pursuant to this Agreement. Southwestern shall have the option to extend the Term of the Agreement beyond the Initial Term for ten (10) years ("Extended Term"). Southwestern may so extend the Term by providing three (3) years notice to Seller prior to the expiration of the Initial Term. Thereafter, Southwestern may terminate the Extended Term by providing the following notice and, if applicable, termination payment:

<u>Notice</u>	<u>Termination Payment</u>
4 years	Zero
3 years	33.3% of last Contract Year Capacity Payments
2 years	66.7% of last Contract Year Capacity Payments
1 year	100.0% of last Contract Year Capacity Payments

Applicable provisions of this Agreement shall continue in effect after termination of the Term to the extent necessary to provide for disconnection of the Facility from Southwestern's electric system, final billings and adjustments related to the period prior to termination, repayment of any money due and owing Southwestern, and the indemnifications specified in Article 13.

3.2 Sale and Purchase of Energy and Capacity.

(A) Energy.

(1) Beginning on the day after the Combustion Turbine Commercial Operation Date, Seller shall sell and Southwestern shall buy the entire Net

Electrical Output delivered from the Facility to the Interconnection Point at the prices set forth in Section 5.4 and Attachment F and subject to the terms and conditions of this Agreement, including, but not limited to, the Dispatch provisions. Energy Payments shall begin (i) for Phase I, on the day after the Combustion Turbine Commercial Operation Date and (ii) for Phase II, on the day after the Cogeneration Commercial Operation Date.

(2) Southwestern shall buy Energy made available by Seller from the Facility during testing prior to the Combustion Turbine Commercial Operation Date, up to a maximum monthly capacity factor of ten percent (10%) applied to a Combustion Turbine Contract Capacity of 192 MW, or such greater capacity factor as required for the testing necessary to cause the Combustion Turbine Commercial Operation Date to occur, at the price set forth in Section 5.8. Notwithstanding Southwestern's right to direct the Dispatch and shut down of the Facility during Phase I in accordance with Section 3.3(B), and notwithstanding the prices for Energy during Phase I set forth in Section 5.4, Southwestern shall buy Energy made available by Seller from the Facility during testing for Cogeneration Commercial Operation up to a maximum monthly capacity factor of fifty percent (50%) applied to a Cogeneration Contract Capacity of 216 MW, or such greater capacity factor as required for the testing necessary to cause the Cogeneration Commercial Operation Date to occur, at the price set forth in Section 5.8.

(B) Capacity. Seller shall sell and Southwestern shall buy electric Capacity delivered from the Facility to the Interconnection Point in accordance with the payment provisions set forth in Section 5.2 and Attachment F and subject to the terms and conditions of this Agreement. Capacity Payments shall begin (i) for Phase I, on the day after the Combustion Turbine Commercial Operation Date, and (ii) for Phase II, on the day after the Cogeneration Commercial Operation Date.

(C) Backup and Maintenance Power. This Agreement does not provide for any electric service by Southwestern to the Facility. The Seller may request such service in accordance with the applicable electric tariffs on file with and authorized by the regulatory authorities having jurisdiction.

3.3 Operation of the Facility.

(A) The Capacity and Energy sold to Southwestern hereunder will be of a type known as three-phase alternating current with a nominal frequency of sixty (60) hertz and a nominal voltage of 115 kV measured phase to phase at the Interconnection Point. Seller shall cause its deliveries of Capacity and Energy to be consistent with Good Utility Practice with respect to maintenance of frequency and avoidance of voltage transients.

(B) Southwestern shall have operating control over the amount of Capacity and Energy to be generated by the Facility and may direct the Dispatch of the Facility in accordance with the terms of this Agreement, the Project Permits, Good Utility Practice, and based on economic, safety, and reliability considerations. Southwestern may dispatch the Facility between its Minimum Load Level and Actual Capacity, and, during Phase I but not Phase II, Southwestern shall have the ability to ask that the Facility be shut down or started up, whether by voice or telefacsimile communication from Southwestern's SCC in accordance with the operating procedures specified in Attachment H.

(C) The AGC equipment initially installed will have the capability to automatically change the load on the Facility through the use of pulse output from an RTU (or successor technology) located at the Facility and change the VAR output or intake of the Facility as defined in Section 9.5 of this Agreement.

(D) Southwestern shall have the right, exercisable in accordance with the requirements of this Section 3.3, to disconnect the interconnection of the Facility with Southwestern's system and discontinue electric service from the Facility:

(1) during an Emergency on Southwestern's system; or  
(2) if, in the reasonable judgment of Southwestern, such disconnection is necessary to prevent damage to its equipment or the equipment of its customers or to maintain electric service to its customers; or

(3) if, in the reasonable judgment of Southwestern, such disconnection is required to permit (a) repairs to Southwestern's system, (b) new construction, or (c) the connection of other lines, customers, or producers of capacity and energy; or

(4) if, in the reasonable judgment of Southwestern, such disconnection is required for equipment maintenance or to facilitate restoration of line outages; or

(5) if, in the reasonable judgment of Southwestern, such disconnection is necessary for the operation of Southwestern's system consistent with Good Utility Practice; or

(6) if, in the reasonable judgment of Southwestern, such disconnection is necessary to prevent damage to its equipment or customer's equipment or injury or danger to persons as a result of the Seller's failure to operate the Facility pursuant to the requirements of this Agreement.

(E) Seller shall bear any extraordinary cost incurred by Southwestern, as a result of any disconnection or resulting reconnection to the extent made pursuant to Section 3.3(D)(6). An extraordinary cost is a cost directly and reasonably incurred by

Southwestern that would not have been incurred by Southwestern absent the existence of the Facility and such disconnection.

(F) Subject to Section 3.3(G), Southwestern's obligations to accept and purchase Energy and make Energy Payments shall be suspended during any period of disconnection or discontinuance occasioned by the events in Sections 3.3(D)(1) through (D)(6) above;

(G) Southwestern shall (i) use ordinary care to avoid and minimize interruptions in the acceptance of Capacity and Energy, (ii) use ordinary care to coordinate any interruptions with scheduled outages or maintenance of the Facility, (iii) keep Seller fully informed as to the anticipated duration of each interruption, and (iv) resume purchase of Capacity and Energy from Seller as soon as practicable once the condition resulting in the interruption has abated sufficiently to permit such resumption.

#### 3.4 Seller's Required Approvals.

(A) Seller shall obtain and maintain: (i) the necessary approvals to construct and operate the Facility in accordance with this Agreement from such regulatory bodies as required by law; and (ii) subject to the proviso in Section 18.1(F), certification of the Facility as a QF. Seller shall not be deemed in default of this obligation to the extent Seller is diligently contesting, in good faith and through appropriate proceedings, the interpretation, jurisdiction, or other order of regulatory authorities.

(B) For so long as the ownership of Seller would require Southwestern to obtain approval to make purchases from Seller as an affiliated EWG, Seller shall not apply for a determination that it is an EWG unless: (1) Seller no longer is a QF or reasonably determines it will fail to continue to qualify as a QF; (2) Seller has provided



notice to Southwestern that it intends to seek such a determination; and (3) Southwestern has obtained all determinations and approvals, if any, required in order for it to purchase electric energy from Seller as an EWG.

(C) Seller shall make all reasonable efforts to obtain a modification to the Facility's air permit to increase, to the maximum extent possible, the number of hours during which power augmentation of the Facility is permitted.

3.5 Contract Certification or Approval.

(A) Notwithstanding anything to the contrary in other parts of this Agreement, each of Southwestern's obligations under this Agreement and each of Seller's obligations under this Agreement are contingent upon Southwestern's determination that it has received the regulatory certifications and approvals from the PUCT and the NMPUC which it reasonably believes are necessary in order for it to undertake its obligations under this Agreement or that it does not need such certifications or approvals that it has not already obtained in order to undertake its obligations under this Agreement. Notwithstanding the immediately preceding sentence, Southwestern and Seller shall undertake in good faith all activity prior to such Southwestern determination that such party believes, in its sole discretion, is necessary to be undertaken, prior to such determination, to honor any obligation imposed on Southwestern or Seller by this Agreement. In Southwestern's sole discretion, Southwestern may file this Agreement for certification or approval with the PUCT and NMPUC. To the extent such filings are made, they shall be made promptly following execution of this Agreement and, in such event, Southwestern shall use all reasonable efforts to obtain certifications or approvals from the PUCT and NMPUC, as applicable, on or before September 30, 1997. Seller shall cooperate with Southwestern in all such filings and efforts to obtain such

certifications or approvals. Upon Southwestern's determination that it has received, in a form satisfactory to Southwestern, the certifications or approvals which it believes are necessary in order for it to undertake its obligations under this Agreement or that it does not need certifications or approvals that it has not already obtained in order for it to undertake its obligations under this Agreement, Southwestern shall notify Seller that the condition of this Section 3.5 is discharged ("Discharge Notice"). Such notice may be provided in writing to Seller and shall be effective on the date of receipt by Seller ("Discharge Notice Date"), provided that the Discharge Notice Date shall be no earlier than three (3) months after the date of this Agreement as set forth in the first paragraph of this Agreement.

(B) If the Discharge Notice Date has not occurred by January 1, 1998, then the Parties agree to use best efforts and negotiate in good faith to agree upon a mutually satisfactory, commercially reasonable amendment to this Agreement which either would enable Southwestern expeditiously to obtain certifications or approvals satisfactory to Southwestern or would make such certifications or approvals legally and commercially unnecessary to Southwestern's performance of this Agreement. Thereafter, upon Southwestern's determination that it has received, in a form satisfactory to Southwestern, the certifications or approvals which it believes are necessary in order for it to undertake its obligations under this Agreement or that it does not need certifications or approvals that it has not already obtained in order for it to undertake its obligations under this Agreement, Southwestern shall provide a Discharge Notice to Seller. After January 1, 1999, either Party may, upon thirty (30) days notice, terminate this Agreement without liability, if the Discharge Notice Date has not occurred.

(C) (1) Within three (3) months following the execution of this Agreement, Southwestern shall file with the PUCT an application for a certificate of convenience and necessity for all of Southwestern's Interconnection Facilities (the "Transmission CCN"), including all transmission line additions required for Southwestern to accept the Estimated Phase II Actual Capacity at the Interconnection Point. If the PUCT fails to approve the Transmission CCN for Southwestern's Interconnection Facilities by February 1, 1998, then the Seller shall take over construction of Southwestern's Interconnection Facilities pursuant to this Section 3.5(C).

(2) Southwestern's Interconnection Facilities shall be designed and constructed in accordance with Southwestern's plans and specifications which shall be consistent with Southwestern's construction practices and Good Utility Practice. If Seller becomes obligated to take over construction of Southwestern's Interconnection Facilities pursuant to this Section 3.5(C), then Southwestern shall provide such plans and specifications to Seller promptly after request by Seller. Notwithstanding the fact that Seller has taken over such construction, Southwestern shall continue to exercise due diligence to obtain the required regulatory approvals, if any, to complete any modifications to its existing facilities to interconnect with Southwestern's Interconnection Facilities and the required regulatory approvals to purchase Southwestern's Interconnection Facilities from Seller.

(3) If Seller becomes obligated to take over construction of Southwestern's Interconnection Facilities pursuant to this Section 3.5(C), then Southwestern shall promptly transfer to Seller all right, title, and interest in such construction, including assignment of all related easements, transfer of all related assets, and assignment of all rights, contracts, and other such interests at the actual net book

cost. Seller shall operate Southwestern's Interconnection Facilities only as generator leads unless another mode of operation is approved by Southwestern or required by regulatory order. At any time during or after Seller's construction of Southwestern's Interconnection Facilities, Southwestern may require Seller to sell, or Seller may require Southwestern to purchase, Southwestern's Interconnection Facilities at their actual net book cost, subject to Southwestern obtaining necessary regulatory approval for such purchase. Net book cost shall include, without limitation, any interest during construction incurred by a Party and attributable to Southwestern's Interconnection Facilities.

(4) If Southwestern's Interconnection Facilities are constructed by Seller and Southwestern shall fail to purchase Southwestern's Interconnection Facilities on or before the Combustion Turbine Commercial Operation Date and/or the Cogeneration Commercial Operation Date, then deliveries of Capacity and Energy shall be made at the points at which Southwestern's Interconnection Facilities interconnect with Southwestern's existing facilities, and Southwestern's Capacity Payments to Seller shall be increased as provided in Schedule F-1 (the "Transmission Adder"). In such event, the Transmission Adder shall remain in effect until and unless Southwestern shall purchase Southwestern's Interconnection Facilities from Seller pursuant to Section 3.5(C)(3). Upon such purchase, deliveries of Capacity and Energy shall resume at the Interconnection Point identified in Section 2.3.

(5) The failure or refusal of the PUCT to issue the Transmission CCN shall not be deemed by either Party to constitute cause to terminate this Agreement unless both Parties mutually and expressly so agree.

3.6 Phillips Steam Agreement. (A) No later than June 30, 1997, Seller shall provide to Southwestern an executed copy of the Phillips Steam Agreement. The use of the executed version of the Phillips Steam Agreement for the purposes of Southwestern's rights and obligations under Sections 11.6 and Article 18 of this Agreement is contingent upon there being no changes in the Phillips Steam Agreement from the draft dated May 7, 1997, that has been provided to Southwestern, which would materially adversely affect Southwestern's rights and obligations under this Agreement (an "Adverse Steam Revision"). If Southwestern, within twenty (20) days of receipt of such executed agreement, reasonably determines that there has been such a change in the Phillips Steam Agreement which would constitute an Adverse Steam Revision, then Seller and Southwestern shall immediately negotiate in good faith such amendments to this Agreement which would cure such adverse effect. If Seller and Southwestern fail to agree on such amendments the provisions of Section 11.6 and Article 18 shall be applied as if the terms of the Phillips Steam Agreement as they existed in the draft dated May 7, 1997, were in effect and without regard to any Adverse Steam Revision to which Southwestern has made timely objection under this Section 3.6(A).

(B) Seller shall provide Southwestern with a copy of any proposed amendments to the Phillips Steam Agreement (or, if applicable, any proposed agreement with a Subsequent Steam Host or proposed amendments thereto) for Southwestern's review and comment pursuant to this Section 3.6(B). Within twenty (20) days after receipt of such copy, Southwestern shall provide Seller with its objection to any provision of such amendment or agreement which would constitute an Adverse Steam Revision and Southwestern's proposed change to such provision. Upon timely receipt of Southwestern's objection under this Section 3.6(B), Seller and Southwestern shall

negotiate in good faith such amendments to this Agreement as would cure such adverse effect. If Southwestern and Seller fail to reach agreement on such amendments, the provisions of Section 11.6 and Article 18 shall be applied without regard to any Adverse Steam Revision to which Southwestern has made timely objection under this Section 3.6(B).

(C) Any amendment or agreement subject to Section 3.6(A) or (B) to which Southwestern does not timely object, including any Adverse Steam Revision, shall be deemed accepted by Southwestern for the purposes of this Section 3.6, Section 11.6, and Article 18 of this Agreement. Southwestern shall not unreasonably object to an Adverse Steam Revision in an initial agreement with a Subsequent Steam Host.

ARTICLE 4

MILESTONES AND SCHEDULE

4.1 Proposed Commercial Operation Dates. Seller shall use every reasonable effort to cause the Facility to achieve Combustion Turbine Commercial Operation by the Proposed Combustion Turbine Commercial Operation Date. The Proposed Combustion Turbine Commercial Operation Date is June 1, 1998, or such later date as results from any Permitted Delay. Seller shall use every reasonable effort to cause the Facility to achieve Cogeneration Commercial Operation by the Proposed Cogeneration Commercial Operation Date. The Proposed Cogeneration Commercial Operation Date is December 31, 1998, or such later date as shall result from a Permitted Delay. If it is reasonably determined that either the Combustion Turbine Commercial Operation Date or Cogeneration Commercial Operation Date will be delayed beyond the Proposed Combustion Turbine Commercial Operation Date or Proposed Cogeneration Commercial Operation Date, as applicable, without Seller's use of labor overtime, every reasonable effort shall include the use of such labor overtime as reasonably necessary and effective to overcome such delay.

4.2 Recourse for Delays.

(A) If Combustion Turbine Commercial Operation is not achieved by the Proposed Combustion Turbine Commercial Operation Date, as originally specified or as extended by Permitted Delay, but is achieved prior to the date that would constitute an Event of Default, as defined in Article 10, Seller shall reimburse Southwestern for such delay damages as required pursuant to Section 6.2, or Southwestern shall be entitled to withdraw and retain such monies from the Completion Security Fund as permitted pursuant to Section 6.2.

(B) If Cogeneration Commercial Operation is not achieved by the Proposed Cogeneration Commercial Operation Date, as originally specified or as extended by Permitted Delay, but is achieved prior to the date that would constitute an Event of Default as defined in Article 10, Seller shall pay Southwestern for such delay damages as required pursuant to Section 6.2, or Southwestern shall be entitled to withdraw and retain such monies from the Completion Security Fund permitted pursuant to Section 6.2.

4.3 Proposed Milestone Dates. Proposed Milestone Dates are as provided for in the following paragraphs or such later date as shall result from any Permitted Delay:

(A) *EPC Contract*. No later than five (5) months after the date of execution of this Agreement, Seller shall provide Southwestern with an executed EPC Contract for the Facility.

(B) *Site Acquisition*. No later than three (3) months after the date of execution of this Agreement, Seller shall: (i) obtain a leasehold estate for the Site with a term at least equal to the Initial Term and the Extended Term; and (ii) provide to Southwestern evidence of such site acquisition in such form as Southwestern may reasonably require.

(1) The Site shall be reasonably accessible for the construction and maintenance of Southwestern's Interconnection Facilities required by this Agreement.

(2) Prior to acquisition, Seller shall cause the Site to be inspected for the attributes listed below, and shall not acquire the Site unless it obtains the representation or the indemnity of the Site owner (in form and substance reasonably satisfactory to Southwestern) to the effect that (a) no Hazardous Materials (as defined below) have been located in or on the Site or have been released by previous occupants



into the environment, or discharged, placed, or disposed of at, on, or under the Site; (b) no underground storage tanks are or have been located in or on the Site; (c) the Site has not been used as a dump or storage or transfer facility for waste material of any kind, including, but not limited to, solid or hazardous waste; (d) the Site complies with, and at all times has complied with, all applicable governmental laws, regulations, or requirements relating to environmental or occupational health and safety matters and Hazardous Materials, to the extent that noncompliance could result in a lien on the Site or the Facility or liability of Seller; and (e) there are no incinerators or cesspools on the Site; all waste is discharged into a government-approved sewage disposal system; and no Hazardous Materials are discharged from the Site, directly or indirectly, into any body of water. The term "Hazardous Materials" shall mean any substance, material, water, gas, or particulate matter that is regulated by any local governmental authority, any applicable state, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including, but not limited to, any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of local, state, or federal law, (ii) petroleum; (iii) asbestos; (iv) polychlorinated biphenols; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1251); (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6901); (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. §

9601); (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (15 U.S.C. § 2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq. (7 U.S.C. § 136). The term “all applicable governmental laws” in this Section 4.3(B)(2) shall include all statutes specifically described in the foregoing sentence and all federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials.

(3) Seller shall provide Southwestern evidence reasonably satisfactory to Southwestern of: (a) the characteristics of lessor’s title to the Site; (b) that the title is unencumbered by easements, attachments, or liens other than Permitted Encumbrances; (c) that the lessor has duly authorized the execution, delivery, and performance of the lease; (d) that lessor’s performance of the lease is not subject to the occurrence or nonoccurrence of any event or contingency other than force majeure, milestones, and Seller’s defaults; (e) that the lease conveys all rights, title, and interests in the Site necessary for Seller to perform the terms and conditions of this Agreement including, without limitation, ancillary services (such as raw water) and easements of proper duration and scope; (f) that the Seller has duly authorized the execution, delivery, and performance of the lease; (g) Seller’s performance of the lease is not subject to the occurrence or nonoccurrence of any event or contingency other than force majeure, milestones, and lessor defaults; and (h) that the lease allows assignment of Seller’s rights thereunder to Southwestern in the event Southwestern exercises its rights to purchase or operate the Facility, notwithstanding any defaults by lessee under the lease, provided that Southwestern cure any such lessee defaults.

(C) *Financial Closing.* No later than three (3) months after the Discharge Notice Date, Seller shall provide Southwestern with an executed loan agreement or bond indenture for the Senior Debt sufficient to cover the estimated cost to complete the construction of the Facility (“Financial Closing”).

(D) *Construction Commitment.* No later than one (1) month after Financial Closing, Seller shall issue a notice to proceed under the EPC Contract.

(E) *Set Generating Equipment.* No later than three (3) months after Financial Closing, Seller shall provide Southwestern with a certification that the Facility generating equipment has been set.

(F) *Set HRSGs.* No later than ten (10) months after Financial Closing, Seller shall provide Southwestern certification that the Facility HRSGs have been set.

4.4 Certain Milestone Matters.

(A) *Notification.* Seller shall notify Southwestern monthly of the status of achieving each milestone set forth in Section 4.3.

(B) *Milestone Deadline Dates.* The Milestone Deadline Date for each milestone in Section 4.3 shall be twelve (12) months after the Proposed Milestone Date.

4.5 Construction Schedule and Proposed Contractor Milestone Dates. Not less than thirty (30) days prior to starting construction of the Facility, Seller shall submit for Southwestern’s review its construction schedule, which shall set forth proposed dates for the EPC Contractor’s achievement of certain levels of progress in completing the Facility (the “Contractor Milestone Dates”). The Contractor Milestone Dates shall be included in this Agreement as Attachment J and shall be adjustable for events of Force Majeure and Delivery Excuse. Seller shall also submit to Southwestern its projected start-up and test schedules for the Facility thirty (30) days prior to start-up and testing dates for the Facility

for Phase I and Phase II, respectively. Once construction of the Facility commences, Seller shall submit to Southwestern progress reports in a form reasonably satisfactory to Southwestern on the first day of every month until the Facility commences Cogeneration Commercial Operation. These progress reports shall notify Southwestern of any changes in the Contractor Milestone Dates and the construction or start-up and testing schedule for the Facility resulting from Force Majeure or Delivery Excuse.

4.6 Southwestern's Rights During Construction. Southwestern shall have the right to monitor the construction, start-up, and testing of the Facility. Seller shall allow physical inspections of the Facility and all documents related to construction, start-up, and testing as may be reasonably requested by Southwestern during and after completion of construction for the exercise of Southwestern's review rights hereunder. Southwestern's technical review and inspection of the Facility shall not be construed as endorsing the design thereof or as any warranty of the safety, durability, or reliability of the Facility.

4.7 Conditions to Combustion Turbine Commercial Operation Date. The occurrence of the Combustion Turbine Commercial Operation Date shall be no earlier than May 1, 1998, and is contingent upon Seller providing evidence reasonably acceptable to Southwestern of the satisfaction or occurrence of all of the following conditions:

- (A) completion of successful acceptance testing of the Facility (excluding the HRSGs) has occurred as required pursuant to the Seller Financing Documents;
- (B) the Facility (excluding the HRSGs) has demonstrated the reliability of any communications systems and equipment for communications with Southwestern's

SCC required to be provided by Seller pursuant to this Agreement not less than thirty (30) days prior to the Combustion Turbine Commercial Operation Date;

(C) the Facility (excluding the HRSGs) has generated electricity continuously for a period of two (2) consecutive hours synchronized to the Southwestern system at a level equal to at least 173 MW and successfully completed five (5) consecutive startups and shutdowns;

(D) an independent engineer's certification has been obtained stating that (1) the Facility (excluding the HRSGs) has been completed in all material respects (excepting, e.g., punch list items that do not materially adversely affect the ability of the Facility (excluding the HRSGs) to operate in Phase I as intended hereunder) in accordance with Good Utility Practice, and (2) the Facility (excluding the HRSGs) has been designed and constructed in accordance with Good Utility Practice and if operated and maintained in accordance with Good Utility Practice can reasonably be expected to have a useful life at least equal to the Initial Term and the Extended Term;

(E) the Facility is certified as a QF (which certification may be satisfied by Seller's filing of a notification of self-certification with the FERC);

(F) security arrangements meeting the requirements of Section 6.5 have been established;

(G) certificates of insurance coverages or insurance policies required by Article 13 have been obtained;

(H) an opinion of Seller's counsel has been rendered that all permits, licenses, approvals, and other governmental authorizations required for the construction and operation of the Facility (excluding the HRSGs) in accordance with this Agreement have been obtained; and

(l) the electrical interconnection of the Facility (excluding the HRSGs) to the Southwestern system has been completed in accordance with Good Utility Practice.

4.8 Conditions to Cogeneration Commercial Operation Date. The occurrence of the Cogeneration Commercial Operation Date is contingent upon Seller providing evidence reasonably acceptable to Southwestern of the satisfaction or occurrence of all of the following conditions:

(A) completion of successful acceptance testing of the Facility has occurred pursuant to the requirements of the Seller Financing Documents;

(B) the Facility has demonstrated the reliability of the Facility's communications systems and equipment for communications with Southwestern's SCC required to be provided by Seller pursuant to this Agreement not less than thirty (30) days prior to the Cogeneration Commercial Operation Date;

(C) the Facility has generated electricity continuously for a period of twenty-four (24) consecutive hours synchronized to the Southwestern system at a level equal to at least 194 MW;

(D) an independent engineer's certification has been obtained stating that the Facility has been completed in all material respects (excepting, e.g., punch list items that do not materially adversely affect the ability of the Facility to operate in Phase II as intended hereunder) in accordance with Good Utility Practice, and the Facility has been designed and constructed in accordance with Good Utility Practice and if operated and maintained in accordance with Good Utility Practice can reasonably be expected to have a useful life at least equal to the Initial Term and the Extended Term;

(E) the Facility is certified as a QF (which certification may be satisfied by Seller's filing of a notification of self-certification with the FERC);

(F) security arrangements meeting the requirements of Section 6.5 have been established;

(G) certificates of insurance coverages or insurance policies required by Article 13 have been obtained;

(H) an opinion of Seller's counsel has been rendered that all permits, licenses, approvals, and other governmental authorizations required for the construction and operation of the Facility in accordance with this Agreement have been obtained; and

(I) the electrical interconnection of the Facility to the Southwestern system has been completed in accordance with Good Utility Practice.

ARTICLE 5

PAYMENT AND BILLINGS

5.1 General Terms and Conditions. Subject to the other terms and conditions of this Agreement, payment for purchases by Southwestern from Seller under this Agreement shall consist of the sums of (i) a Capacity Payment, (ii) a Fixed O&M Payment, (iii) an Energy Payment, (iv) a Variable O&M Payment, and (v) Start Payments (when applicable), less a Seller Charge, all as defined below and further specified in Attachment F.

5.2 Capacity Payments.

(A) During Phase I, Southwestern shall accept, purchase, and pay for the Contract Capacity, as determined pursuant to Section 2.6(C) or, if applicable, Section 2.6(D), at the rate specified in Schedule F-1.

(B) During Phase II, Southwestern shall accept, purchase, and pay for the Contract Capacity as determined pursuant to Section 2.6(C) or, if applicable, Section 2.6(D), at the rate specified in Schedule F-1, subject to the adjustment described in Section 5.2(C).

(C) Starting in the second Contract Year, each monthly Capacity Payment from Southwestern to Seller will be adjusted for AF as follows:

(i) If a) the twelve (12) month rolling average AF is less than or equal to 0.920 but greater than 0.600 and the months over which the twelve (12) month rolling average AF is computed do not contain a Major Maintenance Outage, or b) the twelve (12) month rolling average AF is less than or equal to 0.900 but greater than 0.600 and the months over which the twelve (12) month rolling average AF



is computed contain a Major Maintenance Outage, then the Capacity Payment will be multiplied by a factor expressed as a three place decimal equal to:

$$\frac{9AF-0.280}{8}$$

(ii) If the twelve (12) month rolling average AF is greater than 0.960, then the Capacity Payment will be multiplied by a factor expressed as a three place decimal equal to:

$$AF + 0.040$$

(iii) If a) the twelve (12) month rolling average AF is less than or equal to 0.960 but greater than 0.920 and the months over which the twelve (12) month rolling average AF is computed do not contain a Major Maintenance Outage, or b) the twelve (12) month rolling average AF is less than or equal to 0.960 but greater than 0.900 and the months over which the twelve (12) month rolling average AF is computed contain a Major Maintenance Outage, then the Capacity Payment will be multiplied by a factor equal to:

$$1.000$$

(iv) Notwithstanding the twelve (12) month rolling average AF calculated in (i) through (iii), above,

(a) If the five (5) month rolling average AF calculated for the On-Peak Hours of the On-Peak Months is less than or equal to 0.950 but greater than 0.600, then the Capacity Payment will be multiplied by a factor expressed as a three place decimal equal to:

$$\frac{8AF-0.600}{7}$$

if such factor is less than the factor calculated in (i), (ii), and (iii), above.

(b) If the five (5) month rolling average AF calculated for the On-Peak Hours of the On-Peak Months is greater than 0.970, then the Capacity Payment will be multiplied by a factor equal to:

$$AF + 0.030$$

if such factor is less than the factor calculated in (i), (ii), and (iii), above.

(c) If the five (5) month rolling average AF calculated for the On-Peak Hours of the On-Peak Months is less than or equal to 0.970 but greater than 0.950, then the Capacity Payment will be multiplied by a factor equal to:

$$1.000$$

if such factor is less than the factor calculated in (i), (ii), and (iii), above.

(d) For purposes of this Section 5.2(C)(iv), the "five (5) month rolling average AF" refers to the average of the monthly AF calculated for the On-Peak Hours of each of the last five (5) On-Peak Months.

(v) In all events, no Capacity Payment will be made for those months in which either a) the twelve (12) month rolling average AF is less than or equal to 0.600 or b) the five (5) month rolling average AF calculated for the On-Peak Hours of the On-Peak Months is less than or equal to 0.600.

5.3 Fixed O&M Payment. During Phase II only, a Fixed O&M Payment will be made at the price set forth in Schedule F-2 applied to the Contract Capacity as determined pursuant to Section 2.6(C) or, if applicable, Section 2.6(D).

5.4 Energy Payments.

(A) Energy Payments will be made at a rate computed for each hour in accordance with the following formula:

$$\text{Hourly Energy Payments} = (\text{Fuel Price}) \times (\text{Guaranteed Heat Rate}) \\ \times (\text{Hourly Energy})$$

Where:

Fuel Price = The price for fuel in the hour under the Fuel Agreements, expressed in dollars per MMBtu. The Fuel Price shall encompass all actual costs for delivered fuel, including without limitation, fixed fuel transportation cost, variable fuel transportation cost, variable fuel cost, reservation charges and taxes under the Fuel Agreements. Fixed charges under the Fuel Agreements shall be allocated to the Fuel Price in such a manner as to accomplish complete recovery of all fixed charges in the month through the Energy Payment for the month.

Guaranteed Heat Rate = The Heat Rates specified on Schedule F-4.

Hourly Energy = The Energy delivered in the hour to the Interconnection Point

The Energy Payment for a month is the sum of all Hourly Energy Payments calculated for such month.

(B) Southwestern shall use a standard sixty (60) minute clock hour interval, as measured by its metering equipment, as the basic billing increment for the purpose of calculating the Energy Payment due to Seller.

(C) Energy delivered shall be determined by Southwestern based on data collected by the billing meters and associated equipment detailed in Article 8.

5.5 Variable O&M Payment. During Phase II only, a variable O&M Payment will be made at the price set forth in Schedule F-3 applied to the Energy delivered to the Interconnection Point.

5.6 Seller Charge. For each calendar month, commencing with the Discharge Notice Date, Southwestern shall assess a charge of \$320.00 as reimbursement for expenses not otherwise expressly provided for in this Agreement. This amount shall be adjusted annually by the rate of change over such annual period in the GDPIPD.

5.7 Start Payments. Seller will be paid for Start Payments in accordance with Schedule F-5 provided that such Start Payments shall only be payable if the shut-down state was requested or solely caused by Southwestern.

5.8 Pre-Commercial Operation Energy. If pursuant to Section 3.2(A) Southwestern buys Energy from the Seller during testing prior to the Combustion Turbine Commercial Operation Date or during testing prior to the Cogeneration Commercial Operation Date, then Southwestern shall pay Seller for such Energy at a rate per MWh that shall be equal to the Adjusted Non-Firm Energy Cost set out in Schedule F-6 calculated for the period during which such Energy was provided.

5.9 Manner of Payment.

(A) Payments. All Payments shall be made monthly, as described in this Article 5. Remittances shall be made by check or by Electronic Funds Transfer, or wire transfer, as specified in writing by the Party to whom payment is due at least thirty (30) days prior to the effective date of such instruction.

(B) Statement. Southwestern shall prepare a statement showing purchases by Southwestern from the Facility and associated payments, and any charges to Seller, including any damages or other payments due from Seller to Southwestern

under the terms of this Agreement, and shall provide the statement to Seller within ten (10) calendar days of the end of the month.

(1) The statement will show the MWh of Energy metered at Southwestern's meters at the Facility, the Combustion Turbine Contract Capacity or Cogeneration Contract Capacity, as applicable, the adjustment factor in accordance with Section 5.2(C), damages for Capacity Shortfalls in accordance with Section 6.3, the monthly Seller charge assessed by Southwestern, the total amount due and, upon request, any other published data reasonably pertinent to the calculation of the payments as set forth in Section 5.

(2) If either Party has not paid the amount due the other Party by the applicable late payment charge date set forth in Section 5.9(C), then the Party to which such overdue amount is due, at its option, may exercise the right of offset and deduct the sums owed by the other Party from payments remaining due to such Party. If Southwestern elects to apply any amounts owed against the Seller as provided herein, then Southwestern's statement shall additionally contain an itemization of the amounts owed by Seller to Southwestern that are and are not applied. Any amount shown on such statement which is payable and actually paid from a Security Fund as provided in Article 6, shall be indicated as so paid on such statement.

(C) Late Charges. Any amounts due Seller or Southwestern, as the case may be, shall be due and payable within fifteen (15) days after receipt of the statement setting forth such amount. If the amount due is not paid by the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing. Such late payment charge shall be calculated based on the Contract Interest Rate.

(D) Billing Disputes. Both Southwestern and Seller, may dispute bills in good faith and place the disputed amount in an escrow account until the disputes are resolved pursuant to Section 16.12 hereof. Any interest earned on the amount in escrow shall be allocated to the Parties in proportion with the settlement of the disputed amount. Notwithstanding said escrow procedure, either Party may, at any time, offset against any and all amounts that may be due and owed to such Party under this Agreement including all damages and other payments that such Party asserts in good faith are owed by the other Party to such Party pursuant to this Agreement and are past due. Upon any such offset, any obligation of the paying Party to maintain an escrow account with respect to the amounts offset shall be excused. In the event that any amount offset by a Party against any amounts due and owing to the other Party under this Agreement is later determined not to be owed by such Party to the offsetting Party, the offsetting Party shall then pay over such amount to the other Party, with interest from the date of offset calculated pursuant to Section 5.9(C).

5.10 Pro-rated Months.

If (a) the commencement of service in Phase I or Phase II occurs on a day other than the first day of a month, or (b) the termination of service in Phase I or Phase II occurs on a day other than the last day of a month, then any monthly-calculated payment shall be pro-rated for such month to reflect that the service was provided for only the applicable part of the month. If the Contract Capacity determined under Section 2.6 changes in a month, then any monthly-calculated payment shall be calculated for such month to reflect that a different Contract Capacity was in effect for the affected days of such month.

ARTICLE 6

DAMAGES AND SECURITY FUND

6.1 Establishment of Completion Security Fund.

(A) Seller agrees to establish, fund, and maintain the Completion Security Fund pursuant to this Section 6.1, which shall be available at Southwestern's discretion pursuant to Section 6.2 to pay any amount due to Southwestern pursuant to this Agreement:

(1) The Completion Security Fund shall be in force beginning thirty (30) days after the Discharge Notice Date and shall remain in force until the earlier of the Cogeneration Commercial Operation Date is achieved or the date Southwestern shall be entitled to draw and retain all amounts in the Completion Security Fund as permitted pursuant to this Agreement. The amount of security that must be maintained in the Completion Security Fund shall be:

- (a) \$400,000 as of thirty (30) days after the Discharge Notice Date;
- (b) \$8,250,000 as of Financial Closing; and
- (c) \$5,800,000 as of the day after the Combustion Turbine Commercial Operation Date.

(2) As additional security for the performance of Seller's obligations hereunder, Seller shall cause the Financing Documents to include provisions for a debt service reserve fund to be funded to an amount equal to at least three (3) months worth of debt service payments and a working capital reserve or line of credit in an amount at least equal to one (1) month of Seller's projected operating expenses and a maintenance reserve fund with periodic contributions designed to provide for the funding of the expected cost of the Facility's next scheduled major maintenance. Seller shall be

deemed in compliance with this Section to the extent such funds are established and maintained satisfactory to the Senior Lenders.

(B) The Completion Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("Issuer") reasonably acceptable to Southwestern, and shall be in the form of any combination of the following:

(1) an irrevocable standby letter of credit or a performance bond in form and substance reasonably acceptable to Southwestern and consistent with this Agreement, including a provision for thirty (30) days advance notice to Southwestern of any expiration of the security so as to allow Southwestern the right to exercise its rights under said security to draw the full amount thereof as provided in Section 6.1(D); or

(2) United States currency, deposited with Issuer, either: (i) in an account under which Southwestern is designated as beneficiary with authority to draft from the account of the Issuer or otherwise access the security; or (ii) held by Issuer as trustee with instructions to pay claims made by Southwestern against such security in accordance with this Agreement, such instructions to be in a form reasonably satisfactory to Southwestern. Security provided in this form shall include a requirement for immediate notice to Southwestern from Issuer and Seller in the event that the sums held as security in the account or trust do not at any time meet the minimum security requirements as set forth in this Article 6; or

(3) a guarantee, in form and substance reasonably satisfactory to Southwestern, from an entity with a bond or senior debt rating of investment grade as determined by at least two (2) rating agencies, one of which must be either Standard & Poor's or Moody's (or if either one or both are not available, ratings from alternate rating



sources selected by Southwestern). In addition, the entity providing such guarantee cannot be on credit watch or show a negative ratings trend that reasonably indicates that any such downward adjustment would cause such bond or debt rating to fall below investment grade.

(C) Southwestern will re-evaluate on an annual basis the value of all non-cash security posted by Seller. If the rating (as measured by either Standard & Poor's or Moody's, or if neither is available, a rating from an alternate rating source selected by Southwestern) of the entity guaranteeing the security falls below investment grade, or if such entity is placed on credit watch by a rating agency with a reasonable indication that the next downward rating adjustment for such entity would cause its rating to fall below investment grade, Seller shall be required to convert the security provided by the guarantee to such substitute security as shall meet the requirements therefor under Section 6.1(B) within thirty (30) days after notice from Southwestern of such rating action.

(D) If security in the form of an irrevocable direct pay letter of credit is utilized by Seller to fund the above, the form of such letter must include draw instructions that allow Southwestern to draw-down in accordance with the terms of this Agreement. Such security must be issued for a minimum term of one (1) year. The security must be renewed or extended for another one (1) year term no later than thirty (30) days prior to its expiration date. If Seller fails to renew such security as required under this Section 6.1(D), Southwestern shall have the right to draw immediately upon the security and to place the amounts so drawn in an escrow account in accordance with Section 6.1(E) hereof until and unless Seller shall provide a substitute form for such security meeting the requirements therefor under Section 6.1.

(E) With respect to any escrow account opened as security for Seller's obligations hereunder, Southwestern shall establish at Seller's cost and with Seller's funds an interest-bearing escrow account in the name of Southwestern. Such escrow account may be drawn upon by Southwestern to satisfy any unsatisfied obligations hereunder that it is intended to secure. If Seller's obligation to provide security hereunder expires, Southwestern shall, within a reasonable period of time, return the balance in such escrow account to Seller. At such times as the balance in the escrow account exceeds the amount of Seller's obligation to provide security hereunder, Southwestern shall remit, within a reasonable period of time, to Seller any excess in the escrow account above Seller's obligations. Seller may obtain the return of such escrow account at any time by providing to Southwestern a substitute form of security in the same amount as the escrow account and meeting the appropriate criteria specified in Section 6.1(B).

(F) Notwithstanding any other provision of this Agreement, Seller shall have no obligation to replenish or restore the Completion Security Fund to the extent of any draw or withdrawal by Southwestern.

6.2 Damages Prior to Commercial Operation.

(A) Delay Damages. If Seller fails to achieve Combustion Turbine Commercial Operation by the Proposed Combustion Turbine Commercial Operation Date or fails to achieve Cogeneration Commercial Operation by the Proposed Cogeneration Commercial Operation Date, or fails to meet any milestone described in Section 4.3 by the Proposed Milestone Date, subject to extension for any Permitted Delay, Seller shall pay delay damages to Southwestern or Southwestern may withdraw funds from the Completion Security Fund, as specified below:

<u>Event</u>	<u>Amount Forfeited</u>
Failure to meet the milestone under Section 4.3:	\$1,000 per day
Failure to attain Combustion Turbine Commercial Operation by the Proposed Combustion Turbine Commercial Operation Date:	Amount per day as set forth in Schedule G-1.
Failure to attain Cogeneration Commercial Operation by the Proposed Cogeneration Commercial Operation Date:	Amount per day as set forth in Schedule G-2.

All damages shall begin accruing the day after the Proposed Milestone Date, the Proposed Combustion Turbine Commercial Operation Date, or the Proposed Cogeneration Commercial Operation Date, as applicable, subject to extension for any Permitted Delay, and shall continue until the specific milestone, Combustion Turbine Commercial Operation Date, or Cogeneration Commercial Operation Date is achieved. Notwithstanding the foregoing, the Seller shall not be required to pay any damages otherwise due under this Section 6.2(A) to the extent caused by a failure of Westinghouse to deliver the equipment to be provided or satisfy its obligations pursuant to the Combustion Turbine Equipment Supply Contract between Southwestern and Westinghouse Electric Corporation, dated February 29, 1996. To the extent Seller is subject to damages set forth in both Schedule G-1 and Schedule G-2, Seller only shall be liable for the greater of the amounts required by such schedules; otherwise, all damages shall be cumulative, but shall not exceed the amount required to be contributed to the Completion Security Funds pursuant to Section 6.1(A)(1)(b).

(B) Damages for Termination Prior to Commercial Operation. In the event that Seller (i) provides written notice to Southwestern at any time prior to the Combustion Turbine Commercial Operation Deadline Date that it will not achieve

Combustion Turbine Commercial Operation by the Combustion Turbine Commercial Operation Deadline Date; or (ii) fails to achieve Combustion Turbine Commercial Operation by the Combustion Turbine Commercial Operation Deadline Date, or Cogeneration Commercial Operation by the Cogeneration Commercial Operation Deadline Date, Southwestern shall have the unilateral right to terminate this Agreement pursuant to Article 10, and Seller shall owe Southwestern as damages, the entire amount of the Completion Security Fund, including any accrued interest, less any delay damages, if any, paid to Southwestern by Seller from any source other than the Completion Security Fund. Upon such termination and the payment of any amount due, Seller shall not have any further obligation under this Agreement to Southwestern, except that Southwestern may, pursuant to Article 10 and Section 16.12, pursue any legal remedies available to Southwestern under this Agreement, except as limited by Sections 13.4, 17.14, 17.15, and Article 11 to the extent an Event of Default attributable to Seller's failure to satisfy its obligation to use reasonable efforts under Section 4.1 has occurred.

6.3 Damages for Shortfalls in Capacity.

(A) If during any day of an On-Peak Month, the Summer Capacity shall be less than the Committed CT or Committed Cogeneration Capacity, as applicable, for any reason other than an Excused Outage, the amount of such deficiency shall be treated as a capacity shortfall ("Capacity Shortfall") pursuant to this Section 6.3. Subject to the limitations under Sections 6.3(B) and (C), for each day during an On-Peak Month that a Capacity Shortfall exists, Seller shall pay Southwestern capacity shortfall damages ("Capacity Shortfall Damages") computed as the product of the amount of Capacity Shortfall expressed in MW times the sum of i) the Capacity Payment applicable for the month in which the Capacity Shortfall occurred, expressed in terms of dollars per MW per day, and ii) forty dollars (\$40) per MW per day. Capacity Shortfall Damages shall be

per day, and ii) forty dollars (\$40) per MW per day. Capacity Shortfall Damages shall be prorated for Capacity Shortfalls occurring for only part of a day.

(B) During the Initial Term, the Capacity Shortfall Damages payable by the Seller to Southwestern for any month shall be limited to the amount, if any, by which the Cumulative Initial Term Bonus through such month exceeds the total of all Capacity Shortfall Damages previously paid by the Seller to Southwestern during the Initial Term. During the Extended Term, the Capacity Shortfall Damages payable by the Seller to Southwestern for any month shall be limited to the amount, if any, by which the Cumulative Extended Term Bonus through such month exceeds the total of all Capacity Shortfall Damages previously paid by the Seller to Southwestern during the Extended Term.

(C) If the payment of Capacity Shortfall Damages for any month is prevented by operation of Section 6.3(B), the amount of the Capacity Shortfall Damage payment so prevented shall be recorded in a tracking account with interest computed at the tracking account rate. The amount in such account shall be payable each month as soon as permitted pursuant to the operation of Section 6.3(B); provided that (i) any account balance outstanding as of the beginning of the Extended Term shall be forgiven and considered discharged, and (ii) any account balance outstanding as of the end of the Term of this Agreement shall be forgiven and considered discharged.

(D) Persistent Shortfalls. Upon the occurrence of an Event of Default pursuant to Section 10.2(B)(13), Southwestern may, at its option, limit all future determinations of Contract Capacity to a maximum level equal to the then most recently established Contract Capacity. If Southwestern exercises this option, then the Committed Cogeneration Capacity shall be recalculated to equal the then most recently established

Contract Capacity (the "Adjusted Committed Cogeneration Capacity"). In such circumstance, notwithstanding any other provision of this Agreement, Seller shall be permitted to sell Capacity and Energy from the Facility to any Person to the extent that such sale does not diminish Southwestern's rights to purchase the Adjusted Committed Cogeneration Capacity and associated Energy, including, without limitation, the Actual Capacity and associated Energy on any given day corresponding to the Adjusted Committed Cogeneration Capacity.

6.4 Damage and Other Payments from Completion Security Fund and/or by Direct Billing. In addition to any other remedy available to it, Southwestern may, at such times before or after termination of this Agreement, that Southwestern is expressly authorized to retain all or part of the Completion Security Fund or at such other times as Southwestern is due damages from Seller pursuant to this Agreement, draw from the Completion Security Fund appropriate amounts in order to recover such sums or amounts owing to it pursuant to this Agreement, including, without limitation, any damages due to Southwestern pursuant to Section 6.2. Southwestern may, in its sole discretion, draw all or any part of the amounts due to it from any form of security to the extent available pursuant to this Article 6, and from all such forms, and in any sequence it may select. Any failure to draw upon the Completion Security Fund or other security for any damages or other amounts due to Southwestern shall not prejudice Southwestern's rights to recover such damages or amounts in any other manner provided under this Agreement. Without limiting the foregoing, at any time before or after termination of this Agreement, Southwestern may send Seller a statement for such damages or other amounts as due to it at such time from Seller under this Agreement and such statement shall be payable in the manner and in accordance with the applicable

provisions set forth in Section 5.9, including, without limitation, the provision for late payment charges, as if such statement were a monthly statement of Southwestern to Seller in connection with purchases hereunder. On the day after the Cogeneration Commercial Operation Date, Seller shall be entitled to the Completion Security Fund and accumulated interest if any funds are remaining in the Completion Security Fund and no funds are owed to Southwestern under this Agreement as of such time.

6.5 Additional Security.

(A) Prior to Combustion Turbine Commercial Operation, as security for the purpose of securing Seller's performance and any amounts owed by Seller to Southwestern pursuant to this Agreement, Seller and/or Southwestern, as the case may be, shall execute and record, as appropriate, separate agreements, documents, or instruments under which Seller will provide Southwestern, in a form reasonably acceptable to Southwestern and the Senior Lender, with fully perfected subordinated security interest(s), and/or mortgage lien (collectively the "Subordinated Mortgage") in the Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or operate the Facility. Such Subordinated Mortgage shall be subordinate in right of payment, priority and remedies only to the interests of the Senior Lender in accordance with the terms of the Subordinated Mortgage. The collateral secured by the Subordinated Mortgage shall not include the pledge, assignment, or other interest in any stock or ownership interest in Seller; provided that Seller shall not pledge or assign, or cause or permit to be pledged or assigned, any stock or ownership interest in Seller as collateral to any party other than the Senior Lender.

(B) Southwestern agrees to cooperate with Seller and diligently negotiate in good faith at Seller's request to agree on the form of these agreements and to execute and deliver such agreements as reasonably necessary to enable Seller to comply with the Construction Finance Closing Date. The Parties shall confirm, define, and perfect such Subordinated Mortgage by executing, filing, and recording, at the expense of Seller, the Subordinated Mortgage. In addition, Seller agrees to execute and file such UCC financing statements and to take such further action and execute such further instruments as shall reasonably be required by Southwestern to confirm and continue the validity, priority, and perfection of the Subordinated Mortgage. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, except as set forth in Section 17.5, the amount of any further claims, causes of action or other rights accruing to Southwestern by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of its term. The Subordinated Mortgage shall be discharged and released, and Southwestern shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term of this Agreement, including any Extended Term, and satisfaction by Seller of all obligations hereunder. Seller shall reimburse Southwestern for its reasonable costs associated with the discharge and release of the Subordinated Mortgage and any other documents evidencing the Subordinated Mortgage.

(C) The Subordinated Mortgage shall provide that if Southwestern acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 6.5(A), Seller shall take all steps necessary to transfer all permits and licenses



necessary to operate the Facility to Southwestern, and shall diligently prosecute and cooperate in these transfers.

6.6 Equity Contribution. Seller covenants that it will make, or cause to be made, an equity contribution to the permanent financing of the Facility which shall not be less than fifteen million dollars (\$15,000,000) ("Seller's Minimum Equity Commitment"). Seller's Minimum Equity Commitment shall be committed on or before the date such commitment is required to be made pursuant to the Financing Documents. At Seller's option, the Seller's Minimum Equity Commitment may be provided, in whole or in part, in the form of Junior Debt.

6.7 Indebtedness; Restrictions on Refinancing and Additional Indebtedness.

(A) Seller may incur Senior Debt on the Construction Finance Closing Date pursuant to and for the purposes permitted under the Financing Documents, provided, however, that on or prior to the Cogeneration Commercial Operation Date, the amount of Senior Debt financed shall be reduced by the amount of the Seller's Minimum Equity Commitment.

(B) Seller may refinance the Senior Debt for the Facility, including, without limitation, incurring any additional indebtedness under the Financing Documents, provided that the amount of the Senior Debt resulting from such refinancing (the "Increased Financing") is no greater than the amount of the Senior Debt for the Facility outstanding at the time of refinancing, plus such amount as is reasonably required to cause such repairs, alterations, modifications, or improvements to the Facility as necessary for the continued operation of the Facility in compliance with this Agreement and with applicable law and including reasonable financing fees or premiums charged by the Senior Lender, related out-of-pocket expenses of the Senior Lender, and

any other out-of-pocket expenses of Seller necessary for Seller to achieve such refinancing. Additional Senior Debt will not be incurred to finance repairs or major maintenance for which reserves have been established and initially funded for such purposes pursuant to the Financing Documents. Increased Financing shall further include all such amounts of additional indebtedness incurred by Seller after the Construction Finance Closing Date to achieve final completion of the Facility, provided that if, as a result of such additional indebtedness, the amount of Senior Debt outstanding as of the final completion of the Facility (the "Completion Senior Debt") is greater than the maximum amount of Senior Debt authorized as of the Construction Finance Closing Date, then Seller's Minimum Equity Commitment shall be increased to the greater of (i) fifteen percent (15%) of the Completion Senior Debt, and (ii) an amount equal to the product of the Completion Senior Debt multiplied by the ratio of (x) fifteen million dollars (\$15,000,000) over (y) the maximum amount of Senior Debt authorized as of the Construction Finance Closing Date. Upon Seller's request, Southwestern shall provide its written consent to any such Increased Financing and confirmation that the same shall qualify as Senior Debt under this Agreement. Beginning at least forty-five (45) days prior to the closing of any such amendment or refinancing and continuing through the closing of such refinancing, Seller shall provide copies of the current drafts of any Financing Documents and agreement(s) for which the Senior Lender will request Southwestern's consent.

(C) Junior Debt may be incurred by the Seller from time to time, provided that, prior to incurring such debt, Seller shall cause the Junior Lender to execute a subordination agreement, intercreditor agreement, or other comparable agreement among such parties and in form and substance comparable to the same

executed by Southwestern pursuant to Section 6.5 or otherwise reasonably acceptable to Southwestern.

ARTICLE 7

**BUY-OUT AND FACILITY PURCHASE OPTIONS**

7.1 Termination for Southwestern's Convenience During Initial Term.

(A) Termination Payment. Provided no Southwestern Event of Default shall have occurred and be continuing, Southwestern may terminate this Agreement at its convenience beginning in the sixth Contract Year and continuing for the remainder of the Initial Term upon six (6) months written notice to Seller, such termination to be effective upon the Early Termination Date and the satisfaction of the payment conditions of Section 7.1(C). The Termination Payment due for termination effective under this Section 7.1 shall be equal to the sum of items (i) - (v), below, less an amount equal to the balances in the Steam Host Escrow Accounts, which shall be released to Seller.

(i) all amounts due with respect to Senior Debt (including, without limitation, any prepayment penalties);

(ii) the amount necessary to cover Seller's federal and state income tax liability arising from Southwestern's payment of the amount under clause (i) above and this clause (ii).

(iii) all amounts due with respect to Junior Debt (including, without limitation, any prepayment penalties);

(iv) all amounts required to be paid by Seller with respect to any early termination or modification of Seller's other contracts for the Facility, to the extent attributable to Southwestern's exercise of its option under this Section; and

(v) an amount equal to the present value as of the Early Termination Date of the projected Net Pretax Cashflow for the period between the Early

Termination Date through the remainder of the Initial Term as determined using the Debt Base Case Proforma and a discount rate of fifteen percent (15%).

Upon termination pursuant to this Section 7.1, the Seller shall retain ownership of the Facility assets.

(B) Information and Notice. Seller shall provide Southwestern notice of the estimated Termination Payment due within thirty (30) days after receipt of a notice from Southwestern pursuant to Section 7.1(A). Southwestern shall notify Seller of its intent to exercise its election to terminate under this Section 7.1 or its disagreement with Seller's estimate within fifteen (15) days after the receipt of Seller's Termination Payment estimate. If Southwestern disputes Seller's estimate of the Termination Payment within the notice period required herein, the matter shall be promptly referred to dispute resolution pursuant to Article 16. In such event, Southwestern shall notify Seller of its intent to terminate hereunder within fifteen (15) days after the receipt of the arbitrator's decision with respect to such matter. If, after giving a notice of termination under Section 7.1(A), Southwestern fails to provide notice of its election as required under this Section 7.1(B), or elects not to terminate after receipt or determination, as applicable, of the Termination Payment estimate, this Agreement shall continue in force and effect and Southwestern shall be thereafter precluded from exercising such option for a period of three (3) years.

(C) Consummation. Promptly after Seller's receipt of Southwestern's termination election notice under Section 7.1(B), the Parties shall agree on a termination date which, absent mutual agreement, shall be the last to occur of (i) the first business day following the six (6) months notice period referenced in Section 7.1(A); and (ii) the date which is thirty (30) days after Southwestern's notice of election to terminate

pursuant to Section 7.1(B) (the "Early Termination Date"). Upon the Early Termination Date, Southwestern shall tender to Seller, in cash or immediately available funds, the Termination Payment, with such adjustments as necessary to reflect changes from the Termination Payment estimate through the Early Termination Date and shall release or pay over to Seller, as applicable, all balances existing as of such date in the Steam Host Escrow Accounts. Upon Seller's receipt of the Termination Payment and Southwestern's release or payment, as applicable, of the Steam Host Escrow Account balances pursuant to this Section 7.1(C), this Agreement shall terminate. In the event that Southwestern fails to tender the full amount of the Termination Payment and release for payment, as applicable, this Agreement shall continue in full force and effect. If Southwestern's failure is not willful or in bad faith and provided such failure is corrected within ten (10) business days this Agreement shall terminate as provided in this Section 7.1. In the event Southwestern's failure is willful or in bad faith or not corrected within such period, Southwestern's option under this Section 7.1 shall thereafter be forever terminated. In all events Southwestern shall reimburse Seller for its reasonable and actual costs incurred as a result of Southwestern's failure.

(D) Transfer and Release. Seller shall use all reasonable efforts to reduce the amounts due under Seller's contracts pursuant to Section 7.1(A)(iii). The payment by Southwestern of the Termination Payment shall be full and complete compensation to Seller for such termination. Neither party shall thereafter have any obligation or liability to the other party under this Agreement, except for any such obligation which arose prior to the Early Termination Date.

7.2 Buyout Option.

(A) Provided no Southwestern Event of Default shall have occurred and be continuing, Southwestern may, beginning in the sixth Contract Year, purchase the Facility at a price equal to its Fair Market Value, (the "Buyout Price"); provided that, between Contract Years 6 and 20 the Buyout Price shall not be less than a floor price (the "Floor Price") or greater than a ceiling price (the "Ceiling Price") calculated as provided in this Section 7.2. The determination of Fair Market Value of the Facility shall not consider the value of any balances in the Steam Host Escrow Accounts.

(B) The Floor Price shall be equal to the sum of:

- (i) all amounts due with respect to Senior Debt (including, without limitation, any prepayment penalties);
- (ii) all amounts due with respect to Junior Debt (including, without limitation, any prepayment penalties);
- (iii) all termination payments due under any of Seller's contracts with respect to the Facility that Southwestern elects not to assume; provided that, Southwestern shall be required to assume the Phillips Steam Agreement and all "Project Agreements" (as defined in the Phillips Steam Agreement); and
- (iv) an amount equal to the present value as of the Early Termination Date of the projected Net Pretax Cashflow for the period between the Early Termination Date through the remainder of the Initial Term and the Extended Term, as determined using the Debt Base Case Proforma and a discount rate of twelve percent (12%).

(C) The Ceiling Price shall be computed in the same manner as the Floor Price, provided that the discount rate for the clause (iv) calculation shall be nine percent (9%).

(D) Except as otherwise provided in this Section 7.2(D), the information, notice, and consummation requirements (including the release or payment, as applicable, of the balances in the Steam Host Escrow Accounts) for the exercise of this option shall be the same as provided in Sections 7.1(B) and (C). As a condition to and contemporaneously with Southwestern's payment of the Buyout Price and Southwestern's release or payment, as applicable, of the Steam Host Escrow Account balances to Seller, Seller shall execute and deliver to Southwestern, on the Early Termination Date, such documentation as reasonably required to convey marketable title to the Facility to Southwestern, free from any encumbrances (except such encumbrances as permitted by the Financing Documents for the Senior Debt and included in the determination of Fair Market Value). Upon the payment of the Buyout Price and Seller's performance under this Section 7.2(D), Southwestern shall assume any and all of Seller's interest, rights, and obligations with respect to the Facility including (i) to the extent assignable all governmental permits and approvals held by, for, or related to the Facility; and, (ii) all of Seller's agreements with respect to the Facility (except for such agreements for which Southwestern is entitled to and has paid termination damages as determined pursuant to Section 7.2(B)). Except to the extent prohibited by PUHCA, regulations promulgated under PUHCA, and applicable New Mexico law and regulations, Southwestern shall indemnify and hold harmless Seller for any liability arising under any agreement transferred to Southwestern after the Early Termination Date.



(E) Southwestern's purchase under this Section 7.2 shall terminate this Agreement. Neither party shall thereafter have any obligation or liability to the other party under this Agreement, except for any such obligation which arose prior to the termination date.

7.3 Right to Purchase Facility at End of Term. Southwestern will have the right but not the obligation to purchase the Facility pursuant to this Section 7.3 at the end of the Initial Term or Extended Term of this Agreement. In the event that Southwestern intends to exercise this purchase option, Southwestern shall give one (1) year's written notice of such intention to Seller. Southwestern shall then purchase and assume all of Seller's interests, rights, and obligations in the Facility (including, to the extent assignable, all governmental permits and approvals required to own and operate such facilities), provided that

(1) Southwestern also assumes any pertinent and appropriate lease agreements, easements, steam sale agreements, fuel supply agreements, and other material agreements relating to the ownership and operation of the Facility; and

(2) Southwestern pays to Seller upon exercise of this purchase and assumption right in immediately available funds an amount equal to the Fair Market Value.

7.4 First Right of Refusal: Sale of Seller's Interest.

(A) If Seller proposes to sell Seller's ownership interest in the Facility during the Term of this Agreement to a third party, then prior to proceeding with any such sale to the third party Seller must first offer in good faith to sell such interest in the Facility to Southwestern at such price and terms as Seller is willing to accept ("Offered Price") and Southwestern shall have sixty (60) days from receipt of such price and terms,

in which to notify Seller whether it intends to purchase Seller's ownership interest in the Facility at the price quoted by Seller or such other price offered by Southwestern and set forth in the notice. If Southwestern notifies Seller within the sixty (60) day period that Southwestern will not exercise such purchase right, Southwestern's price offer is not accepted by Seller, or if Southwestern fails to provide Seller any notice of its intention within such period, then Seller may dispose of Seller's ownership interest in the Facility within two (2) years of the conclusion of such 60 day period to any other Person at such price, or at any other price in excess of the lower of Seller's Offered Price or the price offered by Southwestern to Seller. If Seller solicits bids for the purchase of Seller's ownership interest, Seller shall notify Southwestern and permit Southwestern to participate in such solicitation in accordance with the terms set forth therein for other participants. Seller's obligations and Southwestern's rights under this Section also shall apply to any sale or transfer of any stock or ownership interest in Seller or any partner or other owner of Seller.

Southwestern's right of first refusal under this Section 7.4(A) shall only apply to the extent that, after such action, the Seller would not be in default under the Financing Documents with the Senior Lender or its Partnership Agreement for failing to qualify as a QF and the owner or indirect owners of the Facility and the Senior or Junior Lenders or their successors or assigns would not become subject to the Public Utility Holding Company Act of 1935 or otherwise be subject to regulation (including, without limitation, financial, organizational, or rate regulation) as an electric utility, electric corporation, electric company, public utility, utility company, public utility holding company, or associated company, subsidiary company or affiliated company, or terms of similar impact under PUHCA or any applicable federal or state law, solely as a

consequence of Southwestern's exercise of its rights under this Section. Except as provided under Sections 7.4(B), Seller shall not grant a right to purchase the Facility to any Person if such grant prevents Southwestern's exercise of its rights under this Section 7.4(A).

(B) The provisions of Section 7.4(A) shall not apply to any sale or transfer of Seller's interest or ownership interest in Seller by the Senior Lender pursuant to an exercise of remedies under the Seller Financing Documents.

(C) Notwithstanding any provision in this Agreement to the contrary, including, without limitation, the provisions of this Section 7.4, Seller shall not sell, transfer, convey, lease, or otherwise dispose of the Facility during the Initial Term or Extended Term of this Agreement to any party that (i) cannot demonstrate the possession or control of operational and management experience and access to financial resources comparable to those of Seller as of the time of the transfer or otherwise reasonably sufficient to cause and/or continue the operation and maintenance of the Facility pursuant to this Agreement, or (ii) that refuses or fails to assume all of Seller's rights, duties, and obligations under this Agreement.

7.5 Disclaimer of Liability for Losses and Damages. In the event of notice of termination pursuant to Section 7.1, or purchase of the Facility pursuant to Sections 7.2, 7.3, or 7.4, Southwestern shall have no liability for damages (including without limitation, any development and/or investment losses, liabilities or damages, and other liabilities to third parties, incurred by Seller on account of Southwestern's exercise of its option under Sections 7.1, 7.2, 7.3, or 7.4), nor any other obligation, to Seller except for the Termination Payment or other payment due Seller in accordance with Sections 7.1, 7.2, 7.3, or 7.4.

ARTICLE 8

INTERCONNECTION FACILITIES AND METERING

8.1 Interconnection Facilities.

(A) At its expense, Seller shall construct, install, own, and maintain or cause to be maintained Seller's Interconnection Facilities, as are required for Southwestern to receive the Estimated Phase II Actual Capacity from the Facility, in accordance with Good Utility Practice. Southwestern shall be permitted to inspect Seller's Interconnection Facilities prior to connecting thereto and at any reasonable time during the Initial Term or Extended Term of this Agreement.

(B) At Southwestern's expense, Southwestern shall construct, install, and own Southwestern's Interconnection Facilities, as are required for Southwestern to receive the Estimated Phase II Actual Capacity from the Facility, in accordance with Good Utility Practice. At its expense, Southwestern shall maintain or cause to be maintained facilities on its side of the Interconnection Point. Except as provided in Section 3.5(C), Southwestern shall complete the installation of Southwestern's Interconnection Facilities not later than the date to be specified by Seller, provided, however, that such date shall not be earlier than the date which is sixty (60) days prior to the Proposed Combustion Turbine Commercial Operation Date, and Seller shall provide Southwestern with notice of modification to such date at least three (3) months in advance.

(C) Upon Combustion Turbine Commercial Operation of the Facility, all of Seller's Interconnection Facilities shall be used for the transmission of Energy and Capacity to Southwestern pursuant to this Agreement.

(D) The Parties shall provide each other with timely notice of any changes in their respective systems or facilities that may affect the proper coordination of safety devices on the two systems, and shall notify each other immediately in the event that hazardous or unsafe conditions associated with operations pursuant to this Agreement are discovered to exist. Upon Combustion Turbine Commercial Operation of the Facility, changes to the Seller's Interconnection Facilities cannot be made other than with the express prior written approval of Southwestern.

8.2 Metering Devices.

(A) All Metering Devices used to measure the Capacity and Energy made available to Southwestern by Seller and to monitor and coordinate operation of the Facility pursuant to this Agreement shall be owned, installed, and maintained by Southwestern except for Seller's Backup Metering. Metering Devices shall be installed at the Interconnection Point. All Metering Devices used to provide data for the computation of payments due under this Agreement shall be sealed and the seal shall be broken only by Southwestern when such Metering Devices are to be inspected and tested or adjusted in accordance with this Article 8. The number, type, and location of such Metering Devices shall be as specified by Southwestern.

(B) Upon installation and at least annually thereafter, Southwestern shall inspect and test all Metering Devices at its own expense. Southwestern shall provide Seller with reasonable advance notice of and permit a representative of Seller to witness and verify such inspections and tests, provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Southwestern and shall comply with all of Southwestern's safety standards. Upon request by Seller, Southwestern shall perform additional inspections or tests of any Metering Device and shall permit a

qualified representative of Seller to inspect or witness the additional testing of any Metering Device, provided, however, that Seller shall comply with all of Southwestern's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Seller, unless, upon such inspection or testing, a Metering Device is found to register inaccurately by more than the allowable limits established in Section 8.3, in which event the expense of the requested additional inspection or testing shall be borne by Southwestern.

(C) At such times as Southwestern deems necessary, Southwestern shall have reasonable access to the Interconnection Facilities and Metering Devices located on Seller's side of the Interconnection Point for the purposes of conducting necessary examinations, tests, calibrations, and maintenance of such Metering Devices and equipment associated therewith, provided, however, that in exercising such rights Southwestern shall not unreasonably interfere with or disrupt the development, construction, or operation of the Facility, and Southwestern shall comply with Seller's safety regulations at the Facility.

(D) In addition to Metering Devices installed and maintained by Southwestern, Seller, at its own expense, may elect to install and maintain backup metering devices ("Seller's Backup Metering") at the Interconnection Point. Such installation and maintenance shall be in a manner subject to Southwestern's approval and in accordance with Good Utility Practice. Upon installation and at least annually thereafter, at its own expense, Seller shall inspect and test Seller's Backup Metering. Seller shall provide Southwestern with reasonable advance notice of and permit a representative of Southwestern to witness and verify such inspections and tests, provided, however, that Southwestern shall not unreasonably interfere with or disrupt the activities

of Seller and shall comply with all of Seller's safety standards. Upon request by Southwestern, Seller shall perform additional inspections or tests of Seller's Backup Metering and shall permit a qualified representative of Southwestern to inspect or witness the additional testing of Seller's Backup Metering, provided, however, that Southwestern shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Southwestern, unless, upon such inspection or testing, Seller's Backup Metering is found to register inaccurately by more than the allowable limits established in Section 8.3, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

(E) If any Metering Device, including Seller's Backup Metering, is found to be defective or inaccurate (whether or not within the allowable limits established in Section 8.3), it shall be adjusted, repaired, replaced, and/or recalibrated, as near as practicable, to a condition of zero error by the Party owning such defective or inaccurate device.

8.3 Adjustment for Inaccurate Meters. If a Metering Device fails to register, or if the measurement made by a Metering Device is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Metering Device for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

- (A) As may be agreed upon by the Parties, or
- (B) In the event that the Parties cannot agree on the amount of the adjustment necessary to correct the measurements made by any inaccurate or defective Metering Device, the Parties shall use Seller's Backup Metering, if installed, to determine the amount of such inaccuracy, provided, however, that Seller's Backup Metering has

been tested and maintained in accordance with the provisions of Sections 8.2(D) and 8.2(E). In the event that Seller's Backup Metering also is found to be inaccurate by more than the allowable limits set forth in this Section 8.3, the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Capacity and Energy during periods of similar operating conditions when the Metering Device was registering accurately.

(C) In the event that the Parties cannot agree on the actual period during which the Metering Device(s) made inaccurate measurements, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Metering Device to the test that found the Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) days immediately preceding the test that found the Metering Device to be defective or inaccurate.

(D) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Southwestern, Southwestern shall use the corrected measurements as determined in accordance with Sections 8.3(A), (B) or (C) hereof to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Southwestern for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Southwestern to Seller; if the difference is a negative number, that difference shall be paid by Seller to Southwestern, or at the discretion of Southwestern may take the form of an offset to Payments due Seller by Southwestern hereunder. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Southwestern elects payment via an offset.



8.4 Communication Equipment. Seller shall provide at its cost, and thereafter maintain at its expense, a voice grade telephone extension accessible through touch tone dialing without human operator intervention to the metering point, so that remote interrogation of the metering equipment can be accomplished. Subsequent technological advances will be installed as mutually agreed between Seller and Southwestern. Seller shall provide at its cost, and thereafter maintain at its expense, a dedicated telecommunications circuit for the purpose of telemetering to the location of Southwestern's SCC where such SCC may be located during the Initial Term or Extended Term of this Agreement. Such telemetering equipment shall perform in accordance with requirements established by Southwestern in accordance with Good Utility Practice.

8.5 Protective Systems. Seller shall obtain Southwestern's approval, not to be unreasonably withheld, of the design of protective systems for the Facility, including specifications, related drawings, and calibrations of protective devices. Seller shall permit Southwestern to conduct an acceptance test of certain components of protective systems prior to initial synchronization and at certain periodic intervals following initial synchronization. Design and specification of protective relaying, alarming, fault recording, control, metering, and related systems for generators, high voltage switchgear, step-up transformers, and plant service transformers shall be as provided in the specifications therefor provided to Seller which shall be in accordance with Good Utility Practice.

ARTICLE 9

OPERATION AND MAINTENANCE REQUIREMENTS

9.1 (A) General. Seller shall operate, maintain, and repair the Facility in a safe, prudent, reliable, and efficient manner, consistent with Good Utility Practice, and in any event with at least the care and skill a reasonable, prudent Person in similar circumstances would employ.

(B) Fuel.

(1) At all times during the Initial Term and Extended Term of this Agreement, Seller shall have a supply of fuel of quality and in quantity sufficient to meet the Capacity and Energy delivery requirements of this Agreement and assurance of delivery conditions materially no less beneficial to Seller than those contained in the Gas Supply Agreement between Southwestern Public Service Company and GPM Gas Corporation dated December 1, 1995 (the "Fuel Contract Criteria"). Seller shall not modify or replace the Facility's fuel supply or fuel transportation plan or any fuel supply or fuel transportation contract during the Initial Term and Extended Term of this Agreement in any way which would cause Seller's affected fuel supply or transportation contracts to fail to meet the applicable Fuel Contract Criteria unless Seller shall obtain, within a commercially reasonable period of time, a substitute or supplement for such affected agreement that would enable Seller to satisfy the applicable Fuel Contract Criteria, or the consent of Southwestern, not to be unreasonably withheld.

(2) Upon Southwestern's request, made no later than 30 days before the Proposed Milestone Date for Financial Closing, the Parties shall negotiate and execute a fuel management agreement for the Facility (the "Fuel Management Agreement"). The Fuel Management Agreement shall assign the right and responsibility

to administer and enforce the Fuel Agreements and any replacements or additions thereto. The Fuel Management Agreement also shall assign the Seller's rights to the receipt of any damages or other payments for any Fuel Delivery Failure which shall excuse Seller's obligation under this Agreement by reason of a Delivery Excuse. The terms, conditions, and compensation provisions of the Fuel Management Agreement shall comply with all applicable state and federal laws and regulations concerning transactions between Southwestern affiliates.

9.2 Operating Committee and Operating Procedures.

(A) Southwestern and Seller shall each appoint one representative and one alternate representative to act in matters relating to the operation of Seller's Facility and Southwestern's system under this Agreement and detailed operating arrangements for delivery of Capacity and Energy from the Facility to Southwestern. Such representatives shall constitute the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement other than Attachment H.

(B) The Operating Committee shall develop mutually agreeable written operating procedures no later than ninety (90) days prior to the Combustion Turbine Commercial Operation Date. The operating procedures shall be a guide on how to integrate the Facility and its electrical output into Southwestern's system and shall be consistent with the provisions of this Agreement. Operating procedures shall include, but not be limited to, the method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable Southwestern and Seller control centers; clearances and switching practices; operating and maintenance scheduling and reporting; daily capacity and energy reports; unit

operations log; reactive power support; and such other matters as may be mutually agreed upon by the Parties.

(C) The Operating Procedures will constitute Attachment H of this Agreement.

9.3 Maintenance Schedule.

(A) Seller shall provide a maintenance schedule for the first year of operation at least one hundred twenty (120) days prior to the Proposed Combustion Turbine Commercial Operation Date. Thereafter, Seller shall submit annual maintenance schedules by July 1 for the twelve (12) month period starting January 1 for the following calendar year. At the same time, Seller also shall supply a long-term maintenance schedule that will encompass the following four (4) maintenance years. Seller shall furnish Southwestern with reasonable advance notice of any change in the annual maintenance schedule. Reasonable advance notice of any change in the maintenance schedule is as follows:

Scheduled Outage	Expected Duration	Advance Notice to Southwestern
(1)	Less than 2 days	at least 24 hours
(2)	2 to 5 days	at least 7 days
(3)	Major overhauls (over 5 days)	at least 90 days

Seller shall coordinate scheduled maintenance with Southwestern. From time to time, Southwestern shall provide Seller reasonable advance notice of significant maintenance plans, including major scheduled maintenance, with respect to its system that may materially affect the Facility.

(B) No planned maintenance shall be conducted during the On-Peak Months. However, Southwestern acknowledges that the Facility's need for scheduled

maintenance will be affected by Southwestern's Dispatch of the Facility and other factors outside Seller's control and agrees not to unreasonably withhold its consent to requests to schedule outages during On-Peak Months necessary to avoid damage to Facility equipment or a material adverse effect on the operating cost or reliability of the Facility. Modifications to Scheduled Outage periods may be made by mutual agreement. The maximum annual maintenance hours permitted for the Facility shall be 336 hours, except that 730 hours shall be permitted for the annual period in which Major Maintenance Outage occurs, which shall not occur more frequently than every fifth year.

9.4 Facility Operation. Seller shall staff, control, and operate the Facility consistent at all times with agreed to operating practices. Personnel capable of starting and running the Facility shall be continuously available at the Facility or reachable by telephone or pager such that they can start up and provide Capacity requested by Southwestern up to and including Actual Capacity in a maximum time of: (i) thirty (30) minutes from any such notice by Southwestern's SCC or other designated authority during Phase I, and (ii) ninety (90) minutes from any such notice by Southwestern's SCC or other designated authority after the Cogeneration Commercial Operation Date.

9.5 Dispatch. In addition to Southwestern's rights to shut down or start up the Facility as provided in Section 3.3(B), Southwestern shall be able to control the following items through control signals from Southwestern's SCC:

(A) The net MW output of the Facility from Minimum Load Level to Actual Capacity using raise/lower pulse outputs from an RTU or successor technologies located at the Facility.

(B) The net MVAR intake or output of the Facility shall be adjustable within the limits outlined in Section 2.5 (C) using either raise/lower pulses or analog setpoint outputs from the RTU or successor technologies located at the Facility.

9.6 Non-Dispatchable Capacity and Energy. The expected Non-Dispatchable Capacity and Energy from the Facility that will be delivered to Southwestern subsequent to the Cogeneration Commercial Operation Date is sixty-seven percent (67%) of the Actual Capacity. In the event that the Non-Dispatchable Capacity and Energy from the Facility changes, Seller, with the written consent of Southwestern, may revise the Non-Dispatchable Capacity and Energy. Seller shall keep Southwestern informed of any expected short-term changes in the Non-Dispatchable Capacity and Energy. Seller shall notify Southwestern immediately if unexpected conditions force a change in the expected Non-Dispatchable Capacity and Energy from the Facility. During Phase I there shall be no Non-Dispatchable Capacity and Energy.

9.7 Certification of Operation and Maintenance.

(A) Seller shall cause at its sole expense an independent engineer from a list compiled by Seller and approved by Southwestern, such approval not to be unreasonably withheld, to review the entire Facility (including the Seller's Interconnection Facilities) operation and maintenance to assist in monitoring compliance with Good Utility Practice. This review also shall include a review of the environmental compliance of the Facility and its operation and maintenance plan. The independent review will be conducted by an engineering firm and/or an engineer other than the firms and/or engineers chosen by Seller to design, construct, operate, or maintain the Facility. The independent review will be conducted according to the following schedule:

(1) Once every other year for the first ten (10) years following the Cogeneration Commercial Operation Date.

(2) For the remainder of the Initial Term or Extended Term of this Agreement, once every calendar year.

(B) Every year in which the independent review has been conducted, Seller shall cause the independent engineer to issue a written report to Southwestern assessing Facility operation and maintenance and compliance with all applicable environmental licenses, approvals, and permits and stipulating any related remedial or other actions consistent with Good Utility Practice. Such report shall be made available to Southwestern as soon as it is available to Seller. The report shall stipulate any related remedial or other actions consistent with Good Utility Practice and the recommended time to implement those actions. Such report shall be deemed accepted unless disputed within thirty (30) days after receipt. In the event that either Party disputes any recommendation of the independent engineer, the disputed recommendation shall be referred to a second independent engineer selected by Seller from the list compiled by Seller and approved by Southwestern. Seller shall cause the second independent engineer to issue a written report to Southwestern within a reasonable time. In the event disputed recommendation(s) are referred to a second independent engineer, the second independent engineer's recommendation(s) as to the disputed matters shall be implemented. Seller shall cause all final recommendations to be implemented within the time frame specified for such recommendations by the first or second independent engineer, as applicable (the "Correction Period"), unless the Parties mutually agree otherwise. Seller shall provide written certification of implementation of such recommendations to Southwestern. In the event Seller fails to implement the

recommendations within the Correction Period, then, in addition to any other remedy Southwestern may have with respect to such failure, Southwestern will have the right to suspend its purchases of Capacity and Energy from the Facility under this Agreement until it receives such certification of implementation. Such suspension shall not relieve Seller of its delivery obligations under this Agreement, unless and to the extent that failure is excused under other provisions of this Agreement, including, to the extent applicable, Article 11. Failure of Seller to provide the certificate of implementation referred to above within the Correction Period shall constitute a material breach of this Agreement.

(C) At Southwestern's sole expense, Southwestern or its designated agent, at times mutually convenient to the Parties, shall have the right to assess the Facility's operation and maintenance and/or verify all independent engineers' recommendations by reviewing all pertinent Facility records and by inspecting the Facility, provided, however, that such review and inspection shall not unreasonably interfere with Seller's operations at the Facility. Southwestern promptly shall notify Seller of any alleged deficiency in maintenance or operation, and Seller shall provide such information to the applicable independent engineer.

(D) Seller and Southwestern shall use their best efforts to resolve any disputes between them as to whether any maintenance deficiency exists and/or whether a particular remedy is reasonably necessary to correct a purported deficiency. Seller shall undertake promptly and complete any undisputed deficiencies in maintenance and any disputed deficiencies in maintenance finally determined pursuant to Section 9.7 (B).



9.8 Outage Reporting. Seller shall comply with all current Southwestern and NERC generating unit outage reporting requirements, as they may be revised from time to time, as follows:

(A) When forced outages or partial forced outages occur, Seller shall notify Southwestern's SCC of the existence, nature, and expected duration of the outages or partial forced outages as soon as practical, but in no event later than one (1) hour after any outage or partial forced outage occurs. Seller shall immediately inform Southwestern's SCC of changes in the expected duration of the outage or partial forced outage unless relieved of this obligation by Southwestern's SCC for the duration of each forced outage or partial forced outage.

(B) Seller shall report to Southwestern on a monthly basis all scheduled outage/deratings that occurred during the preceding month within five (5) working days after the end of the preceding month. The data reported shall meet all requirements specified in the NERC Generation Availability Data System ("GADS") Manual. Data presentation shall be in accordance with the format prescribed in such manual.

ARTICLE 10

DEFAULT AND TERMINATION

10.1 Notice of Default. If Southwestern defaults under this Agreement, then Seller shall give Southwestern written notice describing such default. If Seller defaults under this Agreement, then Southwestern shall give Seller written notice and concurrently provide Project Lender with a copy of such notice.

10.2 Events of Default of Seller.

(A) The following shall constitute Events of Default of Seller upon their occurrence and no cure period shall be applicable:

(1) Seller's failure to achieve a milestone by the applicable Milestone Deadline Date,

(2) Seller's failure to commence Combustion Turbine Commercial Operation by the Combustion Turbine Commercial Operation Deadline Date,

(3) Seller's failure to commence Cogeneration Commercial Operation by the Cogeneration Commercial Operation Deadline Date.

(B) The following shall constitute Events of Default of Seller upon their occurrence unless cured within thirty (30) days, in the case of defaults (1) and (2), or within sixty (60) days, in the case of defaults (3) through (13), after the date of written notice from Southwestern as provided for in Section 10.1, provided that, if any default under (9) through (13) hereof cannot be cured within sixty (60) days with exercise of due diligence, and if Seller within such period submits to Southwestern a plan reasonably designed to correct the default within a reasonable additional period of time not to

exceed six (6) months, then an Event of Default shall not exist unless Seller fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan:

- (1) Seller's failure to initiate and maintain funding of the Completion Security Fund set forth in Article 6, to the levels, and upon the timing, specified;
- (2) Seller's failure to make any payment due Southwestern for damages pursuant to this Agreement;
- (3) Seller's dissolution or liquidation;
- (4) Seller's assignment of this Agreement or any of its rights under it for the benefit of creditors, provided that, the foregoing shall not be grounds for default if, pursuant to applicable law and with any required court approval, this Agreement is assumed by a trustee or assignee permitted pursuant to Section 15.1;
- (5) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any other affiliate that could materially impact Seller's ability to perform, provided, however, that Seller shall be given sixty (60) days from the date of such filing by a third party in which to obtain a stay or dismissal prior to this provision constituting an Event of Default and provided further that, the foregoing shall not be grounds for default if, pursuant to applicable law and with any required court approval, this Agreement is assumed by an assignee permitted pursuant to Section 15.1 .
- (6) Seller's assignment of this Agreement or any of Seller's rights under the Agreement or the sale or transfer of any interest in Seller without obtaining Southwestern's prior written consent pursuant to Article 15, or Seller's sale or other

transfer of its interest or any part thereof in the Facility without complying with the requirements of Articles 7 and 15;

(7) Seller's tampering with Southwestern's Interconnection Facilities (unless such Facilities are owned by Seller pursuant to the terms of this Agreement) without Southwestern's express consent;

(8) The sale by Seller to a third party, or diversion by Seller for any use, of electrical Capacity or Energy committed to Southwestern by Seller; or, the diversion or sale by Seller of thermal energy (other than the thermal energy required under the Phillips Steam Agreement or Seller's agreement with a subsequent steam host) necessary to produce the electrical Capacity or Energy committed to Southwestern under this Agreement; or the use of Seller's Interconnection Facilities for any purpose other than the transmission of electric Energy and Capacity to Southwestern, without the prior express written approval of Southwestern subject to Southwestern's open access tariff on file with the FERC;

(9) Any representation made by Seller under Section 12.1 shall be false in any material respect;

(10) Seller's material failure to comply with Southwestern's Dispatch provided for in Section 9.5 and Attachment H;

(11) Seller's failure to comply with any other material obligation under this Agreement;

(12) Seller's failure to attain a twelve (12) month rolling average AF greater than 0.600 for thirteen (13) consecutive months; and

(13) For any reason other than an Excused Outage, Seller's failure to attain a Combustion Turbine Contract Capacity equal to 112 MW or Cogeneration

Contract Capacity equal to 130 MW which failure continues during all subsequent tests under Section 2.6 in the twelve (12) months next following the date of such first test below 112 MW or 130 MW, as applicable.

10.3 Project Lender Right to Cure Default of Seller. If Seller defaults pursuant to Section 10.2 and has a Project Lender, Southwestern shall allow the Project Lender, or its designee approved by Southwestern ("Project Lender Designee"), or a new lessee or purchaser of the Facility approved by Southwestern (subject to Southwestern's right of first refusal to purchase the Facility) to correct the default, except for failure to commence Combustion Turbine Commercial Operation by the Combustion Turbine Commercial Operation Deadline Date as set forth in Section 10.2(A), as follows:

(A) Prior to implementing any cure pursuant to this Section 10.3, Project Lender Designee shall comply with the assignment provisions of Article 15, unless any such requirements are waived by Southwestern in its sole discretion, and shall expressly assume Seller's rights and obligations under this Agreement;

(B) For Events of Default set forth in Sections 10.2(A) and (B), Project Lender or Project Lender Designee shall have one hundred twenty (120) days from the date of notice provided for in Section 10.1 or such longer period as provided in Section 10.2 to correct such default.

10.4 Events of Default of Southwestern.

The following shall constitute Events of Default of Southwestern upon their occurrence unless cured within thirty (30) days, in the case of default (1), or sixty (60) days, in the case of defaults (2) through (7), after the date of written notice from Seller as provided for in Section 10.1, provided that, if any default under (6) and (7) hereof cannot be cured within sixty (60) days with exercise of due diligence, and if Southwestern

within such period submits to Seller a plan reasonably designed to correct the default within a reasonable additional period of time not to exceed six (6) months, then an Event of Default shall not exist unless Southwestern fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan:

(1) Southwestern's failure to make any payment due hereunder (net of outstanding damages and any other rights of setoff that Southwestern may have pursuant to this Agreement);

(2) Southwestern's dissolution or liquidation, provided that division of Southwestern into multiple operating units shall not constitute dissolution or liquidation;

(3) Southwestern's general assignment of this Agreement or any of its rights hereunder and its interests in the Facility for the benefit of its creditors, provided that, the foregoing shall not be grounds for default if, pursuant to applicable law and with any required court approval, this Agreement is assumed by an assignee permitted pursuant to Section 15.1;

(4) Southwestern's entry into insolvency proceedings under any insolvency law as debtor, provided that, the foregoing shall not be grounds for default if, pursuant to applicable law and with any required court approval, this Agreement is assumed by an assignee permitted pursuant to Section 15.1;

(5) Southwestern's general assignment of this Agreement or any of its rights under the Agreement without obtaining Seller's prior written consent to the extent required in Article 15;

(6) Any material representation by Southwestern under Section 12.2 shall be false in any material respect; and

(7) Southwestern's failure to comply with any other material obligation under this Agreement.

10.5 Termination. In addition to any other right or remedy available at law, in equity, or in this Agreement except as such rights or remedies are expressly limited hereunder, either Party may, upon written notice to the other Party, terminate this Agreement if any one or more of the Events of Default for the other Party described in Section 10.2 and 10.4 occur and are not cured within the time periods set forth therein. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this Agreement. Nothing in this Agreement that does not explicitly disclaim or limit a right or remedy of any Party or the Parties, including, without limitation, the provision of damages or the enumeration of specific Events of Default, shall be construed to limit any right or remedy available at law or in equity to the Parties, including the right to any and all direct damages for any breach or other failure to perform hereunder. All remedies in this Agreement shall survive termination or cancellation of this Agreement and are cumulative.

10.6 Operation by Southwestern Following Event of Default by Seller.

(A) If any one or more Events of Default shall have occurred and be continuing, subject to the rights of the Senior Lender to (i) foreclose upon its interest in the Facility and exercise its remedies under the Senior Financing Documents, or (ii) operate or cause its nominee, transferee, or successor to operate the Facility through an agent or purchaser after having timely notified Southwestern, in writing as provided herein, of its intent to so operate the Facility pursuant to the terms of this Agreement, Southwestern shall have the right to possess, assume control of, and operate the Facility

as agent for the Seller (in accordance with the Seller's rights, obligations, and interests under this Agreement) during the period provided for herein. Seller shall not grant any Person, other than the Senior Lender, a right to possess, assume control of, and operate the Facility that is equal to or superior to Southwestern's right under this Section 10.6.

(B) Southwestern shall give Seller and the Senior Lender, at least sixty (60) days notice in advance of Southwestern's intent to exercise its right to possess, control, and operate the Facility in accordance with this Section 10.6 ("Lender's Possession Right Period"). In the event that the Senior Lender notifies Southwestern, within the Lender's Possession Right Period, of the intent of the Senior Lender to either possess, assume control of, and operate the Facility or otherwise cure the Events of Default within the Lender's Possession Right Period, either as agent for the Seller or on its own behalf or through a nominee, transferee or successor, pursuant to the exercise of any right or remedy under any Senior Financing Document, then Southwestern's right to possess, control, or operate the Facility shall be suspended. Lender's Possession Right Period shall be extended, (i) for an additional period not to exceed sixty (60) days, as necessary to enable the Senior Lender or its nominee, transferee, or successor to acquire possession of the Facility pursuant to exercise by the Senior Lender of its rights and remedies under the Senior Financing Documents, or (ii) such other additional period as required to enable the Senior Lender or its nominee, transferee, or successor to overcome, by legal proceeding, any restraint on the Senior Lender's right to take possession of the Facility established by an injunction, stay, or similar equitable order issued by any court of competent jurisdiction, unless, in either case, the Senior Lender or its nominee, transferee, or successor fails, after fifteen (15) days notice thereof from Southwestern to the Senior Lender, to commence and continue to exercise its rights and remedies in a



commercially reasonable manner. If the Senior Lender fails to provide such notice to Southwestern within the Lender's Possession Right Period or the Senior Lender or its nominee, transferee or successor fails to either exercise the right to possess, control, and operate the Facility or cure the Event(s) of Default within the Lender's Possession Right Period (as such period may be extended in accordance with the provisions hereof), or subsequently abandons the Facility, then Southwestern's right to possess, control, and operate the Facility in accordance with this Agreement shall be immediately revived and Southwestern shall have the right to take immediate possession and control of the Facility. Nothing in this Section 10.6(B) shall limit the exercise by Southwestern of any other right or remedy it may have pursuant to this Agreement.

(C) During any period that Southwestern is in possession of and operating the Facility pursuant to the foregoing paragraphs, Southwestern shall use the proceeds from the sale of electricity generated by the Facility (i) first, to satisfy obligations under any Senior Financing Documents, (ii) second, to reimburse Southwestern for any and all expenses reasonably incurred by Southwestern in taking possession of and operating the Facility, and (iii) third, any balance shall be remitted to the Seller. Southwestern agrees that, during any period it shall possess or control the Facility, it shall operate the Facility in accordance with Good Utility Practice so as to produce electricity in accordance with the terms of this Agreement and shall maintain in full force and effect all agreements, permits, licenses, and consents required pursuant to the Senior Financing Documents. Seller shall provide Southwestern with copies of all such agreements, approvals, and permits within thirty (30) days of the date Seller has been notified by Southwestern that Southwestern will exercise its right to take possession pursuant to this provision. Southwestern's obligation to comply with such agreements,

approvals, and permits is expressly conditional upon Seller providing Southwestern with copies thereof and such obligation shall be excused to the extent that such compliance (i) is unlawful, (ii) is not reasonably related to the operation or maintenance of the Facility or otherwise required of the party in possession and control of the Facility pursuant to the Senior Financing Documents, or (iii) would cause a violation of or result in a default under the terms and conditions of this Agreement. It is understood and agreed that Southwestern shall not be under any obligation to expend its own funds (exclusive of proceeds from the sale of electricity generated by the Facility) to meet its obligations hereunder.

(D) During any period that Southwestern is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and Southwestern shall assume possession, operation, and control solely as agent for the Seller (and its successors or transferees in foreclosure or nominees of Southwestern). In the event that Southwestern is in possession and control of the Facility for an interim period as provided in this Section 10.6, the Seller, the Senior Lender, or any nominee, transferee or successor thereof, may resume operation and Southwestern shall relinquish its right to operate when the Seller, or the Senior Lender or any nominee, transferee or successor thereof, reasonably demonstrates to Southwestern that it will remove those grounds that originally gave rise to Southwestern's right to operate the Facility, as provided above, in that Seller, its successors, transferees in foreclosure, or nominee of the Senior Lender, (i) will resume operation of the Facility in accordance with the provisions of this Agreement, (ii) have satisfied any claims in foreclosure or bankruptcy applicable to the Facility, or otherwise caused such claims to be dismissed, or have had

a plan of reorganization approved by a court of competent jurisdiction, and (iii) have cured any other Events of Default.

ARTICLE 11

**FORCE MAJEURE**

11.1 Definition of Force Majeure. The term "Force Majeure," as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of, the party claiming Force Majeure, including, without limitation, acts of God; sudden actions of the elements such as floods, hurricanes, or tornadoes; sabotage; terrorism; war; riots; and actions by federal, state, municipal, or any other government or agency (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state, or local government bodies), but only if such actions or failures to act prevent or delay performance. Force Majeure does not include any failure of, or delay in performance or any full or partial curtailment in the electric output of the Facility that is caused by, or arises from (i) any labor dispute or strike by Seller's employees or the employees of any contractor or subcontractor employed at or performing work with respect to the Facility (except to the extent arising out of a strike or labor action by employees or labor organizational members not employed at or performing work with respect to the Facility), or (ii) the failure of performance by any third party having an agreement with Seller, including, without limitation, any vendor, supplier, or customer of Seller, (unless such failure of the third party is excused by reason of force majeure (or comparable term), as defined in Seller's agreement with such third party). Force Majeure also does not include changes in market conditions. Mechanical or equipment breakdown shall not constitute a condition or event of Force Majeure unless it is a Catastrophic Equipment Failure.

11.2 Applicability of Force Majeure. Neither Party shall be responsible or liable for any delay or failure in its performance hereunder due solely to conditions or events of Force Majeure, provided that:

(A) the non-performing party gives the other party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(B) the suspension of performance is of no greater scope and of no longer duration than is directly caused by the Force Majeure;

(C) the non-performing party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other party describing actions taken to end the Force Majeure; and

(D) when the non-performing party is able to resume performance of its obligations under this Agreement, that party shall give the other party written notice to that effect.

11.3 Limitations on Effect of Force Majeure.

(A) In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond the Initial Term or Extended Term, if any.

(B) In the event of any delay or failure of performance caused by conditions or events of Force Majeure, that would otherwise constitute an Event of Default pursuant to Article 10, the cure provisions of Article 10 shall not apply and such delay or failure of performance shall, if not previously cured, become an Event of Default on the date that is eighteen (18) months from the date of notice provided for in Section 11.2(A). The other Party may, at any time following the end of such eighteen (18) month period, terminate this Agreement upon written notice to the affected Party, without

further obligation by the terminating Party except as to costs and balances incurred prior to the effective date of such termination. The other Party may, but shall not be obligated to, extend such eighteen (18) month period, for such additional time as it deems appropriate in its sole discretion, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

11.4 Fixed Payments Affected by Force Majeure. To the extent Seller experiences an event of Force Majeure that excuses it from delivering Capacity and Energy to Southwestern pursuant to this Article 11, the Capacity Payment and the Fixed O&M Payment (the "Fixed Payments") shall be reduced for the period of Force Majeure in accordance with the following formula:

$$RFP = TFP * \frac{APC}{UPC}$$

where

RFP means the reduced Fixed Payments due for the billing period to which the Force Majeure excuse applies.

TFP means the total Fixed Payments which is the sum of the payments which would be due Seller for the period under Section 5.2, but for the application of this Section 11.4.

APC means available purchase Capacity which is the sum of (i) the amount of Actual Capacity available multiplied by the number of hours in the period, and (ii) the amount of any Capacity rendered unavailable by reason of Scheduled Outage

or Delivery Excuse times the number of hours in the period to which such unavailability is applicable.

UPC means unimpaired purchase Capacity or the Actual Capacity that would have been available but for the Force Majeure excuse and unavailability by reason of Scheduled Outage or Delivery Excuse, if any, multiplied by the number of hours for the period.

11.5 Delivery Excuse.

(A) In no event shall Seller be responsible or liable for or deemed in breach of this Agreement for any delay or failure of performance of its obligations under this Agreement to the extent such delay or failure of performance is directly caused by a condition of Delivery Excuse as defined herein. Delivery Excuse shall mean (i) any Event of Default of Southwestern under this Agreement; (ii) any delay by Southwestern in giving any approval within the times required under this Agreement; (iii) any Southwestern Disconnection; (iv) any delay in Southwestern's construction of the Southwestern Interconnection Facilities by the date required under Section 8.1(B), unless Seller shall have responsibility for such construction pursuant to Section 3.5(C); (v) if Seller shall be responsible for construction of the Southwestern Interconnection Facilities pursuant to Section 3.5(C), any delay in obtaining any necessary easement or right of way not transferred by Southwestern or previously obtained by Seller or any delay in obtaining any critical path component or equipment required for the Southwestern Interconnection Facilities from any third party source; or (vi) any Fuel Delivery Failure.

(B) If Seller determines that its performance is or has been affected by a condition of Delivery Excuse,

(i) Seller shall notify Southwestern in writing within forty-eight (48) hours after learning of the Delivery Excuse condition, with details to be supplied within ten (10) days thereafter describing the particulars of the occurrence;

(ii) the suspension of performance shall be of no greater scope or longer duration than is attributable to the condition of Delivery Excuse; and

(iii) Seller shall promptly notify Southwestern when the effects of the condition of Delivery Excuse have been removed and Seller is able to resume its performance.

11.6 Steam Host Force Majeure; Steam Delivery Reduction.

(A) If during any period after the Cogeneration Commercial Operation Date, Phillips or a Subsequent Steam Host shall fail to take or pay for, at the price which is or would be payable under the Phillips Steam Agreement, at least the Minimum Steam Quantity from the Facility (i) by reason of force majeure (or equivalent term) as defined in the Phillips Steam Agreement or substitute agreement with a Subsequent Steam Host (a "Steam Force Majeure"), or (ii) for any other reason other than a default by Seller under the Phillips Steam Agreement or substitute agreement with a Subsequent Steam Host, a Force Majeure Event, a forced or scheduled outage of the Facility, Southwestern's exercise of its dispatch rights under this Agreement, the Facility's inability to produce the Minimum Steam Quantity for whatever reason, or a Steam Loss Event (a "Steam Delivery Reduction"), for the period of such failure the provisions of this Section 11.6 shall apply.



(B) Beginning on the date Seller notifies Southwestern of the occurrence of a Steam Force Majeure or Steam Delivery Reduction and for the remaining period of Steam Force Majeure or Steam Delivery Reduction the provisions of this Agreement relating to Dispatch (including Section 9.6) shall be applied by adjusting the Non-Dispatchable Capacity and Energy to the level of Facility Capacity which is necessary to cause the Facility to produce the steam to be required to be delivered to Phillips or the Subsequent Steam Host during the period of Steam Force Majeure or Steam Delivery Reduction. The Non-Dispatchable Capacity and Energy as revised pursuant to this Section 11.6(C) shall not exceed the level of Non-Dispatchable Capacity and Energy as determined pursuant to Section 9.6. Seller shall provide Southwestern with notice of the revised Non-Dispatchable Capacity and Energy as soon as practicable.

(C) Beginning on the date Seller notifies Southwestern of the occurrence of a Steam Force Majeure or Steam Delivery Reduction and for the remaining period of Steam Force Majeure or Steam Delivery Reduction, Southwestern shall pay Seller Energy Payments calculated using the Net Heat Rate instead of the Guaranteed Heat Rate; provided, however, in the event of Steam Delivery Reduction, each Energy Payment shall be reduced by any amounts remaining in the Steam Host Escrow Accounts to the extent necessary to reduce the Energy Payment to the amount that would have been payable in the absence of Steam Delivery Reduction. On the date each such reduced Energy Payment shall be due under Section 5.9, Seller may withdraw from the Steam Host Escrow Accounts funds equal to the reduction in such Energy Payment.

(D) During the period the provisions of Section 11.6(C) shall apply, Seller shall promptly pay to Southwestern, all revenues from the sale or non-acceptance

of steam received by Seller and attributable to such period of Steam Force Majeure or Steam Delivery Reduction.

(E) The event of Steam Force Majeure or Steam Delivery Reduction shall not be considered a Force Majeure under this Agreement. Seller shall use all reasonable efforts to (i) determine the expected duration and monitor the correction of the Steam Force Majeure or Steam Delivery Reduction, (ii) enforce any rights it may have under the Phillips Steam Agreement or substitute agreement with a Subsequent Steam Host to limit the duration and effect of the Steam Force Majeure or Steam Delivery Reduction, (iii) mitigate the adverse effect of the Steam Force Majeure or Steam Delivery Reduction on the operations of the Facility, including, but not limited to, the adverse effect on the Net Heat Rate, and (iv) promptly collect any revenue for steam sales or non-acceptance due to Seller under the Phillips Steam Agreement or agreement with a Subsequent Steam Host.

ARTICLE 12

REPRESENTATIONS AND WARRANTIES

12.1 Seller's Representations and Warranties. Seller hereby represents and warrants that, as of the date of this Agreement and as restated pursuant to Section 12.1(F):

(A) Seller is a partnership duly organized, validly existing, and in good standing under the laws of the State of Delaware and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary partnership action, and do not and will not:

(i) as to execution and delivery but not performance, require any consent or approval of Seller's partners which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Seller or any provision of the partnership documents of Seller, the violation of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement,

(iii) result in a breach of or constitute a default under any provision of the partnership documents of Seller,

(iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement, or

(v) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of Seller.

(D) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

(E) To its best knowledge, all approvals, authorizations, consents, or other action required by any governmental authority to authorize Seller's execution,

delivery, and performance under this Agreement have been duly obtained and are in full force and effect except for such approvals to be obtained as set forth in Attachment D.

(F) Upon request of Southwestern and at no cost to Southwestern, Seller shall restate the representations in Sections 12.1(A) through (E) as of the Construction Finance Closing Date and cause its counsel to issue an opinion to Southwestern affirming the representations in Sections 12.1(A) through 12.1(D), and setting forth such further matters as Southwestern may reasonably request.

12.2 Southwestern's Representations and Warranties. Southwestern hereby represents and warrants that, as of the date of this Agreement and as restated pursuant to Section 12.2(F):

(A) Southwestern is a corporation duly organized, validly existing, and in good standing under the laws of the State of New Mexico and is qualified as a corporation in good standing authorized to do business in the State of Texas, the State of Oklahoma, and the State of Kansas; and Southwestern has, or prior to taking service under this Agreement shall have, all requisite corporate power and authority to conduct its business, to own its properties, and to execute, to deliver, and to perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Southwestern have been duly authorized by all necessary corporate action, and do not and will not:

(i) as to execution and delivery but not performance, require any consent or approval of Southwestern's board of directors or any Southwestern member which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Southwestern, the violation of which could reasonably be expected to have a material adverse effect on the ability of Southwestern to perform its obligations under this Agreement,

(iii) result in a breach of or constitute a default under any provision of the articles of incorporation or by-laws of Southwestern,

(iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Southwestern or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Southwestern is a party or by which Southwestern or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Southwestern to perform its obligations under this Agreement, or

(v) result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Southwestern now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Southwestern to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of Southwestern.

(D) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to

which it is a party or any judgment, order, statute, or regulation that is applicable to Southwestern or the Facility.

(E) Except as listed on Attachment E, to Southwestern's knowledge, as of the date of this Agreement there are no approvals, authorizations, consents, or other actions required by any governmental authority to authorize Southwestern's execution, delivery, and performance under this Agreement which have not already been obtained.

(F) Upon request of Seller and at no cost to Seller, Southwestern shall restate the representations in Sections 12.2(A) through 12.2(E) as of the Construction Finance Closing Date and cause its counsel to issue an opinion to Seller and the Senior Lender affirming the representations in Sections 12.2(A) through 12.2(D), and setting forth such further matters as Seller may reasonably request.

12.3 Information to Financiers, Stockholders, and Governmental Authorities. Seller shall promptly provide to Southwestern, after the sending or filing thereof, copies of all proxy statements, financial statements, and reports and copies of all regular, periodic and special reports, and all registration statements that the Seller files with the Securities and Exchange Commission, any other governmental authority, and all Senior Lenders. Seller may delete portions of any such information regarding the income, profits or losses of the Seller or any of its partners or shareholders.

12.4 Confidentiality. Each Party agrees not to disclose any non-public information provided under this Agreement and designated as confidential by the providing Party to a third party (other than the Party's officers, investors, consultants, lenders, counsel, or accountants or prospective purchasers or assignees permitted pursuant to Articles 7 or 15 that have agreed to keep the terms confidential) except to comply with any applicable law, order, or regulation, or as required in connection with

any Arbitration pursuant to Articles 7 and 15; provided, however, each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure consistent with its obligations with respect to such disclosure required by law or the affected proceeding. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation.



ARTICLE 13

INSURANCE AND INDEMNITY

13.1 Seller's Insurance Coverages. Seller shall, and not (i) in substitution or limitation of any other responsibility stated elsewhere in this Agreement or (ii) in lieu of obeying applicable law, carry and maintain or cause to be carried and maintained no less than the insurance coverages listed in Attachment I, in forms reasonably acceptable to Southwestern, applicable to all operations undertaken by Seller and Seller's personnel in the minimum amounts (limits) indicated. Such minimum limits may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. Except as provided in Attachment I, the required insurance coverages shall be in effect on or prior to the commencement of construction of the Facility.

13.2 Evidence and Scope of Insurance. Seller shall annually cause each insurer or authorized agent to provide Southwestern with two original copies of insurance certificates reasonably acceptable to Southwestern evidencing the effectiveness of the insurance coverages required to be maintained. A complete copy of each policy shall be provided to Southwestern upon request. All such insurance policies shall (a) name Southwestern as an additional insured (except worker's compensation); (b) provide that Southwestern shall receive thirty (30) days prior written notice of non-renewal, cancellation of, or significant modification to any of the above policies (except that such notice shall be ten (10) days in case of non-payment of premiums); (c) provide a waiver of any rights of subrogation against Southwestern, its affiliated entities and their officers, directors, agents, subcontractors, and employees. The insurance certificates shall indicate that the insurance policies have been endorsed as described above. All policies shall be written by one or more nationally reputable insurance companies authorized to do

business in Texas, rated B+VII or higher by A.M. Best Company, or Lloyds Companies or other insurers reasonably acceptable to Southwestern. For items in Attachment I, Southwestern shall receive certificates and policies (if requested) for items 1-5 and (if applicable) 7 in Attachment I prior to the start of construction of the Facility and for items 6, 8, and 9 in Attachment I, prior to the Proposed Combustion Turbine Commercial Operation Date. All policies shall be written on an occurrence basis unless procured from AEGIS on a claims made basis. Policies shall contain an endorsement that Seller's policy shall be primary as respects construction and operations of the Facility regardless of like coverages, if any, carried by Southwestern. Seller's liability under this Agreement is not limited to the amount of insurance coverage required herein.

13.3 Term and Modification of Insurance.

(A) In the event that any insurance as required herein is on a "claims-made" basis and not on an occurrence basis, such insurance shall provide for a retroactive date and continuing "tail" coverage not later than the date of this Agreement and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five years after the Initial Term and any Extended Term of this Agreement.

(B) During the Initial Term or Extended Term of this Agreement, either Seller or Southwestern shall have the right to reasonably request a modification of the insurance minimum liability, deductible amounts and/or indemnity limits specified in Section 13.1 through 13.3 and Attachment I in order to maintain reasonable coverage amounts. If Southwestern and Seller are unable to agree on appropriate limits within a fifteen (15) day period, the process described in Section 16.12 for dispute resolution shall be followed.

(C) With Southwestern's approval, not to be unreasonably withheld, if Seller has sufficient net worth to self-insure for purposes of this Article 13, Seller shall have the right to self-insure or provide reserves or other security reasonably acceptable to Southwestern for all or any portion of the foregoing coverages so long as, in the case of self-insurance, there is no material decrease in Seller's net worth or means that renders the same insufficient for purposes of self-insurance, and in the case of provision of reserves or security, the reserves and security shall be available and used only for the payment of obligations that otherwise would be covered by insurance policies required under this Article 13 and Attachment I and for no other purpose.

(D) Insurance required hereunder may provide for commercially reasonable deductible amounts of not more than (i) sixty (60) days for Business Interruption attributable to a turbine or generator, (ii) thirty (30) days for Business Interruption other than as described in clause (i), (iii) \$750,000 for Property Damage to a Facility combustion turbine, (iv) \$500,000 for Property Damage to a Facility generator, transformer, or heat recovery steam generator, and (v) \$250,000 for Property Damage to other structures and equipment constituting the Facility. Insurance shall not provide for co-insurance responsibility which requires Seller to self-insure or co-insure in excess of ten percent (10%) of the value of the property covered unless covered by reserves or other security reasonably acceptable to Southwestern, and shall not provide for any co-payment, deductible, or co-insurance responsibility in any form of liability, workers' compensation, or business interruption insurance except as specified in this Section 13.3(D). Seller shall be solely responsible for amounts not covered by insurance by reason of any co-payment, deductible, or co-insurance requirements.

13.4 Indemnification.

(A) Neither Party shall hold the other Party (including its corporate affiliates, parent, subsidiaries, directors, officers, employees, and agents) liable for any claims, losses, costs, and expenses of any kind or character (including, without limitation, loss of earnings and attorneys' fees) for damage to property of Southwestern or Seller in any way occurring incident to, arising out of, or in connection with, a Party's performance under this Agreement, except as provided in Section 13.4(B).

(B) Except to the extent prohibited by PUHCA, regulations promulgated under PUHCA, and applicable New Mexico law and related regulations, each Party (the "Indemnifying Party") agrees to indemnify and hold harmless the other Party (the "Indemnified Party") from and against all claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the Indemnified Party's property or facilities or the property of any other Person or corporation to the extent arising out of, resulting from, or caused by, default of this Agreement or by the negligent or tortious acts, errors, or omissions of the Indemnifying Party.

(C) Except to the extent prohibited by PUHCA, regulations promulgated under PUHCA, and applicable New Mexico law and related regulations, Seller shall indemnify and hold harmless Southwestern against any and all claims, demands, losses, liabilities, expenses, fines, and penalties, including interest and attorneys' fees, resulting from any alleged violation of applicable federal, state, or local environmental laws or regulations arising out of the construction, operation, or ownership of the Facility or the Site, or the release or presence of any toxin or hazardous substance or environmental

contamination at the Facility or on the Site. This subsection 13.4(C) shall remain in full force and effect for twenty (20) years after the termination of this Agreement.

(D) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Section 13.4 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer will pay the expenses of such separate counsel.

(E) If the Indemnifying Party fails to assume the defense of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

(F) In the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Section 13.4, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of

any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 14

REGULATORY JURISDICTION AND COMPLIANCE

14.1 Governmental Jurisdiction and Regulatory Compliance. This Agreement shall at all times be subject to the authority of the Commissions to the extent such Commissions have jurisdiction. Subject to the right of contest consistent with Seller's right under Section 14.5(A), each Party shall at all times comply with all applicable laws, ordinances, rules, and regulations applicable to it. As applicable, each party shall give all required notices; shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Agreement; and shall pay its respective charges and fees in connection therewith.

14.2 Provision of Support. Each Party agrees to make available, upon the other Party's reasonable request, any of its personnel and any records relating to the Facility to the extent that such requesting Party reasonably requires the same in order to fulfill any regulatory reporting requirements, or to assist such Party in litigation, including but not limited to rate proceedings before Commissions. Neither Party shall make a unilateral application to FERC for a change in, nor take any affirmative action that has the intended effect of enhancing or supporting any application to or action by FERC (through the filing of testimony or statements of position, the conduct of examination or cross examination of witnesses, or the filing of briefs) that is for the purpose of or would have the effect of changing this Agreement, under Sections 205 or 206 or any other section of the Federal Power Act. In addition, each Party shall use its best efforts to prevent any affiliated Person from making such a unilateral application or taking such an action that is for the purpose of or would have the effect of changing this Agreement under Sections 205 or

206 or any other section of the Federal Power Act. In the event FERC or any Person seeks or has obtained a change in the formulaic rates, terms, or conditions of the Agreement, neither Party shall be prohibited from seeking or supporting FERC action to give effect to the formulaic rates, terms, or conditions of this Agreement as originally executed and amended by agreement of the Parties.

14.3 Regulatory Disallowance. Notwithstanding any other provision of this Agreement, if Southwestern, commencing on the ten (10) year anniversary of the Cogeneration Commercial Operation Date (the "Tenth Anniversary") is denied the authorization of any Commission which may have jurisdiction over Southwestern's retail rates and charges, to recover from its customers any or all of the Capacity Payments made to Seller pursuant to the terms of this Agreement, based upon an explicit finding that Southwestern's purchase of energy from Seller hereunder was or is imprudent the amount of such payments for which Southwestern is denied recovery (the "Recovery Deficiency") shall be treated in accordance with this Section 14.3. Except to the extent caused by Southwestern's negligence or failure to seek recovery pursuant to applicable law, the amount of any Recovery Deficiency occurring after the Tenth Anniversary shall be recorded in a regulatory tracking account (the "Regulatory Tracking Account"). The balance in the Regulatory Account shall accrue interest at the Contract Interest Rate compounded on a monthly basis. Commencing on the date the Senior Debt is repaid in full and the Senior Mortgage is discharged, Southwestern may, at its sole option, on thirty (30) days prior written notice to Seller, reduce the Capacity Payments made under this Agreement in an amount equal to the sum of any Recovery Deficiency for such period and any balance in the Regulatory Tracking Account; provided that the total reduction in the Capacity Payments for any month shall not exceed twenty-five percent



(25%) of the Capacity Payment otherwise due for such month. Any Recovery Deficiency which Southwestern is prevented from receiving pursuant to the immediately preceding sentence shall be added to the tracking account balance. The provisions of this Section 14.3 shall apply to Commission decisions occurring any time after the Tenth Anniversary. Within thirty (30) days after the Senior Debt is retired, the Parties shall also negotiate a reduction in the Capacity Payment for the purpose of amortizing the balance, if any, in the tracking account. If the Parties are unable to agree on the size of the Capacity Payment reduction within such thirty (30) day period, Southwestern may, at its sole option, implement a payment reduction less than or equal to twenty-five percent (25%) of the remaining Capacity Payment.

14.4 Contest of Regulatory Disallowances. In the event that, at any time during the Initial Term or Extended Term of this Agreement, Southwestern receives formal notification that any legislative, administrative, judicial, or regulatory body seeks or will seek to prevent full recovery by Southwestern from its customers of any payments required to be made under the terms of this Agreement or any subsequent amendment to this Agreement, then Southwestern shall, within thirty (30) days of its receipt of such notice, give written notice thereof to Seller. The Parties agree to use their best efforts to defend this Agreement before any rate regulatory agency, and to cooperate to seek any necessary rate regulatory approvals. Southwestern agrees that it shall neither initiate nor support before any such Commission or authority any direct action with the specific intention of reducing the recovery from its customers of the Payments required to be made to Seller under this Agreement.

14.5 Compliance with Law.

(A) Seller shall comply with all applicable local, state, and federal laws, regulations, and ordinances, including but not limited to equal opportunity and affirmative action requirements and all applicable federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term or during any Extended Term of this Agreement. Notwithstanding the foregoing, Seller shall not be deemed in default of this obligation to the extent Seller is contesting the application, interpretation, order, or other legal direction of any such governmental authority in good faith and with due diligence through appropriate proceedings.

(B) To Seller's best knowledge, all of the required local, state, and federal environmental and other governmental permits, licenses, and approvals, and any applicable emissions allowances or offsets, necessary to construct and operate the Facility are listed in Attachment D hereto.

(C) Seller agrees that a clause relating to the "Utilization of Small , Small Disadvantaged and Women-Owned Small Business Concerns" set out in 48 CFR Pt. 52.219.8, 15 U.S.C. § 637(d)(3), and any subsequent amendments, are, to the extent they may be applicable to this Agreement, incorporated by reference and made a part of this Agreement as if set forth fully herein.

(D) Seller shall, unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor, comply during its performance of this Agreement with (i) the provisions of Executive Order 11246 of September 24, 1965 (the "Order"), and with the rules, regulations, and relevant orders of the U.S. Secretary of Labor issued pursuant to the Order; and (ii) Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (the "Act") and any subsequent amendments to the Act, and with the rules,

regulations, and relevant orders of the U.S. Secretary of Labor issued pursuant to the Act; and (iii) Section 503 of the Rehabilitation Act of 1973 (the "Rehabilitation Act"), and any subsequent amendments thereto and the rules, regulations, and relevant orders of the U.S. Secretary of Labor issued pursuant thereto; all of which, unless such exemption applies, are, pursuant to the authority of the aforementioned Order and Acts, made a part hereof to the extent of their applicability.

(E) Seller agrees that, upon request of Southwestern and at no cost to Southwestern, Seller shall deliver or cause to be delivered to Southwestern (i) certifications of its officers, accountants, engineers, or agents as to such matters pertaining to Sections 14.5 (A) through (D) as Southwestern may reasonably request, and (ii) certified copies of any government license or permit or certificate related to the Facility.

14.6 Seller's Disclosures. Seller shall disclose to Southwestern, to the extent that and as soon as practicable after it is filed or served on Seller, the suit by any governmental authority or third party alleging violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the alleged presence of Environmental contamination at the Facility or on the Site, or the initiation of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination; where the potential liability to Seller, if adversely determined, exceeds \$1,000,000.00.

ARTICLE 15

ASSIGNMENT

15.1 Neither Party shall assign this Agreement, or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided, however, such consent shall not be required prior to an assignment by Southwestern to a parent, subsidiary, or affiliated corporation or by Seller to the Senior Lender (or successor thereof) or subsequent assignment of this Agreement in connection with the Senior Lender's sale or transfer of the Facility or interest in Seller pursuant to the Financing Documents, provided, however, that Seller obtains the Senior Lender's written agreement that any such sale or transfer shall be made to a party meeting the requirements of Section 7.4(C). In all events: (i) prior notice of any such assignment shall be provided to the other Party; (ii) any assignee shall expressly assume assignor's obligations hereunder, unless otherwise agreed to by the other Party; (iii) except with respect to an assignment of this Agreement in its entirety permitted hereunder by the Senior Lender, no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive assignor's continuing obligations pursuant to this Agreement, such waiver not to be unreasonably withheld; and (iv) except with respect to an assignment by Southwestern to a parent, subsidiary, or affiliated corporation and under which Southwestern remains liable for its obligations hereunder, no such assignment shall adversely affect the credit rating or financial security of the other Party or impair any security given by Seller hereunder.

15.2 Seller shall notify Southwestern of any plans to sell or transfer the Facility, or any interest therein, or to assign this Agreement, or any portion thereof.

15.3 Seller shall not sell, transfer, or assign the Facility or any part thereof or any interest therein without complying with the provisions of Article 7 of this Agreement.

15.4 Any sale or other transfer of the ownership interests of Seller or any general partner of Seller that results in the transfer directly or indirectly of a majority of the voting control of Seller to any party which does not meet the requirements of clause (i) of Section 7.4(C) shall require the prior written consent of Southwestern, which shall not be unreasonably withheld.

15.5 Any financing agreement entered into by Seller shall provide that, prior to or upon the exercise of trustee's or mortgagee's assignment rights pursuant to said agreement, trustee or mortgagee shall notify Southwestern of the date and particulars of any such exercise of assignment rights.

15.6 Any sale, transfer, or assignment of any interest in the Facility or in this Agreement made without fulfilling the requirements of this Agreement shall be null and void and shall constitute an Event of Default pursuant to Section 10.2(B)(6).

ARTICLE 16

CONTRACT ADMINISTRATION

16.1 Notices in Writing. Any notice, request, consent, or other communication required or authorized by this Agreement to be given by one Party to the other Party shall be in writing. It shall either be personally delivered or mailed, postage prepaid, to the representative of said other Party designated below. Any such notice, request, consent, or other communication may be sent by telefacsimile or other electronic means, provided that any such electronic communication shall be promptly followed by personal delivery or mailing as set forth herein. Unless otherwise provided herein, all notices shall be deemed to have been given when personally delivered, or if mailed only, three (3) business days after deposit in the mail, or in the case of telefacsimile transmission, the date on the telefacsimile transmission confirmation report. Routine communications concerning Facility operations shall be exempt from this Article 16.

16.2 Representative for Notice. Each Party shall maintain a designated representative to receive notices. Such representative may at the option of each Party be the same Person as that Party's representative or alternate representative on the Operating Committee, or a different Person. Either Party may, by written notice to the other, change the representative or the address to which notices and communications are to be sent.

16.3 Notice Address for Southwestern. Notices and other communications by Seller to Southwestern shall be addressed to:

<u>Mailing Address</u>	<u>Street Address</u>
Southwestern Public Service Company Vice President of Engineering and Operations P.O. Box 1261 Amarillo, Texas 79170	Southwestern Public Service Company Vice President Engineering and Operations 6th and Tyler Amarillo, Texas 79101

Telefacsimile communications shall be directed to: (806) 378-2995.

16.4 Notice Address for Seller. Notices and other communications by Southwestern to Seller shall be addressed to:

Borger Energy Associates, L.P.  
c/o Quixx Corporation  
Attn: President  
P.O. Box 12033  
6th & Tyler, Suite 1510  
Amarillo, TX 79101  
Tel: (806) 378-2161  
Fax: (806) 378-2515

and

Borger Energy Associates, L.P.  
c/o LS Power, LLC  
Attn: Clarence J. Heller  
1633 Des Peres Road, Suite 308  
St. Louis, Missouri 63131  
Tel: (314) 965-2211  
Fax: (314) 965-6492

16.5 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes pursuant to Section 16.12. However, they shall not have the authority to amend or modify any provision of this Agreement.

16.6 Operating Records. Seller and Southwestern shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records, in the prescribed format, as may be required by state or federal regulatory authorities and SPP.

16.7 Operating Log. Seller shall maintain an accurate and up-to-date operating log at the Facility with records of real and reactive power production for each clock hour; changes in operating status; scheduled outage/deratings, forced outages and partial forced outages; and any unusual conditions found during inspections.

16.8 Billing and Payment Records. To facilitate payment and verification, Seller and Southwestern shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 5 of this Agreement and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of the Facility shall be maintained on the premises of the Facility.

16.9 Financial Reports of Seller. Seller shall provide Southwestern with annual financial reports in form and substance similar to financial reports provided by Seller to the Project Lender; provided that, Seller may redact and withhold any confidential information regarding the income or losses of Seller or any of its owners or partners.

16.10 Retention Period. All records kept pursuant to this Article 16 shall be maintained for a minimum of ten (10) years after the creation of the record or data and for any additional length of time required by regulatory agencies with jurisdiction over Seller or Southwestern, provided, however, that Seller shall not dispose of or destroy any such records even after the ten (10) years without prior written approval from Southwestern.

16.11 Examination of Records. Seller and Southwestern may examine the financial records and Operating Records and data kept by the other as necessary to verify or audit transactions or Seller's compliance with its obligations under this Agreement any time during the period the records are required to be maintained under this Article 16 upon request and during normal business hours. Upon Southwestern's request, Seller



shall provide Southwestern with (i) the Financing Documents necessary to verify Seller's compliance with its obligations under this Agreement, and (ii) all documents, data, and information necessary to verify the occurrence, duration, and extent of all outages, partial outages or derating, including without limitation, information necessary for determining AF, damages under Section 6.3, and Actual Capacity.

16.12 Dispute Resolution.

(A) Seller and Southwestern shall inform one another promptly following the occurrence or discovery of any item or event that might reasonably be expected to result in a dispute, in a request for changes in compensation or reimbursement, or any other matter in connection with the Agreement.

(B) The representatives of the Parties, as identified in Sections 16.3 and 16.4, will attempt to resolve the matters identified pursuant to Section 16.12(A), and should such a matter not be resolved to the satisfaction of both Parties, then either Party may deliver a written notice specifying the grounds for the dispute, with supporting documentation, to the other Party's designated representative. Seller and Southwestern will then each appoint a management representative with expertise or experience in the area in which the dispute arises, but who has no prior direct involvement with the particular dispute, to investigate and evaluate the dispute. Based on such investigation and evaluation, the representatives identified in Sections 16.3 and 16.4 and the management representatives will attempt to resolve the dispute.

(C) Arbitration. Any dispute or deadlock that may arise between the Parties in connection with this Agreement that their management representatives cannot resolve within thirty (30) days following submission to them, shall be settled by arbitration in accordance with the procedure set forth below:

(1) Notice to Arbitrate. After the expiration of the thirty (30) day period described above, either Party may submit to arbitration any matter in dispute concerning the provisions of this Agreement by providing the other Party a written notice of arbitration, specifying the matter to be arbitrated ("Notice of Arbitration").

(2) Selection of Arbitrators. Within twenty (20) days of the Notice of Arbitration, the Parties shall meet and select three (3) AAA approved commercial arbitrators, unless the Parties otherwise agree in writing to select the arbitrators from another source. To select these arbitrators, the Parties shall alternately strike names from a list of commercial arbitrators obtained from the AAA or other agreed upon source, with the Party furnishing the Notice of Arbitration striking first, until three (3) Persons' names remain on such list. Such Persons shall become the arbitrators of the matter. In the event any Person selected to be an arbitrator is unable or unwilling to serve, the process shall be repeated until three (3) arbitrators have been selected and have agreed to hear and resolve the dispute.

(3) Discovery. The arbitrators shall permit each Party to conduct reasonable discovery as promptly and expeditiously as possible (and both Parties shall cooperate to this end). Discovery shall be limited to requests for the production of documents and examination upon deposition. Each Party's requests for, and responses to discovery including examination upon deposition shall be completed within seventy-five (75) days of the arbitrators' selection, unless the arbitrators expressly find that additional time is necessary for completion of discovery for reasons deemed to be in the best interests of the Parties and directed toward the development of an adequate record, in which event the arbitrators shall expressly designate the number of days by which the discovery period shall be extended. The Parties may modify the period for discovery by

mutual agreement. The arbitrators shall resolve any discovery disputes between the Parties that, after using their best efforts, the Parties cannot resolve themselves.

(4) Hearing Process. The hearing shall be initiated as promptly and expeditiously as possible (and the Parties shall cooperate to this end) and, in no event more than thirty (30) days after the conclusion of the discovery period. The Texas Rules of Evidence shall apply to the presentation of evidence. Each Party shall file written direct testimony with the arbitrators and serve a copy on the other Party. The written testimony must be received by the arbitrators and the other Party no later than ten (10) days prior to the commencement of the hearing. Each Party shall be permitted to make opening statements with the Party demanding arbitration presenting its opening statement first. Immediately after opening statements, the Party demanding arbitration shall then present evidence in support of its position. The other Party then shall present evidence in support of its position. All witnesses must testify under oath, and a stenographic record and transcript of the hearing shall be made. Each Party shall have an opportunity to cross-examine the other Party's witnesses, including the witnesses that file written direct testimony. The Parties shall be permitted to make closing statements. The Party demanding arbitration shall present its statement first. The arbitrators shall conclude the hearing within thirty (30) calendar days of its commencement, unless the arbitrators expressly find that additional time is necessary for completion of the hearing for reasons deemed to be in the best interests of the Parties and directed toward the development of an adequate record, in which event, the arbitrators shall expressly designate the number of days by which the hearing shall be extended. Such extension shall be limited to the minimum amount of time which, in the arbitrators' judgment, is

necessary to conclude the hearing. The period for concluding the hearing may be modified by mutual agreement of the Parties.

(5) The Parties shall submit briefs and/or proposed orders following the completion of the hearing unless otherwise agreed by the Parties and approved by the arbitrators. Initial briefs or proposed orders shall be served on other Parties. The initial briefs or proposed orders must be received by the arbitrators and the other Party no later than fifteen (15) days after completion of the hearing. Reply briefs shall be submitted to the arbitrators and served on the other Party within ten (10) days of receipt by the arbitrators and the other Party of the initial briefs or proposed orders. The briefing schedule provided herein may be modified by mutual agreement of the Parties with the approval of the arbitrators.

(6) Decision. The determination and/or award of the arbitrators, whichever is appropriate, shall be made no later than thirty (30) days from the date of the completion of the hearing or, if applicable, the date the last required briefs and/or proposed orders were received by the arbitrators and the Parties. Such determination and/or award shall be conclusive, final, and binding, subject only to the outcome of confirmation or vacation proceedings, if any, under applicable law. To the extent that an award includes an amount of money, such award shall include interest at the Contract Interest Rate, and such interest shall accrue from the date(s) on which such money should have been paid to the prevailing Party or was incorrectly paid by that Party.

(7) Venue. Unless the Parties otherwise agree in writing, arbitration under this Agreement shall be conducted in Potter County, Texas.

(8) Governing Rules for Arbitration. Arbitration under this Agreement shall be governed by the AAA Commercial Arbitration Rules (or any

successor thereto) in effect at the time of arbitration, unless the Parties mutually agree to another set of rules or body of law, provided that any specific provision of this Section 16.12(D) that conflicts with the then effective AAA Commercial Arbitration Rules, or other set of rules or body of law mutually agreed to by the parties, shall govern.

(9) Costs. The costs of the arbitration proceedings shall be shared equally by the Parties.

(10) Scope of Arbitrators' Authority. The arbitrators shall have no power to amend or add to this Agreement, or to the extent involved, any other Facility Agreement(s), or any part thereof, but shall have the authority to interpret the language of such agreements and make findings of fact, order specific performance and provide injunctive relief and award punitive damages in accordance with Texas law as if the arbitrators were a court. Subject to such limitation, the decision of the arbitrators shall be final and binding. Judgment on an award may be enforced in any court of competent jurisdiction. Upon request of either party, the arbitrators may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject of arbitration or otherwise avoid irreparable harm to a Party, without prejudice to the rights of the Parties to the final determination of the dispute. Either Party may, without inconsistency with this Agreement, seek from any court of competent jurisdiction any interim or provisional relief that may be necessary to protect the rights or property of that Party, pending the establishment of the arbitral tribunal.

ARTICLE 17

MISCELLANEOUS

17.1 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

17.2 Access to Facility. At all reasonable times, including weekends and nights, and with reasonable prior notice, appropriate representatives of Southwestern shall have access to the Facility, including the control room and Seller's Interconnection Facilities, to read and maintain meters and to perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

17.3 Governing Law. Except as otherwise provided in Section 16.12 of this Agreement, the interpretation and performance of the Agreement and each of its provisions shall be governed and construed in accordance with the law of the State of Texas except for law concerning choice of law. Except as otherwise provided in Section 16.12, the Parties hereby submit to the jurisdiction of the courts located in, and venue is stipulated as, Potter County, Texas.

17.4 Taxes. Seller shall be responsible for any and all federal, state, municipal, or other lawful taxes applicable by reason of the ownership and operation of the Facility

and the sale of Energy or Capacity under this Agreement (other than taxes on the income of Southwestern or any franchise tax or tax on the resale of electricity by Southwestern) as existing on the date this Agreement is executed and all increase in the level or rate of such taxes or fees ("Existing Taxes").

Upon Seller's request, Southwestern shall reimburse Seller for all federal, state, municipal, or other lawful taxes other than taxes reimbursed to Seller pursuant to Southwestern's Energy Payments and Existing Taxes applicable by reason of the ownership and operation of the Facility and the sale of Energy and Capacity under this Agreement, but only to the extent that the amount of such reimbursement exceeds the amount of any reduction of Existing Taxes during the Initial Term and, if applicable, Extended Term of the Agreement. Any reduction in Existing Taxes shall be determined by comparing the actual Existing Taxes paid by Seller during the Initial Term and, if applicable, Extended Term of the Agreement to the amount of the Existing Taxes that Seller would have paid during the Initial Term and, if applicable, Extended Term of the Agreement under the tax rates and assumptions utilized in the Debt Base Case Proforma. To the extent that Southwestern makes Payments under this Section and thereafter Seller experiences a reduction in Existing Taxes, Seller shall reimburse Southwestern accordingly. Upon Southwestern's request, Seller shall provide to Southwestern all data and documentation necessary to verify the calculations of Southwestern's Payments required under this Section 17.4 and of any reimbursement required to be made by Seller to Southwestern under this Section.

To the extent that Southwestern may be authorized by law, regulation, or Commission order to charge any tax levy to its customers, the Parties shall make

arrangements to transmit the revenue collected from said customers to the taxing authority through Southwestern or Seller, as appropriate, under the applicable law.

17.5 Disclaimer of Third Party Beneficiary Rights. In executing this Agreement, Southwestern does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except for the provisions of this Agreement that set forth certain rights and obligations of the Project Lender(s), nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this Agreement.

17.6 Relationship of the Parties.

(A) This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of Persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Southwestern for any purpose; nor shall the Seller represent to any Person that he or she is or shall become an employee of Southwestern.

17.7 Survival of Obligations. Cancellation, expiration, or early termination of this Agreement shall not relieve the Parties of obligations that by their nature should



survive such cancellation, expiration, or termination, including without limitation warranties, remedies, payment obligations, or indemnities.

17.8 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Attachments including schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected by such holding shall remain in full force and effect.

17.9 Non-Endorsement. Any review or approval provided by Southwestern under this Agreement (including without limitation any approval of Seller's Interconnection Facilities) shall be exercised solely for Southwestern's benefit and shall not be construed as an endorsement or warranty of the matter reviewed or approved. Any approval by Southwestern, or Southwestern's connection to, or failure to disconnect from Seller's Interconnection Facilities, shall not constitute approval of, or acquiescence in, the design, installation, or maintenance of any component of the Facility or Seller's Interconnection Facilities for any purpose other than the compliance of such component with the requirements for its approval under this Agreement. Southwestern's review and approval of, or connection to, or failure to disconnect from Seller's Interconnection Facilities also shall not constitute a waiver of any of its rights or remedies. Southwestern's review of any agreement (or drafts of agreements) between Seller and any third parties, including without limitation the Phillips Steam Agreement, shall not be construed as Southwestern's acceptance of Seller's performance or non-performance of Seller's covenants under this Agreement.

17.10 Entire Agreement; Amendments. The terms and provisions contained in this Agreement and the other agreements between Seller and Southwestern expressly

referenced herein constitute the entire Agreement between Southwestern and Seller and shall supersede all previous communications, representations, or agreements, either verbal or written, between Southwestern and Seller with respect to the Facility's generation of Capacity and Energy and this Agreement. This Agreement may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties.

17.11 Binding Effect. This Agreement, as may be amended from time to time pursuant to Section 17.10, shall be binding upon and inure to the benefit of the Parties' respective successors-in-interest, legal representatives, and assigns.

17.12 Headings. Captions and headings used in the Agreement are for ease of reference only and do not constitute a part of this Agreement.

17.13 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.

17.14 No Personal Liability. Each Party acknowledges and agrees that in no event shall any partner, shareholder, owner, officer, director, employee, or affiliate of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement, or any breach or failure of performance of either Party and the sole recourse for payment or performance of the obligations hereunder shall be against the Seller or Southwestern and each of their respective assets and not against any other Person, except for such liability as expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof.

17.15 Limitation of Damages. Except as expressly provided with respect to the indemnity for third party claims pursuant to Section 13.4, neither Southwestern nor Seller

shall be liable to the other or to any third party for any consequential, incidental, indirect or special damages of any nature arising out of or connected with or resulting from the performance or nonperformance of this Agreement including, without limitation, claims in the nature of lost revenues, income or profits, irrespective of whether any such claims are based upon warranty, negligence, strict liability, contract, tort (including negligence whether of Seller, Southwestern, or others), operation of law, or otherwise. The foregoing shall not be construed to prohibit the payment of (i) damages as authorized pursuant to Sections 6.2(A), (ii) the forfeiture of the Completion Security authorized by Section 6.2(B), (iii) the payment of Capacity Shortfall Damages pursuant to Section 6.3, or (iv) Southwestern's recovery of its permitted share of any insurance proceeds to which it shall become entitled pursuant to Section 13.1 and the Subordinated Mortgage.

**ARTICLE 18**

**STEAM HOST LOSS**

**18.1 Loss Of Steam Host.**

(A) If, either (i) for any reason other than a default thereunder by Seller, the Phillips Steam Agreement is terminated, or (ii) for any reason other than a default thereunder by Seller, the Phillips Steam Agreement is not extended, renewed, or otherwise maintained beyond the Phillips Initial Term, or (iii) for any reason other than a default thereunder by Seller, Force Majeure event, forced or scheduled outage of the Facility, or Steam Force Majeure or Steam Delivery Reduction (but only to the extent such Steam Force Majeure or Steam Delivery Reduction is of a duration less than twelve (12) months), Phillips, or its successors, or a Subsequent Steam Host shall fail to take or pay for steam from Seller under the price, terms, and conditions required by Section 6.2 of the Phillips Steam Agreement (each of clauses (i) - (iii) constituting a Steam Loss Event), then the provisions of this Section 18.1 shall apply.

(B) Beginning the day that Seller notifies Southwestern that a Steam Loss Event has occurred, the provisions of this Agreement relating to Dispatch (including Section 9.6) shall be applied as they were during Phase I.

(C) Beginning with the first Fixed O&M Payment made after a Steam Loss Event has occurred, each Fixed O&M Payment shall be reduced to reflect the reduction of Seller's fixed operating and maintenance costs resulting from the elimination or reduction of steam sales.

(D) Beginning with the first Fixed Payment made after a Steam Loss Event has occurred, each Fixed Payment shall be reduced by any amounts remaining in the Steam Host Escrow Accounts, provided that no Fixed Payment shall be reduced

below zero. On the date each such reduced Fixed Payment shall be due under Section 5.9, Seller may withdraw from the Steam Host Escrow Accounts funds equal to the reduction in such Fixed Payment.

(E) Beginning with the first Energy Payment made after Seller notifies Southwestern that a Steam Loss Event has occurred and notwithstanding the provisions of Section 5.4, Southwestern shall pay Seller Energy Payments calculated for the days occurring after such notice that are affected by the Steam Loss Event using the Net Heat Rate instead of the Guaranteed Heat Rate.

(F) Beginning the date that Seller reasonably determines that Steam Loss Event has occurred or will occur within three (3) months or less, Seller shall, subject to the terms of the Phillips Steam Agreement or substitute agreement with a subsequent Steam Host, take all reasonable actions to (i) establish another steam host at the Site ("Subsequent Steam Host"), (ii) to maintain certification as a QF, including, if deemed reasonable, seeking waivers of the FERC's QF certification requirements as necessary due to the termination of steam sales and (iii) exercise all rights and remedies it may have under the Phillips Steam Agreement to mitigate the effects of a Steam Loss Event and collect any payments or damages due Seller with respect thereto. The Seller shall not be obligated to enter into business arrangements with a Subsequent Steam Host on terms less favorable to the Seller than those contained in the Steam Sales and Operating Agreement. Notwithstanding any other provision of this Agreement, Seller shall not be deemed in default of its obligations under this Agreement if it fails to maintain its QF certification as a result of a Steam Loss Event or failure of Phillips to perform under the Phillips Steam Agreement, or to take the minimum steam thereunder necessary to enable

the Facility to retain its QF status, except to the extent caused by a default of Seller thereunder.

(G) Upon Southwestern's request, Southwestern and Seller shall, in good faith and subject to the terms of the Phillips Steam Agreement or substitute agreement with a Subsequent Steam Host, negotiate alternative arrangements including, but not limited to, reconfiguration of the Facility, such reconfiguration to be funded, at Southwestern's sole option, with any funds remaining in the Steam Host Loss Escrow Accounts and thereafter by Southwestern. Appropriate amendments to this Agreement shall be made to incorporate such negotiated arrangements, provided that in no event shall Seller be under any obligation to expose its receipt of full Capacity Payments to any risks in addition to or greater than the risks already agreed to pursuant to this Agreement.

(H) If on the date that is three (3) years prior to the end of the Initial Term, a Steam Loss Event shall not have occurred and thereafter, a Steam Loss Event does occur, Southwestern may terminate this Agreement (i) with the same amount of notice as given by Phillips, its successors, or a Subsequent Steam Host of its cessation or permanent reduction of steam takes, and (ii) without paying the Termination Payment required under Section 3.1, provided that any such termination shall not be effective earlier than the end of the Initial Term.

(I) At any time following a Steam Loss Event that Seller is selling steam to a Person at a level at least averaging 628,000 pounds per hour at the price which would be payable for such period under the Phillips Steam Agreement, this Section 18.1 shall not apply.

18.2 Steam Host Escrow Accounts During Initial Term.

(A) Notwithstanding the provisions of Sections 5.4 and 5.5, Southwestern shall pay Seller for Energy delivered at the Interconnection Point in any hour above 216 MW at a rate equal to ninety-five (95%) of Adjusted Non-Firm Energy Cost, provided that such amount exceeds the price Southwestern would otherwise pay Seller under Sections 5.4 and 5.5. Seller shall establish an interest bearing escrow account in which Seller shall deposit all monies paid by Southwestern under this Section 18.2(A) less (i) the Payments that Southwestern would otherwise have made to the Seller under Sections 5.4 and 5.5, and (ii) the income taxes of the Seller on the difference between the monies paid by Southwestern under this Section 18.2(A) and the Payments that Southwestern would otherwise have made to the Seller under Sections 5.4 and 5.5. Following the date on which the balance of the escrow account (including interest) established under this Section 18.2(A) equals ten million dollars (\$10,000,000), Southwestern shall resume paying for all Energy delivered to the Interconnection Point pursuant to Sections 5.4 and 5.5.

(B) In addition to the escrow account established under Section 18.2(A), Seller shall establish a second interest bearing escrow account in which Seller shall maintain a balance equal to at least fifty percent (50%) of the cumulative after tax cash flow earned by Seller in excess of the cumulative after tax cash flow projections contained in the Debt Base Case Proforma. At the end of each Contract Year, Seller shall confirm to Southwestern with evidence reasonably satisfactory to Southwestern that the balance in the account established under this Section 18.2(B) equals or exceeds fifty percent (50%) of the cumulative after tax cash flow earned by Seller in excess of the cumulative after tax cash flow projections contained in the Debt Base Case Proforma to

that date. At Seller's option, Seller may forego the annual confirmation process required by this Section 18.2(B) provided that the balance in the account established under this Section 18.2(B) equals or exceeds ten million dollars (\$10,000,000).

(C) In addition to the escrow accounts established under Section 18.2(A) and (B), Seller shall establish a third interest bearing escrow account in which Seller shall deposit any termination fees or payments received by Seller from Phillips, or its successors, pursuant to the Steam Sales and Operating Agreement.


(D) Whenever the combined balances of the three escrow accounts established under this Section 18.2 exceed the sum of all Fixed Payments Southwestern will owe Seller for the remainder of the Initial Term, Seller may withdraw and keep funds from the Escrow accounts provided the combined balances do not fall below the sum of all future Fixed Payments for the remainder of the Initial Term.

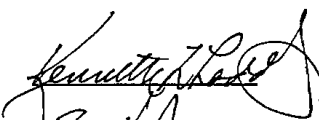


IN WITNESS WHEREOF, the Parties have executed this Agreement.

Borger Energy Associates, L.P.

Southwestern Public Service Company

By:   
Robert D. Dickerson  
Vice President

By:   
Se. V.P.

Borger Energy Associates, L.P.  
c/o Quixx Corporation  
P.O. Box 12033  
6th & Tyler, Suite 1510  
Amarillo, TX 79101

Southwestern Public Service Company  
P.O. Box 1261  
6th and Tyler  
Amarillo, Texas 79170

**ATTACHMENT A  
FACILITY COMPONENTS  
AND EQUIPMENT LISTING**

The Facility shall include the following major components and equipment:

- \* Two combustion turbine generators.
- \* Two heat recovery steam generators, each with duct burners.
- \* Exhaust stacks and continuous emissions monitoring equipment.
- \* Water treatment systems.
- \* Steam supply and condensate return systems.
- \* Fuel supply system.
- \* High and medium voltage electrical systems including generator step-up transformers and auxiliary power systems.
- \* Plant instrumentation and controls systems.
- \* Protective relaying, metering and communications systems.

**ATTACHMENT B**  
**SITE**

**Schedule B-1 Facility Address**

**Schedule B-2 Site Description**

**Schedule B-3 Map**

[TO BE PROVIDED]

**SCHEDULE C-1**  
**ESTABLISHMENT OF NET CAPABILITY**

C.1 Pursuant to Section 2.6, at various times, a capability test shall be conducted to determine the net capability of the Facility in accordance with the Southwestern Power Pool's (SPP's) "Procedures for Establishing Capability Ratings" dated December 1994, incorporated as Schedule C-2 of this Attachment, or its replacement procedure that may become effective from time to time.

C.2 SPP net capability ratings will reflect the net power output that can be obtained for the period specified on a seasonally adjusted basis with all equipment in service under average conditions of operation. Seasonal adjustments are intended to include variations in parameters such as ambient temperature; condenser cooling water temperature and availability; fuel changes, quality, and availability; and steam heating loads.

C.3 In the event Seller provides steam to a thermal customer, if during the net capability test, the Facility's steam sendout to Seller's thermal customer for any hour is less than the sustained maximum steam sendout over a twelve-hour period committed by Seller to such customer during the On-Peak Hours of the On-Peak Months and, if such reduction of steam sendout results in a higher net capability than would have resulted without such reduction, then the maximum Net Electrical Output of the Facility for such hours used to calculate the net capability shall be reduced to reflect the reduction of steam sendout during such hours.

C.4 Seller and Southwestern will mutually agree, subject to Section 2.6, on when each net capability test will occur and shall specify the hours during which the test will be conducted. If Seller and Southwestern cannot agree on the hours during which the test will be conducted, Seller shall conduct the test at the time specified by Southwestern. Southwestern shall have the right to have one or more of its representatives observe such tests. Within ten (10) days after conducting the capability tests, Seller shall provide to Southwestern the results of such tests, including MWh meter readings and copies of actual log sheets verifying the net output of the Facility and a curve of the net output versus ambient temperature. Southwestern shall have the right to independently verify the net capability test results.

C.5 Capacity Payments will be made to Seller in accordance with Section 5.2 on the basis of the Summer Net Capability obtained under the test procedure in effect at the Combustion Turbine Commercial Operation Date or Cogeneration Commercial Operation Date, as applicable. If such a procedure changes over the Initial Term or any Extended Term of the Agreement, Southwestern and Seller agree that tests to determine Net Capability will be conducted using both the procedure in effect at the time of the Combustion Turbine Commercial Operation Date or the Cogeneration Commercial Operation Date, as applicable, and the then current procedure. The then current procedure will determine the Net Capability used for accreditation purposes of the Facility within SPP.

**SCHEDULE C-2**  
**SPP CRITERIA**  
**PROCEDURES FOR ESTABLISHING CAPABILITY RATINGS**

## Southwest Power Pool Criteria

### 2.3.5 Procedures For Establishing Capability Ratings

#### 2.3.5.1 External Factors

- a. Units dependent upon common systems which can restrict total output shall be tested simultaneously.
- b. When the total output of a member's system is reduced due to restrictions placed upon the output of individual generating units through the operation of the Clean Air Act, or similar legislation, then the total of the individual unit ratings of a member's generating resources shall not exceed the modified system capacity.
- c. The fuel used during testing shall be the general type expected to be used during peak load conditions or adjustments made to test data if an alternate fuel is used.
- d. Net Capability is the net power output which can be obtained for the period specified on a seasonally adjusted basis with all equipment in service under average conditions of operation and with the equipment in an average state of maintenance. Deductions from net capability shall not be made for equipment temporarily out of service for normal maintenance or repairs.
- e. The seasonal net capability shall be determined separately for each generating unit in a power plant where the input to the prime mover of the unit is independent of the others, except that in the event multiple unit plant capability is limited by fuel limitations, transmission limitations or other auxiliary devices or equipment, each unit shall be assigned a rating by apportioning the combined capability among the units. The seasonal net capability shall be determined as a group for common header sections of steam plants or multiple unit hydro plants, and each unit shall be assigned a rating by apportioning the combined capability among the units.

#### 2.3.5.2 Seasonality

- a. The summer season is defined by the months June, July, August and September. The winter season is defined by the months December, January and February. The adjustments required to develop seasonal net capabilities are intended to include seasonal variations in ambient temperature, condenser cooling water temperature and availability, fuel changes, quality and availability, steam heating loads, reservoir levels,

### Southwest Power Pool Criteria

- and scheduled reservoir discharge.
- b. The total seasonal net capability rating shall be that available regularly to satisfy the daily load patterns of the member and shall be available for a minimum of four continuous hours taking into account possible fuel curtailments and thermal limits.
  - c. The seasonal net capability of each generating unit shall be based upon a set of conditions, referred to as the "Rating Conditions" for that unit. This set of conditions is determined by the geographical location of the unit, and is composed of three or four factors, depending upon the type of unit. The three factors which can affect most generating units are: Ambient dry-bulb temperature, Ambient wet-bulb temperature and Barometric pressure. Condensing steam turbines which obtain condenser cooling water from a lake, river, or comparable source have a fourth factor: Condenser cooling water source temperature.
  - d. The Rating dry-bulb and wet-bulb temperatures shall be obtained from weather data provided in the most recently published American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Fundamentals Handbook. The handbook is published every four years; 1989, 1993, etc., and is based on 15 years of historical weather data where available. If the generating station is within 30 miles of the nearest weather station reported in the handbook, then these temperatures will be those for the nearest station. For all other stations, rating temperatures shall be determined by interpolating between weather stations using plant latitude and longitude. Selected pages of the "Weather Data" chapter of the handbook are reprinted in the Appendix with permission of ASHRAE. The steps to be used for interpolating weather data and correcting for elevation are also presented in the Appendix.
  - e. If experience for a given unit suggests otherwise, members may optionally use their own site specific temperature data if accurate hourly data is available to allow calculation of the temperature levels as defined in the Criteria. Site specific data shall contain both dry-bulb and wet-bulb temperatures.
  - f. The dry-bulb temperature for summer rating of equipment shall be taken as that which is equalled or exceeded 1% of the total hours during the months of June through September for the plant's geographical location. The wet-bulb temperature for the



### Southwest Power Pool Criteria

summer rating shall be the "mean coincident wet-bulb" temperature corresponding to the above dry-bulb temperature. These two temperatures are listed together under the "1%" heading in the weather data table in the Appendix.

- g. The dry-bulb temperature for the winter rating shall be taken as that which is equalled or exceeded 99% of the total hours during the months of December through February for the plant's geographical location. The wet-bulb temperature is not significant for the winter rating and can be disregarded. The winter dry-bulb temperature is listed under the "99%" heading in the weather data table in the Appendix.
- h. Standard barometric pressure for a plant site shall be determined for each plant elevation by linearly interpolating the pressure table provided in the Appendix.
- i. For those units using a lake or river as a source of condenser cooling water, the summer standard inlet temperature is the highest water inlet temperature during the hottest month of the year, averaged over the past ten years.
- j. Ambient wet-bulb temperature and condenser cooling water temperature are generally not significant factors in adjusting cold weather capability of generating units. Shall special situations arise in which these temperatures are required, reasonable estimates for temperatures occurring coincidentally with the winter rating dry-bulb temperature as defined in the Criteria shall be used.

#### **2.3.5.3 Rating Adjustments**

- a. The rated net capability of a unit may be above or below the actual tested net generation, as a result of adjustments for Rating Conditions.
- b. Seasonal net capability shall not be reduced to provide regulating margin or spinning reserve. It shall reflect operation at the power factor level at which the generating equipment is normally expected to be operated over the daily peak load period.
- c. Extended capability of a unit or plant obtained through bypassing of feed-water heaters, by utilizing other than normal steam conditions, by abnormal operation of auxiliaries in steam plants, or by abnormal operation of combustion turbines or diesel units may be included in the seasonal net capability if the following conditions are met; a) the extended capability based on such conditions shall be available for a period of not less than four continuous hours when needed and meets the other restrictions, and b)

**Southwest Power Pool Criteria**

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- appropriate procedures have been established so that this capability shall be available promptly when requested by the system operator.
- d. The seasonal net capability established for nuclear units shall be determined taking into consideration the fuel management program and any restrictions imposed by governmental agencies.
  - e. The seasonal net capability established for hydro electric plants, including pumped storage projects, shall be determined taking into consideration the reservoir storage program and any restrictions imposed by governmental agencies and shall be based on median hydro conditions.
  - f. The seasonal net capability established for run-of-the-river hydroelectric plants shall be determined using historical hydrological data on a monthly basis.

**ATTACHMENT D**

Agency	Permit/Approval
DOE	Alternate Fuels Capability Certification
EPA	SPCC Plan
EPA	NPDES Stormwater Permit for Construction
FERC	QF Status
TNRCC*	PSD Permit to Construct
TNRCC	Title IV Acid Rain Permit
TNRCC	Title V Operating Permit
Local Building Department	Building Permits
Fire Marshal	Fire Safety Approval

\* Indicates received as of execution date.

**ATTACHMENT E**

1. Approval by the NMPUC as necessary under applicable New Mexico law including NMPUC orders concerning Southwestern and its affiliates.
2. Certification of Agreement by PUCT under Section 2.209 of the Public Utility Regulatory Act for purposes of allowing the recovery of the amount of Payments to Seller in Southwestern's rates.
3. If Seller becomes an affiliated EWG, determinations under 15 U.S.C. § 79z-5a(k) from state commissions having jurisdiction over Southwestern's retail rates.

**ATTACHMENT F**  
**PRICING PROVISIONS AND RELATED SCHEDULES**

**SCHEDULE F-1**  
**CAPACITY PRICE**  
(in \$/kW-month)

Phase I

The Phase I Capacity Price is \$2.50 kW-month and is not subject to adjustment.

Phase II

Contract Year	
1	\$5.06
2	\$5.16
3	\$5.26
4	\$5.37
5	\$5.48
6	\$5.59
7	\$5.70
8	\$5.81
9	\$5.93
10	\$6.05
11	\$6.17
12	\$6.29
13	\$6.42
14	\$6.55
15	\$6.68
16	\$6.81
17	\$6.95
18	\$7.09
19	\$7.23
20	\$7.37
21	\$2.70
22-35	note 3

Notes:

- For the purposes of applying the Phase II Capacity Prices shown above, the first Contract Year will start on the day after the Cogeneration Commercial Operation Date.
- The references in these Schedules to years beyond 25 presume that Southwestern has exercised the option for Extended Term. If Southwestern has not exercised the option for an Extended Term, the references to years beyond 25 shall be disregarded.
- The Capacity Price for Contract Year 21 is not subject to adjustment. The Capacity Prices for Years 22 through 35 shall be the same as the Capacity Price for Contract Year 21 escalated annually thereafter in accordance with the rate of change in the GDPIPD index.
- The Phase II Capacity Prices as shown above for Contract Years 1 through 20 are firm, subject only to a one-time adjustment as a function of the yield of United States ten year treasury notes on the Construction Finance Closing Date as described in this note 4. For the first Contract Year, the Capacity Price shall be the price shown above times an interest rate adjustment factor. The interest rate adjustment factor shall be one (1) plus 7.2 times the difference of a) the yield of United States ten year treasury notes on the Construction Finance Closing Date, expressed in percent, minus b) 6.42%. Once the Phase II Capacity Price for the first Contract Year has been established as described above, the Phase II Capacity Price for Contract Years 2 through 20 shall be recalculated as the Capacity Price for the previous Contract Year escalated annually by a fixed rate of 2.00% per year.
- The cost of any necessary additions to Southwestern's transmission system (starting from the high side of the Facility's

generator step-up transformers) has not been included in the Facility's pricing. If the Transmission Adder as described in Section 3.5(C)(4) of the Agreement is to be added to the Capacity Payments, the Transmission Adder for each month starting with the Cogeneration Commercial Operation Date shall be computed as follows:

$TA = ATP_c \times DSCR_c / 12$ , where

TA is the Transmission Adder for the month, expressed in dollars.

ATP<sub>c</sub> is the Annual Transmission Adder for Contract Year "C," computed by applying the same interest rate and amortization schedule as applies to the Senior Debt as shown in the Debt Base Case Proforma to the actual total cost of the Southwestern Interconnection Facilities, including interest during construction, expressed in dollars.

DSCR<sub>c</sub> is the ratio of the pretax cashflow divided by the debt service payments, as shown in the Debt Base Case Proforma for Contract Year "C."

"C" is the Contract Year in which the TA is being computed.

If the Transmission Adder is added to the Capacity Payments, then the net book cost of the facilities referred to in Section 3.5(C)(3) shall be the actual total cost of the Southwestern Interconnection Facilities, including interest during construction, less the amount of such costs (facility and interest during construction) recovered through Southwestern's payment of the Transmission Adder.

**SCHEDULE F-2**  
**FIXED O&M PRICE**  
(in \$/kW-month)

Phase I

During Phase I, the Fixed O&M price will be zero.

Phase II

Contract  
Year

1-35	\$1.0406
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The Phase II Fixed O&M Prices are expressed as of June 1, 1996 and will be escalated annually in accordance with the rate change in the GDPIPD index.



**SCHEDULE F-3**  
**VARIABLE O&M PRICE**  
(in \$/MWh)

Phase I

During Phase I, the Variable  
O&M price will be zero.

Phase II

Contract

Year

1-35	\$1.64
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The Phase II Variable O&M Prices are expressed as of June 1, 1996 and will be escalated annually in accordance with the rate change in the GDPIPD index.

**SCHEDULE F-4**  
**GUARANTEED HEAT RATES**

Phase I  
(in MMBtu/MWH (net), Higher Heating Value)

Plant Loading of Actual	As A Percentage Capacity	Average Heat Rate (MMBtu/MWH (net), HHV)
<u>Greater Than</u>	<u>Less Than or Equal To</u>	
0.0%	75.3%	N/A
75.3%	79.8%	12.922
79.8%	82.0%	12.582
82.5%	85.4%	12.433
85.4%	88.8%	12.283
88.8%	92.1%	12.146
92.1%	95.5%	12.083
95.5%	100.0%	12.020

95.5% is base load on the combustion turbines  
100% results from peak loading of the combustion turbines

Phase II  
(in MMBtu/MWH (net) Higher Heating Value)

Plant Loading of Actual	As A Percentage Capacity	Average Heat Rate (MMBtu/MWH (net), HHV)
<u>Greater Than</u>	<u>Less Than or Equal To</u>	
0.0%	67.0%	N/A
67.0%	85.0%	7.000
85.0%	87.5%	7.075
87.5%	90.0%	7.150
90.0%	92.5%	7.229
92.5%	100.0%	7.300

85% output is 100% base load on the combustion turbines.  
95% is 100% base load with power augmentation.  
100% is 100% peak load with power augmentation.  
Peak firing will be limited by Good Utility Practice.

**SCHEDULE F- 5**  
**START-UP PRICE**  
(in \$/start-up)

Contract  
Year

1-35	See Below
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The start-up prices for normal and emergency start-ups are respectively, \$750/start-up per unit and \$3,000/start-up per unit based on Fuel Price of \$1.3758/MMBtu. The Start-up Prices shall be recalculated monthly in relation to the changes of the Fuel Price from \$1.3758/MMBtu.

**SCHEDULE F- 6**  
**ADJUSTED NON-FIRM ENERGY COST**

F-6.1 Definition. Adjusted Non-Firm Energy Cost (ANFEC) represents Southwestern's adjusted average hourly avoided energy cost as computed in accordance with PUCT Substantive Rule 23.66(g) in effect on the date of this agreement. The ANFEC for each hour of the month will be calculated as 99% of Southwestern's average Non-Firm Energy Cost (NFEC) for each respective hour, in dollars per MWh.

F-6.2 Non-Firm Energy Cost. NFEC represents Southwestern's computed average non-firm avoided energy cost for each of the month. NFEC will be determined by Southwestern as the difference in Southwestern's production costs with and without the total amount of non-firm energy provided by all non-firm energy producers (i.e., QFs, renewable energy facilities) divided by the total amount of non-firm energy provided by those producers. The formula for NFEC is as follows:

$$\text{NFEC} = [\text{SPC}_1 - \text{SPC}_0] / \text{TNFE}$$

where:

$\text{SPC}_1$  = Southwestern's reconstructed production costs, including purchased power expenses, for each hour, as if all non-firm energy supplied by non-firm energy producers pursuant to PUCT Substantive Rule 23.66(g) or its successor was generated by Southwestern or purchased from another source;

$\text{SPC}_0$  = Southwestern's actual production costs, including purchased power expenses (exclusive of purchased power costs for purchases made pursuant to PUCT Substantive Rule 23.66(g) or its successor), for each hour with all Seller's non-firm energy avoiding Southwestern's production costs or other purchased power expenses; and

TNFE = total non-firm energy provided during each hour by all non-firm energy producers, including Seller, supplying energy to Southwestern pursuant to PUCT Substantive Rule 23.66(g) or its successor.

**SCHEDULE G-1  
DELAY DAMAGES  
COMBUSTION TURBINE COMMERCIAL OPERATION DELAY**

Period	Damages per day
Less than or equal to 30 days after Proposed Combustion Turbine Commercial Operations Date	\$10,000
More than 30 days after Proposed Combustion Turbine Commercial Operations Date, less than or equal to 92 days after Proposed Combustion Turbine Commercial Operations Date	\$15,000
More than 92 days after Proposed Combustion Turbine Commercial Operations Date, less than or equal to 122 days after Proposed Combustion Turbine Commercial Operations Date	\$7,500
More than 122 days after Proposed Combustion Turbine Commercial Operations Date, less than or equal to 304 days after Proposed Combustion Turbine Commercial Operations Date	\$5,000
More than 304 days after Proposed Combustion Turbine Commercial Operations Date, less than or equal to 335 days after Proposed Combustion Turbine Commercial Operations Date	\$10,000
More than 335 days after Proposed Combustion Turbine Commercial Operations Date, less than or equal to 365 days after Proposed Combustion Turbine Commercial Operations Date	\$20,000
More than 365 days after Proposed Combustion Turbine Commercial Operations Date, less than or equal to 427 days after Proposed Combustion Turbine Commercial Operations Date	\$25,000
More than 427 days after Proposed Combustion Turbine Commercial Operations Date, less than or equal to 457 days after Proposed Combustion Turbine Commercial Operations Date	\$10,000
More than 457 days after Proposed Combustion Turbine Commercial Operations Date	\$5,000

**SCHEDULE G-2  
DELAY DAMAGES  
COGENERATION COMMERCIAL OPERATION DELAY**

Period	Damages per day
Less than or equal to 120 days after Proposed Cogeneration Commercial Operations Date	\$5,000
More than 120 days after Proposed Cogeneration Commercial Operations Date, less than or equal to 151 days after Proposed Cogeneration Commercial Operations Date	\$10,000
More than 151 days after Proposed Cogeneration Commercial Operations Date, less than or equal to 181 days after Proposed Cogeneration Commercial Operations Date	\$20,000
More than 181 days after Proposed Cogeneration Commercial Operations Date, less than or equal to 243 days after Proposed Cogeneration Commercial Operations Date	\$25,000
More than 243 days after Proposed Cogeneration Commercial Operations Date, less than or equal to 273 days after Proposed Cogeneration Commercial Operations Date	\$10,000
More than 273 days after Proposed Cogeneration Commercial Operations Date	\$5,000

**ATTACHMENT H**  
**OPERATING PROCEDURES**

**OPERATING PROCEDURES  
PURSUANT TO POWER PURCHASE AGREEMENT  
between  
BORGER ENERGY ASSOCIATES, L.C.  
and  
SOUTHWESTERN PUBLIC SERVICE COMPANY  
with respect to the  
BLACKHAWK GENERATING FACILITY**

These Operating Procedures, dated as of July 31, 2003, are established by agreement of the Operating Committee representatives for Borger Energy Associates, L.P. ("BEA"), as owner the Blackhawk Generating Station ("Facility"), and Southwestern Public Service Company ("SPS") in accordance with Section 9.2(B) of the Power Purchase Agreement between BEA and SPS, dated May 23, 1997, the "PPA". BEA and SPS may be hereinafter referred to individually as a "Party" and collectively as the "Parties".

These Operating Procedures are subject to change from time to time by written mutual agreement of the Operating Committee representatives of the Parties. These Operating Procedures are intended to be a guide on how to integrate the Facility and its electrical output into SPS's system and shall be consistent with the PPA. However, these procedures are not intended to be a comprehensive summary of the PPA.

Notwithstanding anything to the contrary contained herein, the PPA referenced above shall be the governing document should there be any conflict between these operating procedures and the PPA.

Capitalized terms used but undefined in these Operating Procedures shall have the same meaning given to such terms under the PPA.

1. Day-to-Day Communications

Notices required by the PPA shall be provided by the Parties in accordance with the procedures set forth in Sections 16.1, 16.2, 16.3 and 16.4 of the PPA. However, Real-Time Communications (defined below) or routine (day-to-day) communications concerning Facility operations or performance of the PPA and required communications under these Operating Procedures (together with Real-Time Communications, "Day-to-Day Communications") are exempt from notice provisions in accordance with Article 16.1 of the PPA. These Operating Procedures established between the Parties dated as of July 31, 2003 (as the same may be amended, restated or modified from time to time), shall establish the method for such Day-to-Day Communications. Except as otherwise specified in these Operating Procedures, Day-to-Day Communications shall be conducted by phone, followed by electronic mail or facsimile confirmation. For purposes of these Operating Procedures, "Real-time Communications" shall (1) include all communications between the SPS Real-time Generation Dispatch desk and the Primary Contact or On-Duty Operator for BEA that takes place during the Day of the applicable electric delivery or during periods outside of normal business hours and (2) be conducted by recorded phone with no electronic mail confirmation required. The applicable contact information for each of the Parties for Day-to-Day communications is



set forth in Exhibit A to these Operating Procedures. Either Party may, by written notice to the other Party, change the Exhibit A contact information applicable to that Party.

## 2. Dispatch of the Facility Turbine(s)

(A) The Parties shall control and dispatch the Facility turbines in accordance with the Section 3.3(B) and 9.5 of the PPA. Effective January 2002 the control and dispatch of the Facility was transferred from the SPS System Control Center to the SPS Real Time Generation Dispatch Desk located in Denver Colorado. The expected Non-Dispatchable Capacity and Energy from the Facility that will be delivered to SPS subsequent to the June 12, 1999 Cogeneration Commercial Operation Date is sixty-seven percent (67%) of the Actual Capacity. As stated in Article 1 of the PPA, the Minimum Load Level means the level of Non-Dispatchable Capacity and Energy during Cogeneration Commercial Operation. SPS may dispatch the Facility between its Minimum Load Level and Actual Capacity in accordance with Section 3.3(B). In the event that the Non-Dispatchable Capacity and Energy from the Facility changes, BEA, with the written consent of Southwestern, may revise the Non-Dispatchable Capacity and Energy. Seller shall keep Southwestern informed of any expected short-term changes in the Non-Dispatchable Capacity and Energy.

(B) In the event SPS requests BEA to increase the Facility output during any hour greater than base load by mean of utilizing the Facilities peak firing or power augmentation capabilities, BEA shall send a confirmation facsimile to the SPS Real Time Generation Dispatch Desk requesting SPS to acknowledge such request. SPS shall confirm such request is valid by returning via FAX the acknowledgment facsimile to the BEA On-Duty Operator contract. A copy of such confirmation facsimile shall be in the form of shown on Attachment A.

(C) SPS shall not have the right to ask that the Facility be shut down after the June 12, 1999 Cogeneration Commercial Operation Date.

## 3. Ambient Adjustment Factor Corrections

(A) The hourly ambient adjustment factor which is provided by BEA to SPS each month is used in selecting the applicable Guaranteed Heat Rate for purposes of calculating the hourly energy payment pursuant to Sections 5.4 and Schedule F-4 of the PPA.

(B) The Parties acknowledge that the hourly ambient adjustment factor defaults to a value of 1.000000 under certain ambient conditions. In order to correct the incorrect default ambient values to values that better represent the actual ambient adjustment factor, the SPS Contractual contact shall correct the ambient adjustment value according to the following procedures:

- a) If the default ambient adjustment factor value occurred over a continuous period of less than five (5) hours, the hourly ambient adjustment factor shall be calculated based on the average of four (4) hours of valid ambient adjustment data covering the two (2) hours

- before and the two (2) hours after the incorrect ambient adjustment factor value.
- b) If the default ambient adjustment factor value occurred over a continuous period of greater than five (5) hours, the hourly ambient adjustment factor shall be calculated based on the average of six (6) hours of valid ambient adjustment data covering the three (3) hours before and the three (3) hours after the incorrect ambient adjustment factor value.
  - c) If the ambient conditions data (i.e. dry bulb temperature, barometric pressure, and relative humidity) is unavailable for a continuous period of greater than five (5) hours, then the ambient conditions data for the Borger, TX Zip Code 79007 shall be obtained from [www.weatherunderground.com](http://www.weatherunderground.com). Such ambient data values shall be inserted into the Blackhawk Capacity Calculator - the calculator which is used to during the annual capacity tests – to obtain the applicable hourly ambient adjustment factor.

(C) After the Ambient adjustment factor file has been corrected pursuant to Section 3(B) of these Operating Procedures, the SPS Contractual contact shall e-mail the corrected file to the BEA Primary contact.

#### 4. Billing and Payment

(A) With regard to the monthly payments specified in Article 5 of the PPA, SPS shall submit billing invoices to BEA and SPS shall make payments to BEA in accordance with the procedures set forth in Article 5.9 of the PPA. SPS shall provide the billing statement to the BEA Contractual contact or its designate by facsimile within ten (10) calendars days of the end of the month to establish the date of receipt. The billing statement shall show the MWh's of Energy metered by the SPS Metering Devices at the Facility, the Cogeneration Contract Capacity, as applicable, the adjustment factor in accordance with Section 5.2(C) of the PPA, damages for Capacity Shortfalls in accordance with Section 6.3 of the PPA, the monthly Seller charge assessed by SPS, the total amount due and, upon request, any other published data reasonably pertinent to the calculation of the payments as set forth in Section 5 of the PPA.

(C) Unless otherwise directed by the Contractual contacts for the Parties, informal billing questions, pursuant to paragraph (A) above, shall be directed to the Contractual contact for the applicable Party.

#### 5. Scheduled Maintenance

BEA shall submit annual maintenance schedules for the Facility by July 1 for the twelve (12) month period stating January 1 for the following calendar year. At the same time BEA shall supply a long-term maintenance schedule that will encompass the following four (4) maintenance years. Such schedule shall be submitted to the Primary and Contractual Contact for SPS, and BEA shall communicate any changes to such maintenance schedules in accordance with the procedures set forth in Section 9.3(B) of the PPA. Changes to the maintenance schedule by BEA shall be directed to the Primary Contact for SPS, with a copy of the electronic mail confirmation to be sent to the Contractual contact for SPS. SPS responses to such changes shall be directed to the

Primary Contact for BEA, with a copy of the electronic mail confirmation to be sent to the Primary contact for BEA. Maintenance schedules shall include the date and hour that the Scheduled Outage/Derating is to begin and the planned duration. In accordance with Section 9.3(B) of the PPA no planned maintenance shall be conducted during the On-Peak Months except as provided in Section 9.3(B) of the PPA. The maximum annual maintenance hours permitted for the Facility shall be 336 hours, except that 730 hours shall be permitted for the annual period in which Major Maintenance Outage occurs, which shall not occur more frequently than every fifth year as provided in Section 9.3(B) of the PPA.

#### 6. Operations Reporting

(A) When forced outages or partial forced outages occur, BEA shall notify the SPS Real-time Generation Dispatch Desk of the existence, nature, and expected duration of the outages or partial forced outages as soon as practical, but in no event later than one (1) hour after any outage or partial forced outage occurs in accordance with Section 9.8(A) of the PPA. In the event such forced outages or partial forced outages is expected to extend beyond the current day BEA shall immediately inform the Primary contact for SPS of such outage. Any changes in the expected duration of the outage or partial forced outage shall be communicated the Primary contact for SPS.

(B) BEA shall report to the SPS Contractual contact on a monthly basis all scheduled outages/derates that occurred during the preceding month within five (5) working days after the end of the preceding month in accordance with Section 9.8(B) of the PPA. Such schedule shall be reported and submitted to the SPS Contractual contact in electronic format in the form shown on Attachment B.

(C) BEA shall maintain and keep complete Facility operating logs in accordance with Section 16.6 and 16.7 of the PPA.

#### 7. Required Testing

(A) Electric Metering Testing. SPS shall inspect and test all SPS owned Metering Devices at its own expenses and BEA shall inspect and test all installed BEA Back-up Metering Devices at its own expenses in accordance with Article 8.2 of the PPA. The testing Party shall provide advance notice of such testing to the other Party and permit a representative of the other Party to witness and verify such inspections and tests. Additional inspections and tests of the metering devices may be requested by either Party as a provided in Article 8.2(B) and (D) of the PPA. If upon inspection or testing a metering device is found to register inaccurately by more than the allowable limits established in Section 8.3 of the PPA, the expense of such addition inspection and testing shall be borne by the testing Party.

(B) Seasonal Capacity Testing. In accordance with Article 2.6 of the PPA a Capacity Test shall be performed to determine the net capability of the Facility in accordance with the procedures set forth in Attachment C of the PPA. The scheduling and coordination of such capacity tests shall be established by communication between the Contractual contact for BEA and the Performance Engineering contact for SPS, with a copy of electronic mail confirmations to be sent to the Contractual contact for SPS.

8. Air Permit Emission Limit Reporting

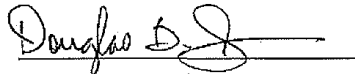
On a daily basis BEA shall report to the SPS Real-time Generation Dispatch Desk by facsimile the number of hours on a 12 month rolling average of power augmentation and peak firing that has used and is available, as permitted in BEA's air emission permit.

9. Clearances and Switching Practices

The Parties recognize that the development of clearances and switching practices between the Parties as identified in Section 9.2 of the PPA for inclusion in these operating procedures is no longer appropriate under the PPA, and that any such practices or procedures, if applicable, should be addressed pursuant to any transmission interconnection agreement.

The respective Operating Committee representatives for BEA and SPS have indicated their agreement with these Operating Procedures by signing below.

Borger Energy Associates, LP



DOUGLAS B. JOHNSON

DIRECTOR, ASSET MANAGEMENT

OPERATING COMMITTEE - ALTERNATE

Southwestern Public Service Company



Karen T. Hyde  
Director, Purchased Power

**EXHIBIT A**  
**CONTACT INFORMATION**

Page 1 of 3

**Borger Energy Associates, LC (BEA):**

Primary Contacts

D. J. Rogers (normal business hours)  
Plant Manager

Phone NR: (806) 274-3340  
Cell: (806) 433-2716  
E-mail: [djrogers@beablackhawk.com](mailto:djrogers@beablackhawk.com)

Marc A. Lindemann (normal business hours)  
Assistant Plant Manager

Phone (NR): (806) 274-3340  
Cell: (806) 584-1653  
E-mail: [mlindemann@beablackhawk.com](mailto:mlindemann@beablackhawk.com)

Blackhawk Generating Facility  
Quixx Power Services, Inc.  
P. O. Box 3326, Spur 119 N. Cogen Place  
Borger, TX 79007

Phone (NR): (806) 274-3340  
FAX: (806) 274-7488

Real-time Communications

Control Room Operator:

Phone: (806) 274-3340  
FAX: (806) 274-7488

Contractual

Doug Johnson, General Manager  
Manager, Assets and Contracts  
Borger Energy Associates  
C/o Quixx Corporation  
Amarillo National's Plaza/Two  
500 S. Taylor, Suite 1100  
Lobby Box 254  
Amarillo, Texas 79101-2442

Phone: (NR) (806) 342-2142  
Cell:  
FAX: (806) 342-2198  
E-mail: [Douglas.B.Johnson@ue-corp.com](mailto:Douglas.B.Johnson@ue-corp.com)

NR means non-recorded phone.

**EXHIBIT A**  
**CONTACT INFORMATION**

Page 2 of 3

**Southwestern Public Service Company (SPS):**

Primary Contact

Trading Analyst (normal business hours)  
Trish Gambino

Phone (NR): 303-308-6186  
FAX: 303-308-6005  
E-mail: [trish.gambino@xemkt.com](mailto:trish.gambino@xemkt.com)

Real-time Communications

Real-time Generation Dispatch desk (24 hour coverage)

Manager: John Welch (normal business hours)

Phone: 303-308-6180  
FAX: 303-308-6005  
Phone: 303-308-7733  
E-mail: [john.welch@xemkt.com](mailto:john.welch@xemkt.com)

Contractual Contact

Donald Smith (normal business hours)  
Purchased Power Contracts  
Public Service Company of Colorado  
1099 18<sup>th</sup> Street, Suite 3000  
Denver, CO 80202

Phone (NR): 303-308-6128  
FAX: 303-308-6141  
E-mail: [donald.smith@xemkt.com](mailto:donald.smith@xemkt.com)

NR means non-recorded phone.

**EXHIBIT A**  
**CONTACT INFORMATION**

Page 3 of 3

**Southwestern Public Service Company (SPS) - Continued:**

Electric Meter Testing

David Stephenson, Manager, Electric Meter Shop  
(normal business hours)

Phone (NR): 806-378-4131  
[David.Stephenson@xcelenergy.com](mailto:David.Stephenson@xcelenergy.com)

Performance Engineering

Ed Gonzales, Manager, Performance Engineer  
(normal business hours)

Phone (NR): 720-497-2062  
[Ed.Gonzales@xcelenergy.com](mailto:Ed.Gonzales@xcelenergy.com)

NR means non-recorded phone.

ATTACHMENT A

Borger Energy Associates, L.P.  
PO Box 29  
Borger, TX 79007

(806) 274-3340 Phone  
(806) 274-2695 Fax



Blackhawk Station

## FAX COVER

To: Denver, Real-Time Trading Desk	From: Control Room Operator
Phone: 1-303-308-2892	Pages including cover: 1
Fax : 1-303-308-6005	Date:
Re: Dispatch / Curtailment	CC: Doug Johnson - 342-2199

Per our discussion, we acknowledge dispatch / curtailment orders  
given at \_\_\_\_\_ (hrs.) on \_\_\_\_\_ (date),  
by Real-Time Trader / Controlling System Operator \_\_\_\_\_  
(name)

**DIRECTING** \_\_\_\_\_ % Plant Capacity,  
**OR** \_\_\_\_\_ net MW output level,  
**OR** Peak Fire / Power Augmentation,  
(circle one or both)  
**OR** Return to Base Load Conditions  
(circle if applicable)

Estimated time of return to normal Base Load mode of operation: \_\_\_\_\_  
(time)

\_\_\_\_\_  
Blackhawk Station Control Room Operator

\_\_\_\_\_  
Denver Real Time Trader / Controlling System Operator  
(sign and return fax)

Blackhawk Station Control Room Operator: Should fax not be returned in a timely manner,  
pause change in plant output to call Denver Trading Desk and verify validity of orders.



ATTACHMENT B

**BLACKHAWK UNIT 1 AND 2 DERATES**

DATE	TIME	U1 Mw Derate	U2 Mw Derate
4/1/2003	0:00	0	0
4/1/2003	1:00	0	0
4/1/2003	2:00	0	0
4/1/2003	3:00	0	0
4/1/2003	4:00	0	0
4/1/2003	5:00	15	5
4/1/2003	6:00	15	5
4/1/2003	7:00	15	5
4/1/2003	8:00	15	5
4/1/2003	9:00	15	5
4/1/2003	10:00	0	0
4/1/2003	11:00	0	0
4/1/2003	12:00	0	0
4/1/2003	13:00	0	0
4/1/2003	14:00	0	0
4/1/2003	15:00	0	0
4/1/2003	16:00	0	0
4/1/2003	17:00	0	0
4/1/2003	18:00	0	0
4/1/2003	19:00	0	0
4/1/2003	20:00	0	0
4/1/2003	21:00	0	0
4/1/2003	22:00	0	0
4/1/2003	23:00	0	0

**ATTACHMENT I  
INSURANCE COVERAGE**

**[PENDING SOUTHWESTERN AND INSURANCE BROKER REVIEW]**

**SPECIFICATION OF INSURANCE COVERAGE**

- | <u>1. Type of Insurance</u>  | <u>Minimum Limits of Liability</u> |  |
|--|------------------------------------|--|
| Commercial General Liability Insurance   | \$1,000,000                        | combined single limit each occurrence and \$2,000,000 aggregate              |
| <p>Comprehensive General Liability policies shall include coverage for (a) premises/operations, (b) independent contractor, (c) products and completed operation, (d) broad form contractual liability, (e) broad form property damage, (f) explosion, collapse, and underground damage exclusion deletion, (g) product liability, (h) bodily injury, all with limits as specified above.</p> <p>The Commercial General Liability policies to be obtained by or on behalf of Seller shall be endorsed to the following effect or as may be reasonably acceptable to Southwestern:</p> <p style="padding-left: 40px;">Such insurance as afforded by this policy for the benefit of Southwestern as an additional insured shall be primary as respects any claims, losses, damages, expenses, or liabilities and all litigation and defense obligations arising out of this Agreement, and insured hereunder, and any insurance carried by Southwestern shall be excess of and noncontributing with insurance afforded by this policy.</p> |                                    |  |
| 2. Business Auto Liability   | \$1,000,000                        | combined single limit including all Owned, Non-Owned, Hired and Leased Autos |
| 3. Workers Compensation including U.S. Long-shore and Harbor Workers' Act and Jones Act, if applicable   | Statutory                          |  |
| Employers Liability  | \$1,000,000<br>\$1,000,000         | (each accident-each employee)<br>(disease-each employee)                     |
| 4. Excess Umbrella Liability   | \$10,000,000                       | (each occurrence and in the aggregate where applicable)                      |
| 5. Builders Risk insurance or an installation floater with minimum limits equal to the completed value of the Facility including collapse, damage resulting from faulty workmanship, materials and design, freezing, testing of machinery or equipment, and partial occupancy, and on a sublimit basis coverage for earthquake, flood, debris removal and loss of revenue due to an insured delay in the Facility's commissioning.   |                                    |  |
| 6. Environmental Impairment Liability Insurance or pollution liability coverage under the Commercial and Excess Umbrella Liability policies or separate Environmental Impairment Liability Insurance   | \$5,000,000                        | each occurrence and in the aggregate   |

7. Watercraft or Aircraft                      \$5,000,000                      each occurrence and in the aggregate  
Liability Insurance  
including passenger liability  
(where applicable)
  
8. Insurance Against Loss or Damage to the Facility. Seller shall maintain in effect an All Risk Property Insurance policy(ies) commencing no later than the earlier of (i) the termination of Builder's Risk policy or (ii) the Combustion Turbine Operation Date. Such insurance shall cover, subject to the deductible and co-insurance limits contained in Article 13 of the Agreement, the full replacement value of all property and include:
  - (a) coverage for fire, flood, wind and storm, tornado, and earthquake with respect to facilities similar in construction, location, and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and
  - (b) Boiler and Machinery Insurance covering all objects customarily subject to such insurance, including boilers and turbines in an amount equal to their full replacement value.
  
9. Business Interruption, covering loss of revenues and/or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered in Paragraph 8 above, to the extent available on commercially reasonable terms. Such coverage shall be in an amount equal to not less than Seller's reasonably expected non-operating cash flow requirements for the next twelve (12) calendar months.

Notwithstanding any other provision of the Agreement, Seller shall not be required to have Environmental Impairment/pollution liability insurance, and Business Interruption insurance until the Combustion Turbine Commercial Operation Date.

**BORGER ENERGY ASSOCIATES - BLACKHAWK Facility  
 CAPACITY PAYMENT RATES**

**Interest Rate Adjustment Methodology**

Year 1 of Phase II Cap Payment Rate is per Schedule F-1 \$5.06/(KW-Mo.)

Interest Rate Adjustment =  $1 + ((7.2) * (5.579 - 6.42)) = 93.9448\%$

Assumption: Yield on US 10 year treasury note is 5.579%, per Karen Hyde

Interest Rate Adjustment \* Capacity Payment Rate = Adjusted Capacity Payment Rate

Adjusted Capacity Payment Rate \$/KW-Mo. = Cap Payment Rate for Yr 1 of Phase II  
 Cap Payment Rate for Yr 1 of Phase II =  $5.06 * 0.939448 = 4.754$

2% Annual Esc Rate = 2%

Year Start	Year End	Contract Year Began on June 12, 1999	Calendar Year	Phase II, Year begins June 12, 1999	Adjusted Capacity Payment Rate \$/KW-Mo	Original Adjusted Cap Payment Rate \$/KW-Mo
6/1999	6/2000	1	1999	0	4.754	5.06
6/2000	6/2001	2	2000	1	4.849	5.16
6/2001	6/2002	3	2001	2	4.946	5.26
6/2002	6/2003	4	2002	3	5.045	5.37
6/2003	6/2004	5	2003	4	5.145	5.48
6/2004	6/2005	6	2004	5	5.248	5.59
6/2005	6/2006	7	2005	6	5.353	5.70
6/2006	6/2007	8	2006	7	5.460	5.81
6/2007	6/2008	9	2007	8	5.570	5.93
6/2008	6/2009	10	2008	9	5.681	6.05
6/2009	6/2010	11	2009	10	5.795	6.17
6/2010	6/2011	12	2010	11	5.911	6.29
6/2011	6/2012	13	2011	12	6.029	6.42
6/2012	6/2013	14	2012	13	6.149	6.55
6/2013	6/2014	15	2013	14	6.272	6.68
6/2014	6/2015	16	2014	15	6.398	6.81
6/2015	6/2016	17	2015	16	6.526	6.95
6/2016	6/2017	18	2016	17	6.656	7.09
6/2017	6/2018	19	2017	18	6.789	7.23
6/2018	6/2019	20	2018	19	6.925	7.37
6/2019	6/2020	21	2019	20	7.064	7.51
6/2020	6/2021	22	2020	21	7.206	7.65
6/2021	6/2022	23	2021	22	7.351	7.79
6/2022	6/2023	24	2022	23	7.500	7.93
6/2023	6/2024	25	2023	24	7.652	8.07
6/2024	6/2025	26	2024	25	7.808	8.21
6/2025	6/2026	27	2025	26	7.968	8.35
6/2026	6/2027	28	2026	27	8.132	8.49
6/2027	6/2028	29	2027	28	8.300	8.63
6/2028	6/2029	30	2028	29	8.472	8.77
6/2029	6/2030	31	2029	30	8.649	8.91
6/2030	6/2031	32	2030	31	8.831	9.05
6/2031	6/2032	33	2031	32	9.018	9.19
6/2032	6/2033	34	2032	33	9.211	9.33
6/2033	6/2034	35	2033	34	9.410	9.47

Year 21 is not adjusted.

Years 22 - 35 Capacity Payment Rate shall be adjusted in accordance with the rate of change in the GDPID Index.

SPS has the option to extend the term an additional 10 years beyond the initial 25 year term.

Years 22-35: Used an escalation rate of 2.75% as a place holder

Capacity Rate (Rev Capacity)

10/11/2007

10.01.12.

HENRY HAMILTON  
Executive Vice President



February 12, 1998

Borger Energy Associates, L.P.  
c/o Quixx Corporation  
Attn: President  
P.O. Box 12033  
6<sup>th</sup> and Tyler, Suite 1510  
Amarillo, TX 79101

Borger Energy Associates, L.P.  
c/o LS Power LLC  
Attention: Clarence J. Heller  
1633 Des Peres Road, Suite 308  
St. Louis, MO 63131

PO Box 1261  
Amarillo, Texas 79170-0001  
Telephone 806.378.2720  
Fax 806.378.2990

RE: Contract Capacity for Borger Project

Dear Sirs:

In the letter dated January 5, 1998 from Mr. Heller to Ms. Hyde, you requested that Southwestern Public Service Company ("Southwestern") agree to purchase up to 230 MW from the Borger Project under the Power Purchase Agreement ("PPA") dated May 23, 1997 between Southwestern and Borger Energy Associates, L.P. ("BEA").

Section 2.6(F) of the PPA states in part:

Notwithstanding any expansion of the Facility by Seller, in no event shall the Contract Capacity exceed the approximately 216 MW that the Facility is initially designed to produce, unless Southwestern consents to a greater Contract Capacity, such consent not to be unreasonably withheld.

In discussions and correspondence with Mr. Sajer of your office, Southwestern has learned that the initial design of approximately 216 MW for the Cogeneration Facility included a 5% degradation assumption for the facility. In other words, the 216 MW was the minimum capacity level at which the Facility was expected to operate over the contract term. BEA's detailed engineering has shown that this assumption was conservative and the facility is initially expected to produce 230 MW. Because the Facility design has not changed and because the Facility has not been expanded, Southwestern agrees to your request to accept 230 MW as the Contract Capacity and agrees to purchase this Capacity and associated Energy according to the terms of the PPA subject to (i) satisfactory verification through Capacity Tests, (ii) consistent design (no expansion of facility to achieve 230 MW), and (iii) the other terms and conditions of the PPA.

Southwestern affirms that this consent is given in accordance with existing sections 2.6 (F) of the PPA.

Sincerely,

Handwritten signature of Henry H. Hamilton in cursive.  
Henry H. Hamilton  
Executive Vice President

AGREEMENT  
for the  
PURCHASE AND SALE OF ELECTRICITY  
between  
SOUTHWESTERN PUBLIC SERVICE COMPANY  
and  
SID RICHARDSON CARBON, LTD.

The parties ("Parties") to this agreement for the Purchase and Sale of Electricity ("Agreement") are Southwestern Public Service Company ("SPS"), a New Mexico corporation, and Sid Richardson Carbon, Ltd. ("Richardson"), a Texas limited partnership.

BACKGROUND

SPS is a public utility in the business of generating, transmitting, and distributing electricity to customers within Texas, New Mexico, Oklahoma and Kansas.

SPS currently provides electricity to Richardson's Carbon Black Plant ("Plant") located near Borger, Texas.

Richardson owns and operates the Plant and an electric generator and associated equipment operating in conjunction with the Plant ("Generator"). Richardson intends to sell to SPS all of the power produced by the Generator, less the power needed to operate the Plant and the Generator auxiliaries. The Generator is a Qualifying Facility ("QF") under the Federal Energy Regulatory Commission rules implementing the Public Utility Regulatory Policies Act of 1978.

SPS will provide standby, supplemental, and maintenance power to Richardson at the Plant and purchase from Richardson the electricity produced from the Generator in excess of the Plant and Generator auxiliaries' needs.

ACCORDINGLY, in consideration of the benefits to be realized by the Parties as a result of this Agreement, the specific considerations set forth in this Agreement, and the mutual promises of the Parties contained in this Agreement, the Parties agree as follows:

I.

DEFINITIONS

Section 1.01. Billing Month. The term "Billing Month" shall mean the period of time, approximately one month in duration, between the SPS meter readings which are taken for billing purposes.

Section 1.02. Effective Date. The term "Effective Date" shall mean August 1, 2001, or the date specified in the final order of the Public Utility Commission of Texas ("PUCT") approving this Agreement.

Section 1.03. Net Generation. The term "Net Generation" shall mean net amount of energy generated by the Generator, less the energy consumed to operate the Generator auxiliaries and the Plant.

Section 1.04. Meter(s). The term "Meter(s)" shall mean collectively, the Plant Meters and the QF Generation Meter, or singularly, one of these meters.

Section 1.05. Plant Meters. The term "Plant Meters" shall mean the meters that measure the power and energy Richardson purchases from SPS for the Plant and Generator auxiliaries.

Section 1.06. QF Generation Meter. The term "QF Generation Meter" shall mean the meter that measures the electricity which Richardson sells to SPS from the Generator.

## II.

### GENERAL AGREEMENT OF THE PARTIES

Section 2.01. Purchase by SPS. Richardson agrees to sell and deliver to SPS, and SPS agrees to purchase and receive from Richardson, all of the electricity generated by the Generator, less the power needed to operate the Generator auxiliaries and the Plant according to the terms and conditions of this Agreement. Richardson will deliver power at nominal three-phase, 60-cycle electric energy at approximately 69 kV up to 25,000 kW. Richardson shall control the VAR flow as directed by SPS's dispatcher within the operating limits of the Generator. Richardson shall determine the actual quantity of electricity to be generated. The quantity of Net Generation to be sold to SPS is estimated to be approximately 120 million kilowatt-hours annually.

Section 2.02. Purchase by Richardson. SPS agrees to sell and deliver to Richardson, and Richardson agrees to purchase and receive from SPS, all power and energy for Richardson's operations at the Plant, in excess of Richardson's generation, according to the terms and conditions of this Agreement. Exhibit A contains the electric tariff for Standby, Maintenance and Supplemental services to be provided by SPS to Richardson. SPS agrees to provide, maintain and operate sufficient facilities to deliver to the Plant approximately 10,000 kVA of nominal three-phase, 60-cycle electric energy at approximately 69 kV and metered at approximately 69 kV.

Section 2.03. Interconnection and Maintenance. SPS currently owns, operates and maintains electric transmission facilities and the interconnection facilities necessary to interconnect the Plant with SPS facilities. SPS shall maintain all of its facilities shown in Exhibit B to this Agreement during the term of this Agreement, and SPS will only be responsible for the cost of, and perform at its expense, minor repairs and maintenance of its 69 kV breaker located at its Industrial Substation, which is tied to Richardson's 69 kV line from the Plant. Major repairs to this breaker shall include replacement of this breaker or any other single incident requiring repairs or maintenance costing in excess of \$[REDACTED]. Richardson will

reimburse SPS for all reasonable and necessary costs of any major repairs within 30 days of invoicing by SPS. However, if SPS estimates the repair cost of any single incident will exceed \$[REDACTED], SPS will give Richardson prompt notice and consult with Richardson concerning the equipment and methods to be used in such repairs.

The "Points of Delivery" for electricity delivered under this Agreement shall be the points where Richardson owned facilities are connected to SPS owned facilities (exclusive of metering equipment) as shown on Exhibit B.

Section 2.04 Metering. The Meters shall measure all electricity delivered by either Party under this Agreement. SPS shall select, provide, install, own and maintain the Meters. SPS shall test and calibrate the Meters in accordance with its normal practices. If SPS determines that any one of the Meters is inaccurate, SPS shall either restore that Meter to an accurate condition or install a new Meter.

Richardson shall have the right at any time to request SPS to test a Meter. If SPS performs the test at Richardson's request and the results disclose that the Meter is registering accurately within the standards established by the American National Standards Institute, Inc. ("ANSI Standards"), or any other standards to which the Parties mutually agree, Richardson shall bear the expense of the test. The expense of all other tests shall be borne by SPS.

If any test establishes that a Meter is registering above or below the ANSI Standards, or any other standards to which the Parties mutually agree, the readings taken on that Meter for billing purposes since the last test or for any other period of time to which the Parties mutually agree, which indicated the accuracy of that Meter, shall be corrected to provide for zero error. In no event shall the period of adjustment for a metering error exceed six (6) months.

For any period that a Meter fails to register, SPS shall assume that consumption during that period was equivalent to consumption for a like period of operation to be agreed upon by the Parties, during which the Meter was in service and operating accurately, and SPS shall bill or pay Richardson accordingly. SPS shall cause the Meters to be read in accordance with all applicable rules of the regulatory body having jurisdiction and at intervals approximately thirty (30) days apart.

Section 2.05. Inspection of Books and Records. Upon reasonable notice, duly authorized representatives of Richardson shall have the right to inspect SPS's books and records directly relating to this Agreement during normal SPS business hours.

Section 2.06. Warranties and Representation of Richardson. In order to induce SPS to enter into this Agreement, Richardson warrants and represents to SPS that Richardson (a) will use all electricity delivered to it pursuant to this Agreement for its sole consumption, (b) will not increase its load above 12,000 kVA without the prior written approval of SPS, (c) will provide and maintain protective equipment compatible with SPS's protective equipment, (d) will limit future motor sizes and motor starting conditions to a level agreed upon by the Parties, (e) will



install and maintain its wiring and electrical equipment in accordance with specifications at least equal to those prescribed by the applicable National Electric Safety Code of the United States Bureau of Standards and the current applicable National Electric Code, and (f) will operate its electrical equipment in a manner that will not reasonably interfere with SPS's service to its other customers. In the event SPS believes Richardson's protective equipment is not compatible with SPS's protective equipment or Richardson's electrical equipment is being operated in a manner which is interfering with SPS's service to its other customers, SPS will notify Richardson of the specific details of the problem and the reasonable length of time in which Richardson will have to correct the problem prior to being disconnected from SPS's system. If SPS believes an emergency exists due to the problem (such as, but not limited to, danger to property or life), SPS may disconnect Richardson immediately without prior notice until such time that the problem has been corrected. SPS shall have no liability to Richardson for disconnection or discontinuation of electric service in accordance with this section except to the extent SPS shall be shown to have acted in an unreasonable manner in disconnecting or discontinuing service to Richardson.

Section 2.07. Installation. Richardson shall provide a suitable place on, and reasonable access to, Richardson's property for SPS to install all equipment necessary for SPS to perform its obligations under this Agreement. Richardson shall use reasonable diligence to protect all SPS equipment located on Richardson's property. Richardson will furnish SPS with reasonable rights-of-way acceptable to SPS for the installation, maintenance, operation, repair, replacement and removal of SPS's equipment necessary to comply with its obligations under this Agreement.

Section 2.08. No Guarantee. Neither Party guarantees that the supply of electricity to the other Party will be free from interruptions or fluctuations. The Parties agree that interruptions or fluctuations of service under this Agreement shall not constitute a breach of this Agreement, and neither Party shall be liable to the other for damages resulting from any interruptions or fluctuations. In the event of interruptions to service, the Parties will restore service as soon as they can reasonably do so.

Section 2.09. QF Status. Richardson shall maintain the Generator's status as a QF throughout the term. Should Richardson fail to maintain such status as the result of a final nonappealable order, it shall notify SPS and SPS may terminate this Agreement not less than thirty (30) days following the notice given by Richardson.

Section 2.10. Security Deposit. SPS reserves the right to require Richardson to make a deposit to guarantee payment for service under this Agreement as allowed by the regulatory body having jurisdiction or other mutually agreeable method to prove financial capability. The amount of this deposit shall not exceed two times the dollar amount by which Richardson's average monthly purchase of electricity from SPS exceeds Richardson's average monthly sale of electricity to SPS.

Section 2.11 Capacity Testing. Richardson shall perform, at their expense, all tests, either current or as amended, required by the Southwest Power Pool (SPP),

or other reliability organization, to meet reliability and capacity requirements. The tests currently required are a summer net capability test, which consists of a 1.0 hour full load test, conducted once every 3 years. The test criteria are currently listed in Section 12.1 of the Southwest Power Pool Criteria, a copy of which is attached as Exhibit D. Full load shall mean the Plant will be operated at full carbon black production to produce the full load of the generator. Richardson and SPS shall agree on the time of the test, and SPS shall have the right to have personnel present to witness the testing. At no time will Richardson be required to provide natural gas as fuel for the purpose of increasing generator capacity or meeting requirements of the capacity test.

III.

APPLICABLE RATES AND PAYMENT METHODS

Section 3.01. Rates. During the time this contract is in effect, the following rates will be in effect:

- (a) For electricity generated by the Generator and sold to SPS, SPS shall pay to Richardson in accordance with Sheet No. IV (which is attached as Exhibit C) as filed with the Public Utility Commission of Texas (PUCT) as it may be amended from time to time. The monthly administrative charge, shall be at the same rate contained as the Standby Service Customer Charge in Exhibit A, or any amendment thereto. If actual information is not available for payment to Richardson by the twentieth calendar day after the meter is read, payment shall be based on estimated information and the payment shall be reconciled to actual information in the following month's payment. In the event the PUCT disallows recovery by SPS of any portion of the payments made under this agreement, Richardson shall refund such amounts to SPS with interest calculated at the same rate as required by SPS fuel refunds in Texas.
- (b) Richardson will pay SPS monthly for standby, maintenance, and supplemental services in accordance with Sheet No. IV-119 (which is attached as Exhibit A), as it may be amended from time to time with approval by the PUCT. 146 HRC

If, because of poor business conditions, the Plant's electric demand and energy usage is reduced, the minimum demand as defined on Exhibit A ("Minimum Demand") will be reduced subject to the following conditions:

- (i) Richardson shall notify SPS of the poor business conditions and the expected continuance thereof. Included in this notice shall be six (6) consecutive months of Plant records showing the plant electric demand not exceeding 7,000 kW.

- (ii) Upon completion of six (6) consecutive months of Plant records showing such reduction in electric demand as stipulated in 3.01(b)(i) above, the minimum demand will be reduced, beginning the next billing period, to the arithmetic average demand of the six (6) consecutive months.
- (iii) The Minimum Demand shall at all times be subject to increases in accordance with Exhibit A.

Section 3.02. Amendment of Rates. The rates in this Agreement are subject to the jurisdiction of the PUCT. It is provided, however, that if the rates or the other terms and provisions in this Agreement are materially modified by the PUCT, (or if PUCT disallows recovery by SPS of any portion of the payments made by it to Richardson under this Agreement), a Party who is adversely affected by such modification may terminate this Agreement upon thirty (30) days advance notice to the other Party.

Section 3.03. Payment. Each month the Parties shall pay each other all amounts due pursuant to this Agreement. Such payments will be based on separate monthly statements. Payment to the other Party under this Agreement shall be made according to the Terms of Payment clause contained in Exhibit A or Exhibit C.

Section 3.04. Regulatory Matters. This Agreement may be modified to comply with all published rules of service of SPS (or rules, regulations, or orders of any regulatory body having jurisdiction) as they may be changed from time to time.

#### IV.

#### TERM

Section 4.01. Term. The primary term ("Primary Term") of this Agreement shall begin on its Effective Date and continue for ten (10) years. Should the PUCT reject this Agreement, it will not become effective. Upon the expiration of the Primary Term of this Agreement, it shall automatically extend from year to year ("Extended Term"), unless terminated under Section 4.02.

Section 4.02. Termination. Either Party may terminate this Agreement (i) at the end of the Primary Term by delivering to the other Party written notice of termination not less than six (6) months prior to the end of the Primary Term, or (ii) at any time during any Extended Term by delivering to the other Party written notice of its intention to terminate at least six (6) months prior to the proposed date of termination.

#### V.

#### FORCE MAJEURE

Section 5.01. Defined. The phrase "force majeure" as used in this Agreement shall mean, without limitation, an act of God, lightning, storm, fire, slide, explosion, accident, unusual casualty, strike, lockout, labor dispute, civil disturbance, labor slow-down, industrial disturbance, or labor trouble, embargo, blockade, sabotage, riot, insurrection, act of the public enemy, war, breakdowns or damage to equipment or facilities (including emergency outages of equipment or facilities for the purpose of making repairs to avoid breakdown, damage, or imminent danger), unavailability of equipment, fuel or energy from others, orders or acts of military or civil authority which are complied with in good faith, or any other cause, whether or not of the same class or kind specifically enumerated above and whether or not foreseen or foreseeable, which is not reasonably within the control of the Party claiming force majeure.

Orders and acts of civil authority, as that phrase is used in this Article, shall include, without limitation, any regulation, direction, order or request (whether valid or invalid) made by any governmental authority or person acting for a government agency, the act or failure or refusal to act, whether rightfully or wrongfully done, of any governmental agency, authority, officer, or court charged with the interpretation, enforcement, or administration of any applicable law, rule, or regulation, which act or failure or refusal to act effectively delays issuance of, or denies to either Party, any permit, license, or approval reasonably necessary for the construction, development, operation, or repair of any facility necessary for the performance of this Agreement.

Section 5.02. Effect. If either Party is prevented, or is delayed wholly or in part, from carrying out any of its obligations under this Agreement due to force majeure or its effects, and if that Party gives the other Party written notice as soon as is reasonably possible, the obligations of the Party giving the notice shall be suspended to the extent affected by force majeure or its effects, provided that such Party's obligations to make payments to the other Party pursuant to Article III shall not be suspended if (and to the extent that) the services contemplated in Article III continue to be rendered or continue to be capable of being rendered. For example, Richardson's payments for standby services (customer charge and demand charge) pursuant to Section 3.01 (b) shall be suspended or, as applicable, reduced if, due to force majeure or its effects, SPS is unable, in whole or in part, to furnish or Richardson is unable, in whole or in part, to accept power to the extent contemplated by Section 3.01 (b) and Exhibit A. The suspension of a Party's obligations due to force majeure or its effects shall not include a Party's obligation to make payment for sales or services provided prior to the claim of force majeure. The Party claiming force majeure shall incur no liability except as set out in this Agreement by reason of its failure to perform the obligations so suspended; provided, however, that the disabling effects of force majeure shall be eliminated by the affected Party as soon as and to the extent reasonably possible.

The requirement that any force majeure be remedied as soon as and to the extent reasonably possible, shall not require the settlement of strikes, lockouts, or other labor difficulty of the Party involved, contrary to its interests as determined by such Party in its sole and absolute discretion.

VI.

INDEMNITY

Section 6.01. Indemnity by SPS. Richardson shall not be liable or responsible for, and shall be saved and held harmless by SPS from and against any and all claims and damages of every kind (including, without limitations, injury to or death of any person or persons and for damage to or loss of property), arising out of or attributed, directly or indirectly, to the operations or performance of SPS or SPS's agents, employees, or subcontractors under this Agreement irrespective of the legal theory upon which any claim or suit may be grounded.

Section 6.02. Indemnity by Richardson. SPS shall not be liable or responsible for, and shall be saved and held harmless by Richardson from and against any and all claims and damages of every kind (including, without limitations, injury to or death of any person or persons and for damage to or loss of property), arising out of or attributed, directly or indirectly, to the operations or performance of Richardson or Richardson's agents, employees, or subcontractors under this Agreement irrespective of the legal theory upon which any claim or suit may be grounded.

VII.

GENERAL

Section 7.01. Notice. Any notice shall be given as soon as reasonably possible, first by phone, followed promptly in writing. If the notice does not regard operating conditions, emergency conditions or other urgent matters, notification by phone will not be required. Written notice shall be given by personal delivery or certified mail, return receipt requested or Federal Express or other courier, to the following addresses:

Southwestern Public Service Company  
Attn: Vice President, Marketing  
Sixth and Tyler Streets  
P. O. Box 1261  
Amarillo, TX 79170  
Phone Number: 806-378-2121  
Fax Number: 806-378-2995

Sid Richardson Carbon, Ltd.  
Attn: Vice President - Manufacturing  
Chase Texas Tower  
201 Main Street, Suite 3000  
Fort Worth, TX 76102  
Phone Number: 817-390-8600  
Fax Number: 817-339-4394

Any notice shall be deemed delivered on the date mailed or sent in the manner set out above. The designation or address of the Party to be notified may be changed at any time by delivery of notice of that change to the other Party. Written notice may also be given by telecopier or telex, in which event such notice shall be deemed given when received.

Section 7.02. Cumulative Remedies. Either Party's pursuit of any remedy available for default shall not constitute a forfeiture or waiver of any amount due by the defaulting Party or of any damages accruing by reason of the violation of any of the terms, provisions, and covenants of this Agreement. No waiver of any violation shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants contained in this Agreement. Forbearance to enforce one or more of the remedies available, upon an event of default, shall not be deemed to constitute a waiver of that default.

Section 7.03. Partial Invalidity. If a court of competent jurisdiction holds any term, provision, covenant, or condition of this Agreement to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

Section 7.04. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters covered herein. No other oral agreement, statement, or promise made by any Party, or to any employee, officer, or agent of any Party, which is not contained in this Agreement, shall be binding or valid. Upon the Effective date, this Agreement shall replace and supercede any prior agreements between the parties with respect to the matters covered herein.

Section 7.05. Amendments. No amendment to this Agreement shall be effective until reduced to writing and executed by the Parties.

Section 7.06. Assignment. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be reasonably withheld or delayed. The restrictions upon assignment shall not be applicable to any assignment (a) to any Affiliate or in the case of Richardson, any person, corporation, or other entity owned or controlled directly or indirectly by Perry R. Bass or any of his descendants, or (b) as security to a financial institution in a financing transaction for the purpose of creating a lien, mortgage, or security interest on property of Richardson. However, no assignment of this Agreement shall in any way relieve the Parties of their primary responsibility for performance under this Agreement.

Section 7.07. Successors and Assigns. Subject to the provisions of Section 7.06, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.

Section 7.08. Governing Laws. This Agreement shall be construed in accordance with the laws of the State of Texas.

Section 7.09. Captions. The captions preceding the text of each Section of this Agreement are included only for convenience of reference and shall be disregarded in the construction of this Agreement.

EXECUTED THIS 30<sup>th</sup> day of July, 2001.

Sid Richardson Carbon, Ltd.

Southwestern Public Service Company

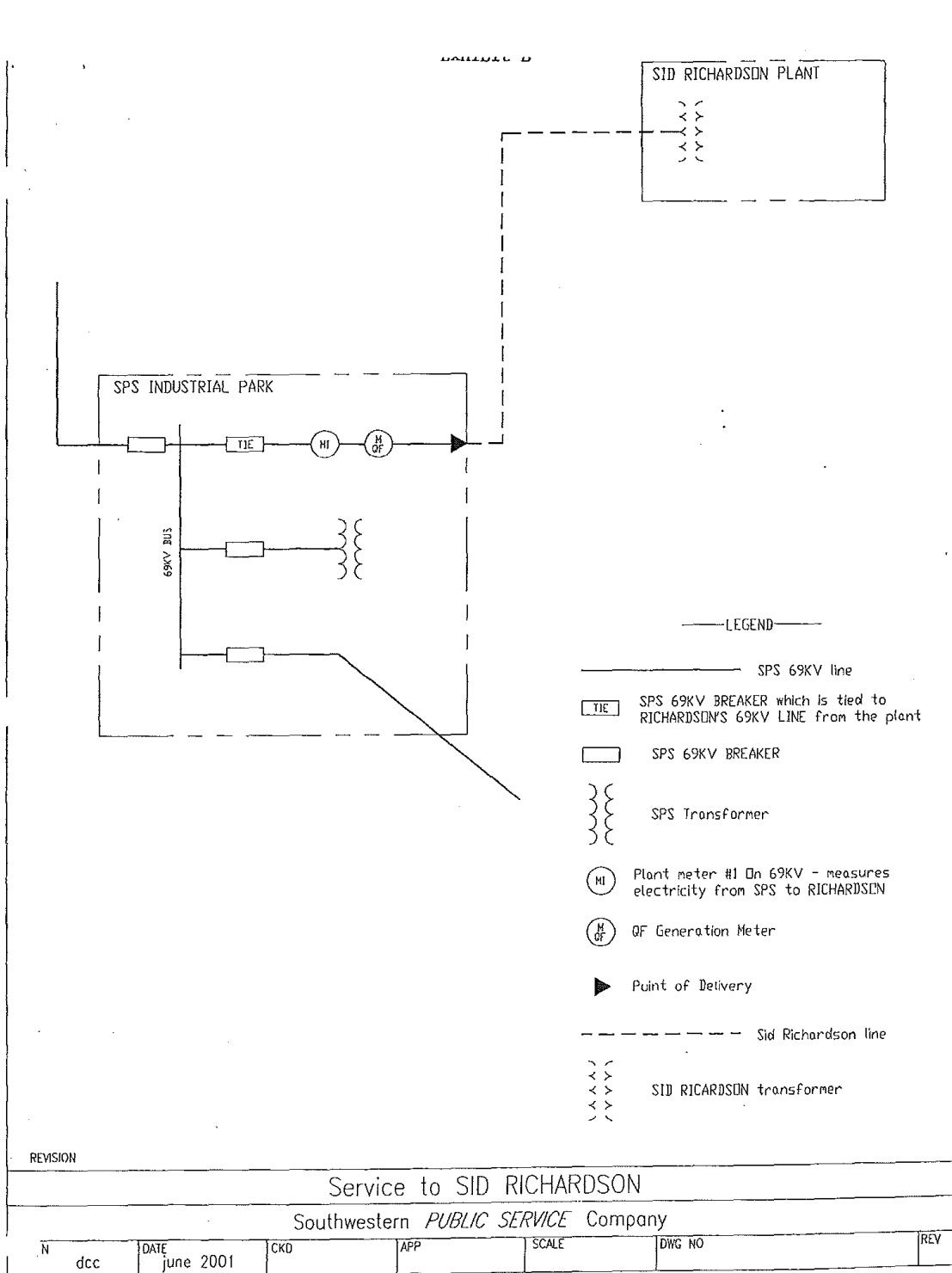
By: SRCG Geppar, Inc., general partner

By: [Signature] <sup>M&A</sup>

By: [Signature]

Title: [Signature] <sup>M&A</sup>

Title: President





Southwestern *PUBLIC SERVICE* Company

COMMISSION	SCHEDULE	SHEET	RATE SCHEDULE NUMBER	
PUCT	IV-146		Amoco	710
			Unocal	720
			Sid Richardson	730
Fuel Factor #5	724			
Fuel Factor #7	739			
Fuel Factor #9	710			

**QUALIFYING FACILITY STANDBY SERVICE**

TARIFF NUMBER	7008.1
CANCELLING	7008

Page 1 of 3

**APPLICABLE:** Under contract for electric service to a Qualifying Facility ("QF") for which the Company's service is used as standby backup or maintenance service supplied at one point of delivery.

**MONTHLY RATE:** The Customer shall be charged monthly for QF STANDBY Service at the following applicable rates based on the service voltage:

	TRANSMISSION	DISTRIBUTION
Standby Customer Charge (\$)	██████	██████
Standby Demand Charge (\$/nominated kW)	██	██
Standby Energy Charge (\$/kWh for Replacement Energy)	████	████

Transmission voltage level service is service provided at a voltage of 69 kV, or greater. Distribution voltage level service is service provided at a voltage less than 69 kV.

**BACKUP SERVICE:** Backup Service is capacity and energy supplied by Company to replace the Customer's generation during an unscheduled outage. The level of Backup Demand shall be nominated annually in writing at least 30 days before the beginning of the calendar year. If Customer receives Replacement Power for 100 or more hours in a month where a scheduled outage was not planned in accordance with the Maintenance Service section below, then all power and energy delivered through the Customer Meter shall be billed in accordance with the standard applicable rate schedule, but the demand ratchet for future months under the standard applicable rate schedule shall not apply. Also, the Standby Demand charge will not be assessed in that month.

Effective Date April 24, 1993  
internal146.doc

Approved *David M. Wilber*

**MAINTENANCE SERVICE:** Maintenance Service is capacity and energy supplied by Company to replace the Customer's self-generation during scheduled outages of the Customer's generation. Scheduled outages shall be set at a time mutually agreeable by Customer and Company, but exclusive of the months of June, July, and August of every year. The scheduled outage shall be scheduled within only two billing months per calendar year. Scheduled outages shall be agreed to in writing at least 30 days prior to the beginning of the month in which the scheduled outage is planned to take place. Customer shall be charged by Company for Maintenance Service at the rate specified above. However, the Supplemental Demand established in a scheduled outage period shall not be used to determine future minimum Supplemental Demands.

**SUPPLEMENTAL SERVICE:** Supplemental Service is capacity and energy supplied by the utility and used by the Customer in addition to the Customer's self-generation in order to meet the Customer's total load requirement and shall be billed in accordance with the standard applicable rate schedule.

**DEFINITION OF CUSTOMER METER DEMAND:** The Customer Meter Demand shall be the kW determined from Company's demand meter at the Customer Meter for the 30-minute period of greatest use during the month.

**DEFINITION OF MINIMUM GENERATION DEMAND:** The Minimum Generation Demand shall be the kW determined at the QF Generation Meter for the 30-minute period of least total generation during the month.

**DEFINITION OF REPLACEMENT POWER:** The Replacement Power shall be equal to the minimum of (a) the Customer Meter Demand, (b) the Standby Demand, or (c) the remainder of the QF Generation Capability minus the Minimum Generation Demand. The Generation Capability shall be set forth in the contract.

**DEFINITION OF REPLACEMENT ENERGY:** The Replacement Energy shall be equal to the energy metered at the Customer Meter, but not more than the outage hours in a month times the Generation Capability.

**DEFINITION OF SUPPLEMENTAL DEMAND:** The Supplemental Demand shall be equal to the Customer Meter Demand minus the Replacement Power, but not less than the minimum demand set forth in the applicable tariff. If the Customer Meter Demand minus the Replacement Power is at a level below the applicable minimum demand level, the billing standby demand shall be reduced in only that month by the amount of demand below the applicable minimum demand level. If a Customer Charge is collected for Supplemental Service, a separate Standby Customer Charge shall not be billed.

**MINIMUM CHARGE:** The minimum charges in a month shall be the sum of the Standby Customer Charge and the Standby Demand Charge.

**PRIMARY SERVICE DISCOUNT:** A discount of 3 percent of customer, standby demand, energy and power factor adjustment will be allowed when distribution voltage level service is supplied at a line voltage of 12 kilovolts, or greater, and no transformation is made by the Company at the Customer's location.

Page 3 of 3

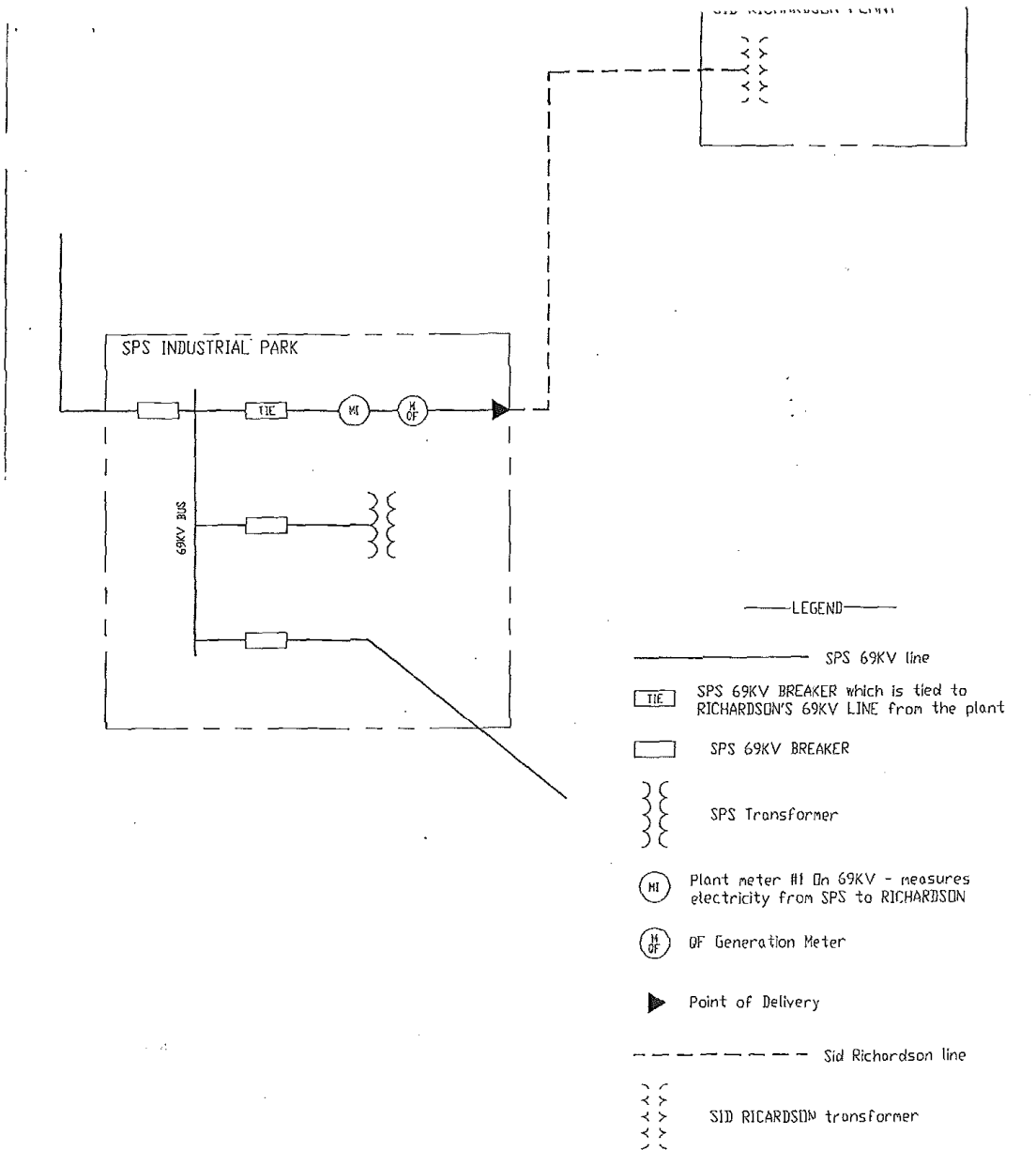
**FUEL COST RECOVERY:** The charge per kilowatt-hour of the above rate shall be increased by the applicable fuel cost recovery per kilowatt-hour as provided in Tariff Number 7100.

**TAX ADJUSTMENT:** (Applicable to sales inside corporate limits): Billings under this schedule may be increased by an amount equal to the sum of the taxes payable under federal, state and local sales tax acts, and of all additional taxes, fees, or charges, (exclusive of ad valorem, state and federal income taxes) payable by the utility and levied or assessed by any governmental authority on the public utility services rendered, or on the right or privilege of rendering the service, or on any object or event incidental to the rendition of service, as the result of any new or amended laws after June 30, 1965.

**POWER FACTOR ADJUSTMENT:** Bills computed under the above rates will be increased \$0.25 for each kvar by which the reactive demand exceeds, numerically, 0.53 times the measured kW demand, and will be reduced \$0.25 for each kvar by which the reactive demand is less than, numerically, 0.40 times the measured kW demand. Reactive and measured kW demands used for the Power Factor Adjustment shall be measured from the Customer Meters.

**TERMS OF PAYMENT:** Net in 16 days after mailing date; 5 percent added to bill after 16 days. If the sixteenth day falls on a holiday or weekend, the due date will be the next work day.

**CHARACTER OF SERVICE:** Alternating current; 60 hertz; at approximately the contract voltage.



REVISION

Service to SID RICHARDSON

Southwestern PUBLIC SERVICE Company

DRAWN	dcc	DATE	June 2001	CKD	APP	SCALE	DWG NO	REV
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P. O. Box 1261  
Amarillo, Texas 79170

Section No. IV  
Sheet No. IV  
Revision No. 3

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**ELECTRIC TARIFF  
PURCHASE OF FIRM  
ENERGY FROM QUALIFYING FACILITIES**

TARIFF NUMBER	_____
CANCELLING	_____

**AVAILABILITY**

This tariff is available under contract and shall apply to purchases by the Company of firm energy received from the Customer's Qualifying Facility which has a generating capability in excess of 100 kilowatts. Purchases of firm energy will be made in accordance with the Public Utility Commission of Texas ("PUCT") regulations (P.U.C. SUBST. R. 25.242). This tariff does not require or provide for any electric service by the Company to the Customer. The Customer may request such service from the Company and, if required by the Company, shall enter into separate contractual agreements with the Company in accordance with the applicable electric tariff(s). Qualifying Facility ("QF") as used in this tariff, means a cogeneration or small power production facility which qualifies under Title 18, Chapter 1, Subchapter K, Part 292, Subpart B of the Code of Federal Regulations (Federal Energy Regulatory Commission's regulations implementing Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 with regard to small power production and cogeneration).

Nothing in this tariff shall limit the authority of the Company and the Customer to negotiate and agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the provisions of this tariff.

**PAYMENT DETERMINATION**

Company will pay the customer monthly for firm energy received from the QF at the sum of the rates below:

Demand Charge: \$ [redacted] /kW/mo for the average net capacity where the average net capacity is defined as [redacted], except for periods with scheduled maintenance, in which case the hours of the scheduled outage shall be subtracted from the hours in the month.

Energy Charge: \$ [redacted] /MWh for all Net Energy.

Fuel Charge On Peak Hours:  
[redacted] MMBTU/MWh X Net Generation On Peak (MWh) X WAHA gas index (\$/MMBTU)(see below)

PRESIDENT OF SPS

**Southwestern  
Public Service**

P. O. Box 1261  
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Section No. IV  
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Revision No. 1

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**ELECTRIC TARIFF**

Fuel Charge Off Peak Hours:

■ MMBTU/MWh X Net Generation Off Peak (MWh) X WAHA gas  
index (\$/MMBTU)(see below)

Where:

On Peak Hours is defined as HE 0700 through HE 2200 Monday through Friday  
except NERC holidays.

Off Peak Hours is defined as all hours except On Peak Hours.

The WAHA gas index shall be the index price( \$/MMBTU) quoted by Inside FERC Gas Market  
report in the issue containing the "Market Center Spot-Gas Prices" for the first day of each month in  
which Gas is delivered for West Texas-WAHA In the event the Waha Index is not published for any  
given month or ceases to be published, then the Parties will negotiate in good faith to establish a new  
Index price, which most nearly reflects the market the West Texas WAHA Index represented.

If Customer requests in writing, and within six months of any payment period, Company shall make  
available supporting information from which the monthly calculations for payment were made.

The payments for firm energy will be made to Customer provided the PUCT recognizes such  
payments as allowable purchased energy costs to be fully recoverable under the PUCT's regulations  
(PUC SUBST. R. 25.238).

Company will assess in accordance with the PUCT's regulations a monthly administrative charge to  
compensate for the billing and preparing the Customer's credit statement. This charge will be  
subtracted from Customer's monthly credit statement regardless of whether Company has purchased  
firm energy from the Customer's QF during such billing period. In the event the PUCT enters an  
order authorizing Company to make any change in the above administrative costs which Company  
receives from the Customer, such change shall be automatically implemented as a part of this tariff.

**PAYMENT**

Company shall read Customer's QF meter monthly, send a statement and make a payment on or before  
the 20<sup>th</sup> calendar day after the meter is read; except that Customer will make arrangements with  
Company to ensure that all payments to Company for electrical service will be made and are current on  
or before the day of Company's payments to Customer. The statement will show the summation of the  
hourly kilowatt-hours of energy metered and delivered by the Customer's QF, the monthly average  
hourly

PRESIDENT OF SPS



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Amarillo, Texas 79170

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**ELECTRIC TARIFF**

ANFEC factor, the monthly administrative cost assessment by Company, and the total credit amount to Customer or the amount due to Company.

**CONTRACT**

The sale of firm energy to the Company by Customer under this tariff requires a written contract. The contract shall be negotiable by the Company and the Customer.

**INTERCONNECTION COSTS**

If the Company determines an interconnection study is necessary, the Company shall perform such study within a reasonable period of time under reasonable terms and conditions agreed upon by the parties. The Customer shall be responsible for the costs of such study. The interconnection study shall determine the equipment and facilities, and the costs associated therewith, that must be designed, purchased, installed, modified, replaced and/or removed to economically, reliably, and safely integrate Customer's QF into the Company's electrical system.

**PURCHASE OF FIRM  
ENERGY FROM QUALIFYING FACILITIES**

The Customer shall pay any interconnection costs, which are defined as the costs of connection, switching, metering, telemetering, transmission, distribution, safety provisions, or any other costs directly related to the installation of physical facilities necessary to permit interconnected operations with the Customer, to the extent such costs are in excess of the corresponding costs that the Company would have incurred if it had not engaged in interconnection operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.

PRESIDENT OF SPS

EXHIBIT D

**Southwest Power Pool Criteria**

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**12.0**

**12.1 Rating of Generating Equipment**

To provide a basis for comparing operating margin of various entities and to assure reasonable distribution of the margin, generating equipment shall be uniformly and consistently rated to permit accurate planning. Procedures are herein established for rating generating units and establishing a system of records so that changes in capacity during the life of the equipment can be recognized. These procedures define the framework under which the ratings are to be established while recognizing the necessity of exercising judgment in their determination. The terms defined and the ratings established pursuant to these procedures shall be used for SPP purposes, including determining capacity margins for both planning and operating purposes, scheduling maintenance, and preparation of reports of other information for industry organizations, news media, and governmental agencies. These ratings are not intended to restrict daily operating practices associated with SPP operating reserve sharing, for which more dynamic ratings may be necessary. Each member shall test its generating equipment in accordance with the procedures contained herein. On the basis of these tests summer and winter net capability ratings for each generating unit and station on the member's electric system shall be established. The summer net capability of each unit may be used as the winter net capability without further testing, at the option of the member. As a minimum, each member shall conduct tests on all its generating equipment which is designated as a part of the resource for supplying its own peak load and minimum capacity margin requirement of this Criteria. The seasonal net capabilities shall be furnished to SPP for all existing generating units and upon installation of new generating units and shall be revised at other times when necessary. Members shall annually report the seasonal net generating unit capability in conjunction with the Department of Energy 411 Report data gathering effort.

**12.1.1 Capability Test**

Capability Tests are required to demonstrate the claimed capability of all generating units. During a Capability Test, a unit shall generate its rated net capability for a specified Test Period following a specified Settling Period. The length of these periods is determined by the type and size of unit. The unit will be within 5% of its rated capability throughout the Settling Period. Only minor changes in unit controls shall be made during this time as required to bring the unit into normal, steady-state operation. The following table specifies the duration of these periods. The reduced duration tests on the specified unit types are generally considered to be a fair and



**Southwest Power Pool Criteria**

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practical demonstration of unit capability. If operating experience for a given unit suggests otherwise, the system shall use this experience in establishing the time periods or use the periods in the table associated with large steam units.

Unit Type	Settling Period	Test Period
Steam > 100 MW net	2.0 hours	2.0 hours
Steam < 100 MW net	1.0 hour	1.0 hour
All other units	0.0 hour	1.0 hour

**12.1.2 Operational Test**

An Operational Test is used to demonstrate the ability of a generating unit to be loaded to its nominal rating. Operational tests shall be conducted at a minimum of 90% of claimed summer capability for a minimum of 1 hour. Any normal operating hour with the unit at or above 90% of claimed capability may be deemed an Operational Test.

**12.1.3 Frequency of Testing**

Summer Capability Tests shall be conducted once every 3 years. If the winter capability rating is greater than summer, winter tests shall also be conducted once every 3 years. Operational Tests shall be conducted once every year during the summer season. New units or units undergoing a physical or operational modification which could impact capability shall be given a capability test.

**12.1.4 Rating and Testing Conditions**

Ambient conditions at the time of running capability tests shall be recorded so that appropriate adjustments can be made when establishing seasonal capabilities. Conditions to be recorded are: dry-bulb temperature, wet-bulb temperature, barometric pressure, and condenser cooling water inlet temperature. Summer Capability Tests are to be conducted at an ambient temperature within 10 degrees Fahrenheit of Rating dry-bulb temperature. Winter Capability Tests are to be conducted at an ambient temperature equal to or greater than the minimum dry-bulb temperature for winter testing and rating defined in paragraph 2.3.5.2.g.

**Southwest Power Pool Criteria**

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**12.1.5 Procedures For Establishing Capability Ratings**

**12.1.5.1 External Factors**

- a. Units dependent upon common systems which can restrict total output shall be tested simultaneously.
- b. When the total output of a member's system is reduced due to restrictions placed upon the output of individual generating units through the operation of the Clean Air Act, or similar legislation, then the total of the individual unit ratings of a member's generating resources shall not exceed the modified system capacity.
- c. The fuel used during testing shall be the general type expected to be used during peak load conditions or adjustments made to test data if an alternate fuel is used.
- d. Net Capability is the net power output which can be obtained for the period specified on a seasonally adjusted basis with all equipment in service under average conditions of operation and with the equipment in an average state of maintenance. Deductions from net capability shall not be made for equipment temporarily out of service for normal maintenance or repairs.
- e. The seasonal net capability shall be determined separately for each generating unit in a power plant where the input to the prime mover of the unit is independent of the others, except that in the event multiple unit plant capability is limited by fuel limitations, transmission limitations or other auxiliary devices or equipment, each unit shall be assigned a rating by apportioning the combined capability among the units. The seasonal net capability shall be determined as a group for common header sections of steam plants or multiple unit hydro plants, and each unit shall be assigned a rating by apportioning the combined capability among the units.

**12.1.5.2 Seasonality**

- a. The summer season is defined by the months June, July, August and September. The winter season is defined by the months December, January and February. The adjustments required to develop seasonal net capabilities are intended to include seasonal variations in ambient temperature, condenser cooling water temperature and availability, fuel changes, quality and availability, steam heating loads, reservoir levels, and scheduled reservoir discharge.
- b. The total seasonal net capability rating shall be that available regularly to satisfy the daily load patterns of the member and shall be available for a minimum of four continuous

**Southwest Power Pool Criteria**

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- hours taking into account possible fuel curtailments and thermal limits.
- c. The seasonal net capability of each generating unit shall be based upon a set of conditions, referred to as the "Rating Conditions" for that unit. This set of conditions is determined by the geographical location of the unit, and is composed of three or four factors, depending upon the type of unit. The three factors which can affect most generating units are: Ambient dry-bulb temperature, Ambient wet-bulb temperature and Barometric pressure. Condensing steam turbines which obtain condenser cooling water from a lake, river, or comparable source have a fourth factor: Condenser cooling water source temperature.
  - d. The Rating dry-bulb and wet-bulb temperatures shall be obtained from weather data provided in the most recently published American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Fundamentals Handbook. The handbook is published every four years; 1989, 1993, etc., and is based on 15 years of historical weather data where available. If the generating station is within 30 miles of the nearest weather station reported in the handbook, then these temperatures will be those for the nearest station. For all other stations, rating temperatures shall be determined by interpolating between weather stations using plant latitude and longitude. Selected pages of the "Weather Data" chapter of the handbook are reprinted in the Appendix with permission of ASHRAE. The steps to be used for interpolating weather data and correcting for elevation are also presented in the Appendix.
  - e. If experience for a given unit suggests otherwise, members may optionally use their own site specific temperature data if accurate hourly data is available to allow calculation of the temperature levels as defined in the Criteria. Site specific data shall contain both dry-bulb and wet-bulb temperatures.
  - f. The dry-bulb temperature for summer rating of equipment shall be taken as that which is equaled or exceeded 1% of the total hours during the months of June through September for the plant's geographical location. The wet-bulb temperature for the summer rating shall be the "mean coincident wet-bulb" temperature corresponding to the above dry-bulb temperature. These two temperatures are listed together under the "1%" heading in the weather data table in the Appendix.
  - g. The minimum dry-bulb temperature for winter testing and rating shall be taken as that which is equaled or exceeded 99% of the total hours during the months of December through February for the plant's geographical location. The wet-bulb temperature is not

#### **Southwest Power Pool Criteria**

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- significant for the winter rating and can be disregarded. The winter dry-bulb temperature is listed under the "99%" heading in the weather data table in the Appendix.
- h. Standard barometric pressure for a plant site shall be determined for each plant elevation by linearly interpolating the pressure table provided in the Appendix.
  - i. For those units using a lake or river as a source of condenser cooling water, the summer standard inlet temperature is the highest water inlet temperature during the hottest month of the year, averaged over the past ten years.
  - j. Ambient wet-bulb temperature and condenser cooling water temperature are generally not significant factors in adjusting cold weather capability of generating units. Shall special situations arise in which these temperatures are required, reasonable estimates for temperatures occurring coincidentally with the winter rating dry-bulb temperature as defined in the Criteria shall be used.

#### **12.1.5.3 Rating Adjustments**

- a. The rated net capability of a unit may be above or below the actual tested net generation as a result of adjustments for Rating Conditions, with the exception of units with winter season ratings greater than their summer rating. For these units, the winter season rated net capability shall be no greater than the actual tested net generation. No rating adjustment for ambient conditions shall be made.
- b. Seasonal net capability shall not be reduced to provide regulating margin or spinning reserve. It shall reflect operation at the power factor level at which the generating equipment is normally expected to be operated over the daily peak load period.
- c. Extended capability of a unit or plant obtained through bypassing of feed-water heaters, by utilizing other than normal steam conditions, by abnormal operation of auxiliaries in steam plants, or by abnormal operation of combustion turbines or diesel units may be included in the seasonal net capability if the following conditions are met; a) the extended capability based on such conditions shall be available for a period of not less than four continuous hours when needed and meets the other restrictions, and b) appropriate procedures have been established so that this capability shall be available promptly when requested by the system operator.
- d. The seasonal net capability established for nuclear units shall be determined taking into consideration the fuel management program and any restrictions imposed by governmental agencies.

**Southwest Power Pool Criteria**

- e. The seasonal net capability established for hydro electric plants, including pumped storage projects, shall be determined taking into consideration the reservoir storage program and any restrictions imposed by governmental agencies and shall be based on median hydro conditions.
- f. The seasonal net capability established for run-of-the-river hydroelectric plants shall be determined using historical hydrological data on a monthly basis.

**12.2 Rating of Transmission Circuits**

Each SPP member shall rate transmission circuits operated at 69 kV and above in accordance with this criteria. A transmission circuit shall consist of all elements load carrying between circuit breakers or the comparable switching devices. Transformers with both primary and secondary windings energized at 69 kV or above are subject to this criteria. All circuit ratings shall be computed with the system operated in its normal state (all lines and buses in-service, all breakers with normal status, all loads served from their normal source). The circuit ratings will be specified in "MVA" and are taken as the minimum ratings of all of the elements in series. The minimum circuit rating shall be determined as described in this criteria and members shall maintain transmission right-of-way to operate at this rating. However, SPP members may use circuit ratings higher than these minimums. Each element of a circuit shall have both a normal and an emergency rating. For certain equipment, (switches, wave traps, current transformers and circuit breakers), these two ratings are identical and are defined as follows:

- a. **NORMAL RATING:** Normal circuit ratings specify the level of power flow that facilities can carry continuously without loss of life to the facility involved.
- b. **EMERGENCY RATING:** Emergency circuit ratings specify the level of power flow that a facility can carry for the time sufficient for adjustment of transfer schedules, generation dispatch, or line switching in an orderly manner with acceptable loss of life to the facility involved.

At a minimum, each member shall compute summer and winter seasonal ratings for each circuit element. The summer season is defined by the months June, July, August and September. The winter season is defined by the months December, January, February and March. The seasonal rating shall be based upon an ambient temperature (either maximum or average) developed using the methodology described in Appendix A. A member may elect to compute a third set of seasonal ratings for the remaining months of the year (April, May, October and November). If that election is not made, summer ratings shall be used for these remaining

FIRST AMENDMENT to AGREEMENT  
for the  
PURCHASE AND SALE OF ELECTRICITY  
between  
SOUTHWESTERN PUBLIC SERVICE COMPANY  
and  
SID RICHARDSON CARBON, LTD.

Document  
# 185809

This First Amendment to Agreement for the Purchase and Sale of Electricity (this "First Amendment") is made and entered into as of the ~~17<sup>th</sup>~~ 17<sup>th</sup> of July, 2007, by and between Sid Richardson Carbon, Ltd. ("Richardson") and Southwestern Public Service Company ("SPS").

WHEREAS, Richardson and SPS entered into that certain Agreement for the Purchase and Sale of Electricity dated as of July 30, 2001 ("Agreement"), pursuant to which Seller agreed to sell and SPS agreed to purchase all of the electricity generated by the Generator, less the power needed to operate the Generator auxiliaries and the Plant; and

WHEREAS, Richardson and SPS desire to extend the Primary Term of the Agreement to July 31, 2021, modify the Fuel Charge, establish an advanced notification period for maintenance outages, and include provisions for any Energy Imbalance Service charges imposed under the proposed Southwest Power Pool Tariff as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized terms used but undefined in this First Amendment shall have the meaning ascribed to such terms in the Agreement.
2. A new Section 3.05 is hereby added to the Agreement to establish an advanced notification period for maintenance outages and responsibility for SPP EIS Charges during certain outages of the Richardson steam generator. Section 3.05 shall hereafter read as follows:

Section 3.05 Scheduled and Unscheduled Outages

(A) Richardson shall provide a schedule of expected maintenance outages for the steam generator ("Maintenance Schedule") to SPS at least sixty (60) Days prior to the start of such scheduled maintenance outage during each calendar year of the Term of this Agreement. Richardson shall furnish SPS with reasonable advance notice of any change in the Maintenance Schedule. Reasonable advance notice of any change in the Maintenance Schedule is as follows:

<u>Scheduled Outage -- Expected Duration</u>	<u>Advance Notice to SPS</u>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days
(3) Major Overhauls (over 5 Days)	at least 30 Days

(B) Richardson shall not schedule any maintenance outages for the steam generator, excluding outages associated with Emergencies and Forced Outages, during any business day of an On-Peak Month without the prior written approval of SPS. On-Peak Months shall be defined as the calendar months of May through September.

(C) Richardson shall pay to SPS the EIS Charges imposed on SPS by the Southwest Power Pool (SPP) to the extent that such charges result from Richardson's failure to timely advise SPS of a planned unit outage as required in this Section 3.05. SPS shall take reasonable steps to amend its schedules for the Richardson steam generator upon receipt of notice of a planned outage in order to minimize the EIS Charges.

(D) In addition to any other charges provided for in the Agreement that may be applicable, in the event of an unplanned or forced outage of the Richardson steam generator, Richardson shall pay to SPS the SPP EIS Charges imposed on SPS by SPP associated with such outage for the period from the time the outage occurred until the bottom of the second hour after the hour during which Richardson provided SPS with notice of such outage to the extent such charge exceeds the Energy and Fuel Charge that SPS would have incurred without such outage. Specifically, for each such outage, Richardson shall pay SPS the accessed hourly SPP EIS Charge that exceeds the total of the Energy and Fuel Charge payments which would have otherwise been due Richardson for each such hour or hours. For purposes of illustration only, (i) if the EIS Charge(s) imposed on SPS by SPP is calculated into an energy rate of \$65.00 per megawatt-hour and (ii) SPS's total Energy and Fuel payment to Richardson is \$60.00 per megawatt-hour during a five (5) hour period when SPS was purchasing 50 MWh from the Richardson steam generator, then in this example, the EIS market charge by SPS to Richardson would be \$250.00  $[(\$65/\text{MWh} - \$60/\text{MWh}) \times (50 \text{ MWh})]$ . SPS shall take reasonable steps to amend its schedules for the Richardson steam generator upon receipt of timely notice of the availability status of the Richardson steam generator in order to minimize EIS Charges. "SPP EIS Charge(s)" shall mean the charge for energy imbalance services provided for in Section 5.2 of Schedule AE of the Southwest Power Pool's Open Access Transmission Tariff, as such schedule and tariff may be on file with the Federal Energy Regulatory Commission and in effect from time to time.

3. Section 4.01 is hereby amended to extend the term of the Agreement to July 31, 2021. Section 4.01 shall hereafter read as follows:

Section 4.01. Term. The primary term ("Primary Term") of this Agreement shall begin on its Effective Date and continue through July 31, 2021. If any regulatory authority, including but not limited to the Texas Public Utilities Commission, does not allow SPS to recover in full the Demand Charge, Energy Charge, and the Fuel Charge payments made to Richardson under this First Amendment, SPS shall have the right to terminate this Agreement upon thirty (30) days advance written notice to Richardson without any obligation or liability whatsoever to Richardson as a result of such termination except for any payments due and owing to Richardson for electricity delivered to SPS prior to such termination. Upon the expiration of the Primary Term of this Agreement, it shall automatically extend from year to year ("Extended Term"), unless terminated under Section 4.02.

4. Section 7.01 is hereby amended to update the names and addresses in the Notice Section. Section 7.01 shall hereafter read as follows:

Section 7.01. Notice. Any notice shall be given as soon as reasonably possible, first by phone, followed promptly in writing. If the notice does not regard operating conditions, emergency conditions or other urgent matters, notification by phone will not be required. Written notice shall be given by personal delivery or certified mail, return receipt requested or Federal Express or other courier, to the following addresses:

For Southwestern Public Service Company  
Vice President, Resource Planning and Acquisition  
Xcel Energy Services Inc.  
1099 18<sup>th</sup> Street  
Denver Colorado 80202  
Phone 303-308-6113  
Fax 303-308-6141

With a copy each to Director, Purchased Power and Manager, Structured Purchases

Director, Purchased Power  
Xcel Energy Services Inc.  
1099 18<sup>th</sup> Street  
Denver Colorado 80202  
Phone 303-308-2748  
Fax 303-308-6141

Manager, Structured Purchases  
Xcel Energy Services Inc.  
1099 18<sup>th</sup> Street  
Denver Colorado 80202  
Phone 303-308-2732  
Fax 303-308-6141



For Sid Richardson Carbon, Ltd.  
Herb Trulove  
Vice President  
201 Main Street Suite 3000  
Fort Worth TX 76102  
Phone: 817-390-8656  
Fax: 817-390-8663

Any notice shall be deemed delivered on the date mailed or sent in the manner set out above. The designation or address of the Party to be notified may be changed at any time by delivery of notice of that change to the other Party. Written notice may also be given by telecopier or telex, in which event such notice shall be deemed given when received.

5. Exhibit C is hereby amended to modify the Fuel Charge during the On-Peak and Off-Peak periods effective January 1, 2008 through the Primary and any Extended Terms of this Agreement.

The Fuel Charge section of Exhibit C shall hereafter read as follows:

For the period January 1, 2007 through December 31, 2007:

Fuel Charge for the On Peak Hours:

$9.500 \text{ MMBTu/MWh} \times \text{Net Generation On Peak (MWh)} \times \text{Gas Index}$   
(\$/MMBTu)

Fuel Charge for the Off Peak Hours:

$7.000 \text{ MMBTu/MWh} \times \text{Net Generation Off Peak (MWh)} \times \text{Gas Index}$   
(\$/MMBTu)

From January 1, 2008 through the Primary and Extended Terms:

Fuel Charge for the On Peak Hours:

$\text{MMBTu/MWh} \times \text{Net Generation On Peak (MWh)} \times \text{Gas Index}$   
(\$/MMBTu)

Fuel Charge for the Off Peak Hours:

$\text{MMBTu/MWh} \times \text{Net Generation Off Peak (MWh)} \times \text{Gas Index}$   
(\$/MMBTu)

All other provisions of Exhibit C shall remain unchanged.

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

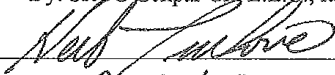
7. No Other Amendment. Except as expressly amended hereby, the terms and provisions of the Agreement shall remain in full force and effect.

EXECUTED THIS 17<sup>th</sup> day of July, 2007

Sid Richardson Carbon Ltd.

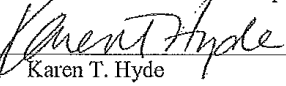
By: SRCG Genpar L.P., its General Partner

By: SRCG Genpar GP, L.L.C., its General Partner

By: 

Title: Vice President Finance and Marketing Services

Southwestern Public Service Company

By: 

Karen T. Hyde

Title: Vice President, Resource Planning and Acquisition

Xcel Energy Services Inc.

Acting as agent for Southwestern Public Service Company

SECOND AMENDMENT to AGREEMENT  
for the  
PURCHASE AND SALE OF ELECTRICITY  
between  
SOUTHWESTERN PUBLIC SERVICE COMPANY  
and  
SID RICHARDSON CARBON, LTD.

This Second Amendment to Agreement for the Purchase and Sale of Electricity (this "Second Amendment") is made and entered into as of the 1<sup>st</sup> of February, 2015, by and between Sid Richardson Carbon, Ltd. ("Richardson") and Southwestern Public Service Company ("SPS").

WHEREAS, Richardson and SPS entered into that certain Agreement for the Purchase and Sale of Electricity dated as of July 30, 2001 ("Agreement"), pursuant to which Seller agreed to sell and SPS agreed to purchase all of the electricity generated by the Generator, less the power needed to operate the Generator auxiliaries and the Plant, as amended; and

WHEREAS, Richardson and SPS desire to amend the Agreement to reflect changes expected to result from the commencement of the Southwest Power Pool (the "SPP") Integrated Marketplace (the "SPP Market") that commenced on March 1, 2014.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized terms used but undefined in this Second Amendment shall have the meaning ascribed to such terms in the Agreement.
2. Section 3.05 is hereby modified to establish an advanced notification period for maintenance outages and responsibility for SPP Market Charges during certain outages of the Generator. Section 3.05 is replaced in its entirety and shall hereafter read as follows:

Section 3.05 Scheduled and Unscheduled Outages

(A) Richardson shall provide a schedule of expected maintenance outages for the Generator ("Maintenance Schedule") to SPS at least sixty (60) Days prior to the start of such scheduled maintenance outage during each calendar year of the Term of this Agreement. Richardson shall furnish SPS with reasonable advance notice of any change in the Maintenance Schedule. Reasonable advance notice of any change in the Maintenance Schedule is as follows:

<u>Scheduled Outage – Expected Duration</u>	<u>Advance Notice to SPS</u>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days

(3) Major Overhauls (over 5 Days) at least 30 Days

(B) Richardson shall not schedule any maintenance outages for the Generator, excluding outages associated with Emergencies and Forced Outages, during any business day of an On-Peak Month without the prior written approval of SPS. On-Peak Months shall be defined as the calendar months of May through September.

(C) Richardson shall pay to SPS the SPP Market Charges imposed on SPS by the SPP to the extent that such charges result from Richardson's failure to timely advise SPS of a planned unit outage as required in this Section 3.05. SPS shall take reasonable steps to amend its schedules for the Generator upon receipt of notice of a planned outage in order to minimize the SPP Market Charges.

(D) In addition to any other charges provided for in the Agreement that may be applicable, in the event of an unplanned or forced outage of the Generator, Richardson shall pay to SPS the SPP Market Charges imposed on SPS by SPP associated with such outage. The SPP Market Charges Richardson shall be required to pay shall be for the period from the time the outage occurred until the bottom of the second hour after the hour during which Richardson provided SPS with notice of such outage. Richardson shall only be required to pay such SPP Market Charges to the extent they exceed the Energy and Fuel Charge that SPS would have incurred without such outage. Specifically, for each such outage, Richardson shall pay SPS the accessed hourly SPP Market Charge that exceeds the total of the Energy and Fuel Charge payments which would have otherwise been due Richardson for each such hour or hours. For purposes of illustration only, (i) if the SPP Market Charge(s) imposed on SPS by SPP is calculated into an energy rate of \$65.00 per megawatt-hour and (ii) SPS's total Energy and Fuel payment to Richardson is \$60.00 per megawatt-hour during a five (5) hour period when SPS was purchasing 50 MWh from the Richardson steam generator, then in this example, the SPP Market Charge by SPS to Richardson would be \$250.00  $[(\$65/\text{MWh} - \$60/\text{MWh}) \times (50 \text{ MWh})]$ . SPS shall take reasonable steps to amend its schedules for the Generator upon receipt of timely notice of the availability status of the Generator in order to minimize SPP Market Charges. "SPP Market Charge(s)" shall mean the settlement charges provided for in Section 8 of Attachment AE of the Southwest Power Pool's Open Access Transmission Tariff, as such schedule and tariff may be on file with the Federal Energy Regulatory Commission and in effect from time to time.

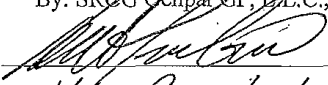
3. Counterparts. This Second Amendment may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

4. No Other Amendment. Except as expressly amended hereby, the terms and provisions of the Agreement shall remain in full force and effect.

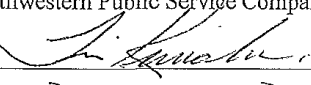
EXECUTED THIS 19<sup>th</sup> day of February, 2015

Sid Richardson Carbon Ltd.

By: SRCG Genpar L.P., its General Partner  
By: SRCG Genpar GP, L.L.C., its General Partner

By:   
Title: Vice President

Southwestern Public Service Company

By:   
Title: Director, Purchased Power  
Xcel Energy Services Inc., as agent for  
Southwestern Public Service Company,  
a New Mexico corporation

**CONFIDENTIAL AGREEMENT**  
**SOUTHWESTERN PUBLIC SERVICE COMPANY**  
**AMENDED**  
**MASTER POWER PURCHASE AND SALE AGREEMENT**

This Master Power Purchase and Sale Agreement (this "Master Agreement" and together with all Transaction Agreements, collectively, the "Agreement") is entered into effective as of this 30 day of June, 2004 (the "Effective Date") by and between Southwestern Public Service Company ("Company"), and City of Lubbock, Texas by and through its municipally owned electric utility, Lubbock Power & Light, ("Counterparty"). Each of the Company and Counterparty may also be referred to individually as a "Party" or collectively as the "Parties." Unless otherwise defined in this Master Agreement capitalized terms shall have the meanings set forth in the Appendix "1" attached to this Master Agreement. The definitions set forth in Appendix "1" shall apply to this Agreement. This Amended Master Agreement replaces and supercedes the Master Agreement dated July 15, 2003.

**SECTION 1.**  
**SCOPE OF AGREEMENT**

**1.1. Scope of Agreement.**

(a) This Master Agreement is entered into in accordance with the Company's Rate Schedule for Market-Based Power Sales ("Rate Schedule"), and the terms of that Rate Schedule, and the service agreement between the Parties entered thereunder ("Service Agreement"), apply to this Master Agreement and any Transaction Agreements as though set forth herein and therein. From time to time, the Parties may, but shall not be obligated to, enter into Transactions for the sale and purchase of Power hereunder. Certain terms of specific Transactions will be set forth in appropriate Transaction Agreements entered into in accordance with this Master Agreement. However, the Parties are relying upon the fact that all Transaction Agreements, together with this Master Agreement, shall constitute a single integrated agreement, and that the Parties would not otherwise enter into any agreement to undertake a specific Transaction. In the event of any conflict between or among the documents comprising this Agreement, the following order of precedence shall apply: (i) written Transaction Agreement (including Confirmations), (ii) Master Agreement, and (iii) oral Transaction Agreement. All purchases and sales between the Parties from and after the Effective Date shall be deemed to be under the Rate Schedule, the Service Agreement, and this Master Agreement unless expressly agreed to otherwise. The Parties acknowledge that this Master Agreement and any Transaction Agreement governed by it shall be subject to any filing, disclosure or notification requirements of the FERC.

(b) Company conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct of Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, Company's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. Accordingly, Counterparty acknowledges that the Company's responsibilities and obligations under the Master Agreement and any Transaction are those of that Party's merchant function, not of its transmission function, and that neither this Master Agreement nor any Transaction Agreement

## CONFIDENTIAL AGREEMENT

impose any responsibilities or obligations on that Party's transmission function. To the extent Company obligates itself to arrange transmission on its system in connection with a Transaction, it is understood that Company will do so in a manner consistent with the open-access transmission tariff that is applicable to its system, and it will only communicate with its transmission function in a manner consistent with FERC Order No. 2004 (as it may be modified or superseded by subsequent FERC orders).

1.2. **Transaction Procedures.** During the term of this Agreement, the Parties may notify each other that Power is sought or available for purchase or sale. Each Transaction shall be effectuated and evidenced by the Authorized Representatives of the Parties at the time the Transaction is agreed to and shall be set forth as follows: (i) by a written Transaction Agreement executed by the Parties, or (ii) in a telephone conversation between the Parties whereby an offer and acceptance shall constitute an oral Transaction Agreement of the Parties (which agreement may be subsequently set out in a Confirmation, as described below) provided each Party may stipulate by prior notice to the other Party that all Transactions or particular types of Transactions (*e.g.*, having a certain duration or above a certain price) shall be effectuated and formed only by means of procedure (i) above. Long-term Transactions (*i.e.*, having a duration of greater than a year) must be evidenced by a written Transaction Agreement. The specific terms to be established by the Parties for each Transaction in a Transaction Agreement shall include the Buyer and Seller, the nature of the Power to be provided (*i.e.*, capacity, energy, or both), the Period of Delivery, the Contract Price, the Delivery Point, the Contract Quantity, whether the Transaction is Firm or Non-Firm, Scheduling, and such other terms as the Parties shall agree upon. The Seller may confirm a telephonic Transaction by forwarding to the Buyer a Confirmation, which shall be executed by the Buyer (with any objections noted thereon) and returned to the Seller within two (2) Business Days of Buyer's receipt of it or else be deemed correct as sent, absent manifest error. Failure by the Seller to send a Confirmation shall not invalidate any Transaction agreed to by the Parties. The Parties agree not to contest or assert any defense to the validity or enforceability of telephonic Transactions entered into in accordance with this Master Agreement under laws relating to whether certain agreements are to be in writing or signed by the Party to be bound, or the authority of any employee of the Party to enter into a Transaction. Each Party consents to the recording of its representatives' telephone conversations without any further notice. All recordings may be introduced into evidence and used to prove oral agreements between the Parties permitted by this Section 1.2.

1.3. **Term of Agreement.** The Parties intend that the term of this Master Agreement commence on the Effective Date and continue until terminated by either Party upon thirty (30) days prior written notice; provided, however, that this Master Agreement shall remain in effect with respect to any Transaction(s) entered into prior to the effective date of the termination until both Parties have fulfilled all their obligations with respect to such Transaction(s).

1.4. **Regulatory Approval.** The Parties acknowledge that under current FERC policy, neither Company nor Counterparty are required to file this Master Agreement with the FERC for its approval. In the event that FERC changes its policy, Company may file their Master Agreement with the FERC, and the Counterparty shall not oppose such filing.

## CONFIDENTIAL AGREEMENT

### SECTION 2. REPRESENTATIONS AND WARRANTIES

2.1. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction in which a Transaction will be performed by it, (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction, other than FERC acceptance of this Master Agreement as described in Section 1.4 above, (iii) the execution, delivery and performance of this Master Agreement and each Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law applicable to it, (iv) this Master Agreement and each Transaction when entered into in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses, (v) there are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it, (vi) there are no Legal Proceedings that materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction, and (vii) it has knowledge and experience in financial matters and the electric industry that enable it to evaluate the merits and risks of entering into this Master Agreement and each Transaction.

### SECTION 3. OBLIGATIONS AND DELIVERIES

3.1. **Seller's and Buyer's Obligations.** Subject to the terms of this Master Agreement and any applicable Transaction Agreement, Seller, with respect to each Transaction, shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, at the Delivery Point the Contract Quantity, and Buyer shall pay Seller the Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the delivery of the Contract Quantity up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Contract Quantity at and from the Delivery Point.

3.2. **Transmission and Scheduling.** Seller shall arrange and be responsible for any necessary transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver the Power to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Power at the Delivery Point. Each Party shall designate Authorized Representatives to effect the Scheduling of the Contract Quantity of Power.

3.3. **Title, Risk of Loss and Indemnity.** Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, claims, and encumbrances arising prior to



## CONFIDENTIAL AGREEMENT

the Delivery Point. Title to and risk of loss related to the Contract Quantity shall transfer from Seller to Buyer at the Delivery Point. Notwithstanding any limitation or exclusion prescribed by Section 5.1 or any other provision of this Agreement, each Party shall indemnify and hold harmless the other Party, its directors, officers, employees, agents, and contractors for, against, and from any and all Claims, for personal injury (including mental anguish), death, or damage to the property of any third party(s) arising from or out of any event, circumstance, act, or incident first occurring or existing during the period when title to the Power is vested in the indemnitor; provided, however, the obligations prescribed by this sentence shall not apply to the extent such Claims are determined to be attributable to the negligence, gross negligence, willful misconduct, or strict liability in tort of the indemnitee, its directors, officers, employees, agents and/or contractors, if any (it being the intent of the Parties that the indemnitee shall be entitled to comparative indemnification for such Claims).

3.4. **Force Majeure.** If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations with respect to a Transaction and such Party gives notice and full details of the event to the other Party as soon as practicable after the occurrence of the event, then the obligations of the Party affected by the event (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) shall be suspended to for such period as is necessary for the Party claiming Force Majeure, using all reasonable dispatch, to remedy either the event of Force Majeure or the effects thereof so as to be able to resume performed; provided, however, that this provision shall not require Seller to deliver, or Buyer to receive, Power at points other than the Delivery Point.

3.5. **Failure to Deliver/Receive in Firm Transactions.** (a) Unless excused by Force Majeure in accordance with Section 3.4 or Buyer's failure to perform any material obligation under this Agreement, if Seller fails to deliver all or part of the Contract Quantity pursuant to a Firm Transaction that Buyer has Scheduled, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute Power not delivered by Seller (plus any (i) Costs (as the term "Cost" is defined in Section 4.2) reasonably incurred by Buyer in purchasing the substitute Power, and (ii) additional transmission charges incurred by Buyer to the Delivery Point or, absent a purchase, the market price for such quantity at such Delivery Point as determined by Buyer in a commercially reasonable manner. For purposes of determining Buyer's Replacement Price and its duty to mitigate damages under Section 5.2, Buyer shall not be required to use or change its use of its owned or controlled assets or market positions to minimize Seller's liability.

(b) Unless excused by Force Majeure in accordance with Section 3.4 or Seller's failure to perform any material obligation under this Agreement, if Buyer fails to receive (i) the minimum requirement of the Contract Quantity, if any, as required to be received pursuant to a Firm Transaction or (ii) amounts of Power that the Parties agreed to Schedule pursuant to a Firm Transaction, Buyer shall pay Seller, on the date payment would otherwise be due, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells the Power not received by Buyer

## CONFIDENTIAL AGREEMENT

(plus any (i) Costs (as the term "Cost" is defined in Section 4.2) reasonably incurred by Seller in selling such minimum requirement, and (ii) additional transmission charges incurred by Seller) or, absent a resale, the market price for such quantity at the Delivery Point as determined by Seller in a commercially reasonable manner. For purposes of determining Seller's Sales Price and its duty to mitigate damages under Section 5.2, Seller shall not be required to use or change its use of its owned or controlled assets or market positions to minimize Buyer's liability.

(c) Notwithstanding the requirements and obligations specified in this Section 3.5, the Parties in a written Transaction Agreement may agree to alternative arrangements that would apply in the event of a Seller's failure to deliver or a Buyer's failure to accept the Contract Quantity or any portion thereof.

3.6. **Failure to Deliver/Receive Non-Firm Transactions.** A Party may be excused from delivering or receiving the Contract Quantity, in whole or in part, in a Non-Firm Transaction for any reason without liability.

3.7. **Exclusive Remedy.** Except as may be provided in a Transaction Agreement, the applicable remedy prescribed by Section 3.5 shall be the sole and exclusive remedy for a Party's failure to deliver or receive the Contract Quantity referenced therein.

## SECTION 4. DEFAULTS AND REMEDIES

4.1. **Events of Default.** An "Event of Default" shall mean with respect to a Party ("Defaulting Party"): (i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is received by the Defaulting Party from the other Party ("Non-Defaulting Party") and provided the payment is not the subject of a good faith dispute as described in Section 6, (ii) any representation or warranty made by the Defaulting Party in Section 2. shall at any time prove to be false or misleading in any material respect, (iii) the failure to perform any material covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Section 4.1 as a separate Event of Default or its obligations to deliver or receive Power the exclusive remedy for which is provided in Section 3) or any Transaction Agreement, and such failure is not excused by Force Majeure in accordance with Section 3.4 or cured within five (5) Business Days after written notice thereof is received by the Defaulting Party, (iv) the Defaulting Party shall be subject to a Bankruptcy Proceeding, or (v) Adequate Assurance of Performance is not provided in accordance with Section 4.4.

4.2. **Remedies upon an Event of Default** (a) If an Event of Default occurs at any time during the term of this Agreement, the Non-Defaulting Party may, for so long as the Event of Default is continuing, (i) establish a date (which date shall be between 2 and 20 Business Days after the Non-Defaulting Party delivers notice) ("Early Termination Date") on which (x) if the Event of Default arises under clauses (i) or (iii) of Section 4.1, the Transaction(s) underlying or giving rise to such Event of Default shall terminate (each a "Terminated Transaction") or (y) if the Event of Default arises under clauses (ii), (iv), or (v) of Section 4.1, all Transactions shall terminate, and (ii) withhold any payments due in respect of the Terminated Transaction(s). If an Early Termination Date has been designated, the Non-Defaulting Party

### CONFIDENTIAL AGREEMENT

shall in good faith calculate its Gains, Losses, and Costs resulting from the termination of the Terminated Transaction(s). The Gains and Losses shall be determined by comparing the value of the remaining term, Contract Quantities and Contract Prices under each Terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each Terminated Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Power futures contracts, quotations from leading dealers in energy swap contracts, and other bona fide third-party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that a Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the amount due under Section 4.2. The Non-Defaulting Party shall aggregate such Gains and Losses, and all associated Costs with respect to all Terminated Transaction(s) into a single net amount if the Non-Defaulting Party's (i) aggregate Losses and Costs exceed (ii) its aggregate Gains, the Defaulting Party shall, within five (5) Business Days of receipt of written demand, pay the difference between (i) and (ii) the ("Termination Payment") to the Non-Defaulting Party, which Termination Payment shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's (i) aggregate Gains equal or exceed (ii) the sum of its aggregate Losses and Costs, the Termination Payment shall be zero, and the Defaulting Party may not claim that it should be owed the difference between (i) and (ii).

(b) As used in this Agreement with respect to each Party: (i) "Costs" shall mean, with respect to a Party, brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction, and attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement; (ii) "Gains" shall mean, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to a Terminated Transaction, determined in a commercially reasonable manner; and (iii) "Losses" shall mean, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to a Terminated Transaction, determined in a commercially reasonable manner. At the time for payment of any amount due under this Section 4.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement (e.g., amounts owed for services provided prior to termination), but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

(c) Notwithstanding any other provision of this Agreement, if Buyer or Seller fails to pay to the other Party any amounts when due and such failure is not cured within five (5) Business days following the delinquent Party's receipt of written notice describing such nonpayment in reasonable detail, the Non-Defaulting Party may, regardless of whether it elects to exercise its remedies under Section 4.2(a), (i) suspend performance of any or all of its obligations related to any Transactions until such amounts plus interest at the Interest Rate have been paid and/or (ii) exercise any remedy available at Law to enforce payment of such amount plus interest at the Interest Rate; provided, however, if the non-paying Party, in good faith, shall dispute the

## CONFIDENTIAL AGREEMENT

amount of any such billing or part thereof and shall pay such amounts as it concedes to be correct, no suspension shall be permitted.

4.3. **Other Events.** Unless the Parties agree otherwise in a Transaction Agreement, in the event Buyer or Seller is regulated by a federal, state, or local regulatory body, and such body shall either disallow all or any portion of any costs incurred or yet to be incurred by Buyer through a purchase or through its setting of rates attribute costs to a sale made by Seller under any provision of this Agreement, such action shall not operate to excuse Buyer or Seller from performance of any obligation nor shall such action give rise to any right of Buyer or Seller to any refund or retroactive adjustment of the Contract Price provided in any Transaction. Notwithstanding the foregoing, if a Party's activities hereunder become subject to regulation of any kind whatsoever under any Law to a greater or different extent than that existing on the Effective Date and such regulation renders this Agreement illegal or unenforceable in its entirety, the Parties shall, through their duly authorized representatives, convene to discuss and assess in good faith appropriate modifications to or restructuring of this Agreement so that it is no longer rendered illegal or unenforceable; provided, however, if despite such good faith efforts the Agreement cannot be so modified or restructured, either Party shall have the right to declare an Early Termination Date effective as of the date this Agreement becomes illegal or unenforceable and no Termination Payment shall be owing to either Party.

4.4. **Credit Assurances.**

(a) If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance in an amount determined by X in a commercially reasonable manner. To the extent permitted by law, Y may provide such assurances through one of the following means: (i) by posting an irrevocable letter of credit (from a bank or financial institution and in a format reasonably acceptable to the obligee Party); (ii) by prepayment; or (iii) other mutually agreed means. In the event that Y fails to provide Adequate Assurance of Performance reasonably acceptable to X within three (3) Business Days following Y's receipt of such demand, an Event of Default under Section 4.1 will be deemed to have occurred and X will be entitled to the remedies set forth in Section 4.2 of this Master Agreement.

## SECTION 5 LIMITATIONS; DUTY TO MITIGATE

5.1. **Limitation of Remedies, Liability and Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL

## CONFIDENTIAL AGREEMENT

BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT FOR CLAIMS FOR INDEMNIFICATION UNDER SECTION 3.3, EACH TO WHICH THE PROVISIONS OF THIS SECTION 5.1 SHALL NOT APPLY, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

5.2. **Duty to Mitigate.** Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

5.3. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

## SECTION 6. BILLING; PAYMENT

### 6.1. **Billing and Payment.**

(a) Seller shall render to Buyer (by regular mail, facsimile or other acceptable means pursuant to Section 8.3) for each calendar month during which purchases/sales are made, a statement setting forth the total quantity of Power that was Scheduled or that Buyer was obligated to purchase and any other charges due Seller, including Demand Charges or payments or credits between the Parties pursuant to Section 3.5, under this Agreement during the preceding month and the amounts due to Seller from Buyer therefore. Billing and payment will be based on Scheduled hourly quantities (with such amount adjusted as appropriate for curtailments that are allowable under a Transaction Agreement). On or before fifteen (15) days after receipt of Seller's statement or if such day is not a Business Day, the immediately following Business Day, Buyer shall pay, by wire transfer or as otherwise agreed between the parties, the amount set forth

## CONFIDENTIAL AGREEMENT

on such statement to the payment address provided in Exhibit "A" appended to this Master Agreement. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment at the Interest Rate.

(b) If Buyer disputes a statement, Buyer shall (i) provide a written explanation of the basis for the dispute and (ii) pay to Seller the portion of such statement conceded to be correct, as required per Section 6.1(a) above, and (iii) if total net amounts in dispute exceed \$100,000 and if so requested by Seller, deposit the disputed amount(s) into an interest-bearing escrow account ("Account") at a national bank with which neither Buyer nor Seller has any banking relationship. All amounts in the Account shall be deemed owned by Seller and Seller shall be entitled to all interest earned thereon, provide that (A) Seller and Buyer shall have joint signature control over the Account, and (B) Buyer shall take such actions as may be required to grant to Seller a first and sole perfected security interest in the Account to secure such amount(s) as may be found to be owing to Seller upon resolution of the dispute. If any amount disputed by Buyer is determined to be due to Seller, it shall be paid within ten (10) days of such determination, along with interest accrued at the Interest Rate from the date such payment was originally due to the date paid.

6.2. **Mandatory Netting/Setoff.** On or before the tenth (10<sup>th</sup>) calendar day of each month the Parties shall communicate by telephone to determine whether the netting and setoff provisions of this Section 6.2 are applicable to the payments to be made with respect to such month. Any amounts (other than amounts disputed in good faith) owed by the Parties under this Agreement shall be aggregated and the Parties shall discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, and other remedies and defenses consistent with Section 4 (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement. All outstanding Transactions and the obligations to make payment in connection therewith or under this Agreement (including any damages that may be determined and owed in accordance with Section 3.5 and Section 4) may be offset against each other, set off, or recouped there from. A Party's failure to net, offset, setoff, or recoup such obligations shall not alter, waive, or otherwise affect such Party's right to payment under this Agreement.

6.3. **Audit.** Each Party (and its representative(s)) has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Power delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments with such statement and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of four (4) years from the rendition thereof.

## SECTION 7. TAXES

## CONFIDENTIAL AGREEMENT

7.1. **Taxes.** Unless otherwise specified Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Taxes") on or with respect to a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to a Transaction at and from the Delivery Point (other than ad valorem, franchise, or income Taxes that are related to the sale of Power and are, therefore, the responsibility of the Seller). In the event Seller is required by Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under Section 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under Law.

7.2. **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all Taxes, so long as neither Party is adversely affected by such efforts.

## SECTION 8. MISCELLANEOUS

8.1. **Assignment.** Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign its rights under this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party provided that the creditworthiness of such Affiliate is equal to or greater than that of the transferring entity, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree to in writing be bound by the terms and conditions hereof. Additionally, in the event a Party undertakes a reorganization to comply with any Law (including, without limitation, Section 39.051 of the Texas Utility Code), the Parties agree that such Party may transfer or assign this Agreement (including any Transaction Agreements entered into pursuant to this Master Agreement) to an Affiliate, and be released of its obligations thereunder, provided that the Affiliate's ultimate parent company provides a guarantee of the Affiliate's payment obligations at terms and conditions that are reasonably acceptable to the receiving Party.

8.2. **Financial Information.** If requested by Counterparty, the Company shall deliver within 120 days following the end of each fiscal year, a copy of its audited consolidated financial statements for such fiscal year certified by independent certified public accountants. If requested by the Company, Counterparty shall deliver within 120 days following the end of each fiscal year, a copy of its audited consolidated financial statements for such fiscal year certified by independent certified public accountants. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP or such other principles then in effect; provided, should any such statements not be available within such 120 day period due to a delay

## CONFIDENTIAL AGREEMENT

in preparation or certification, such delay shall not be considered a default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

8.3. **Notices.** All notices, demands, requests, statements, Confirmations, payments, or other communications between the Parties shall be made as specified in Exhibit "A". Notices and other communications required to be in writing shall be delivered in letter, facsimile, or other documentary form. All notices and other written communications shall be effective upon receipt if sent by facsimile, the next Business day if sent by overnight courier, or three days later if mailed, provided, however, that receipt after 5:00 p.m. local time of the recipient shall be effective the following Business Day. A Party may change its addresses by providing notice of same in accordance herewith.

8.4. **Governing Law.** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

8.5. **Survival.** The following provisions shall survive the expiration or termination of this Agreement: Sections 3.3, 4.2, 5.1, 5.2, 6.2, 6.3, 8.3, 8.4, 8.5, 8.6 and 8.7 and such provisions of any Transaction Agreement necessary to give them full effect.

8.6. **General.** This Master Agreement, the Exhibits and Appendices hereto, if any, each Transaction Agreement constitute the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. No amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Master Agreement shall not impart any rights enforceable by any third-party other than a permitted successor or assignee bound to this Agreement. No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Nothing in this Master Agreement shall be construed to create a partnership or joint venture between the Parties. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

8.7. **Rate Change Mobile-Sierra.** The terms and conditions of this Agreement shall remain in effect for the term of each Transaction hereunder. Absent the Parties' written agreement, this Master Agreement and any Transaction Agreement entered into pursuant to this Master Agreement shall not be subject to change by application of either Party pursuant to the provisions of Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, or a process by which or circumstances under which a change in rates may be made, the standard of review for changes to this Master Agreement and any Transaction Agreement entered into pursuant to this Master Agreement whether proposed by a Party, a non-



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### CONFIDENTIAL AGREEMENT

party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

8.8 **Terminations.** The Parties acknowledge that under FERC regulations (specifically 18 C.F.R. §35.15(b)), neither Party is required to provide FERC with a notice of termination before it may terminate any Transaction entered into under this Master Agreement, in accordance with the terms of such Transaction. Neither Party will contend before any forum that such a notice of termination is required.

8.9 **Bankruptcy.** Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the Other Party is a "provider of last resort."

In Witness Whereof, the Parties have executed this Master Agreement in multiple counterparts to be construed as one effective as of the Effective Date.

#### SOUTHWESTERN PUBLIC SERVICE COMPANY

By: *Todd Hegwer*  
Name: Todd Hegwer  
Title: Director Origination

#### CITY OF LUBBOCK, TEXAS

By: *Carroll McDonald*  
Name: Carroll McDonald  
Title: Director of Electric Utilities

#### CITY OF LUBBOCK, TEXAS

By: *W.R. Collier*  
Name: W.R. Collier  
Title: Chairman of Electric Utility Board

## CONFIDENTIAL AGREEMENT

### **APPENDIX "1" - DEFINITIONS** **MASTER ENERGY PURCHASE AND SALE AGREEMENT**

All references to Articles and Sections are to those set forth in this Agreement. Reference to any document means such document as amended from time to time and reference to any Party includes any permitted successor or assignee thereof. The following definitions and any terms defined internally in this Agreement shall apply to this Agreement and all notices and communications made pursuant to this Agreement.

***"Adequate Assurance of Performance"*** shall mean sufficient security in the form, amount and for the term reasonably acceptable to the Party requesting such assurance, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a guaranty (including the issuer of any such security).

***"Affiliate"*** means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

***"Authorized Representatives"*** means those individuals, designated by the Parties who have the authority to negotiate and enter into a Transaction on behalf of such Party. Each Party's Authorized Representatives may be changed by written notice provided in accordance with Section 8.3.

***"Bankruptcy Proceeding"*** means with respect to a Party or entity, such Party or entity (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 30 days after such filing, (iii) otherwise becomes bankrupt or insolvent (however evidenced) or (iv) is unable to pay its debts as they fall due.

***"Business Day"*** means a day on which banks in New York City are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for each Party's principal place of business.

***"Buyer"*** means the Party to a Transaction who is obligated to purchase and receive, or cause to be received, Power during a Period of Delivery.

***"Claims"*** means all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by

## CONFIDENTIAL AGREEMENT

settlement or otherwise, and whether such claims, demands, or actions are threatened or filed prior to or after the termination of this Agreement.

**“Confirmation”** means a written notice confirming the specific terms of an oral Transaction Agreement which may be in any form adequate at law; an example of a Confirmation which may be utilized hereunder is shown in “Exhibit B-1”.

**“Contract Price”** means the price in \$U.S. per MWh (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Power, including the Power Price, Demand Charges, Transmission Charges and any other charges, if any, pursuant to a Transaction.

**“Contract Quantity”** means that quantity of Power that Seller agrees to sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, pursuant to the terms of a Transaction.

**“Costs”** shall have the meaning defined in Section 4.2(b)(i).

**“Delivery Point”** means the agreed point of delivery and receipt of Power pursuant to a Transaction.

**“Demand Charges”** means the amount, if any, to be paid by Buyer to Seller for capacity as agreed to by the Parties in a Transaction.

**“Equitable Defenses”** means any bankruptcy, insolvency, reorganization and other laws affecting creditor’s rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

**“Event of Default”** shall have the meaning defined in Section 4.1.

**“FERC”** means the Federal Energy Regulatory Commission or any successor agency.

**“Firm”** means, with respect to a Transaction, that the only excuse for the failure to deliver Power by Seller or the failure to receive Power by the Buyer pursuant to a Transaction is Force Majeure or the other Party’s non-performance.

**“Force Majeure”** means (with respect to Firm Transactions) an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the “Claiming Party”), and which by the exercise of due diligence the Claiming Party, or third party, is unable to prevent, overcome or obtain or cause to be obtained a commercially reasonable substitute therefor. Force Majeure may include, but is not restricted to: acts of God; fire; civil disturbance; labor dispute; labor or material shortage; sabotage; action or restraint by court order or public of governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); provided, that none of (i) the loss of Buyer’s markets nor Buyer’s inability economically to use or resell Power purchased hereunder or (ii) Seller’s ability to sell Power to a market at a

## CONFIDENTIAL AGREEMENT

more advantageous price shall constitute an event of Force Majeure. Notwithstanding anything herein to the contrary, nothing in this Master Agreement shall obligate either Party to settle any strike or other labor dispute.

**"GAAP"** means generally accepted accounting principles, consistently applied.

**"Gains"** shall have the meaning defined in Section 4.2(b)(ii).

**"Interest Rate"** means, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal under "Money Rates"; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable law.

**"Law"** means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

**"Legal Proceedings"** means any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

**"Losses"** shall have the meaning defined in Section 4.2(b)(iii).

**"Non-Firm"** means with respect to a Transaction, unless otherwise set forth in a Transaction Agreement signed by both Parties, that delivery or receipt of Power may be interrupted for any reason, without liability by either Party, including, without limitation, price fluctuations.

**"OATT"** means Transmission Provider's open-access transmission tariff satisfying the requirements of the FERC under Order No. 888 and subsequent orders.

**"Period of Delivery"** means the period of time from the date physical delivery of the Power is to commence to the date physical delivery is to terminate under a Transaction.

**"Power"** means energy expressed in megawatt hours (MWh) or capacity expressed in megawatts (MW) to the extent designated in a Transaction Agreement, or both. Unless expressly agreed to in a Transaction Agreement, energy supplied shall be of the character commonly known as three-phase, sixty-hertz electric energy that is delivered at the nominal voltage of the Delivery Point.

**"Power Price"** means the price in \$U.S. (unless otherwise provided for) per MWh to be paid by Buyer to Seller for Power in a Transaction.

**"Regulatory Approvals"** means all current and future valid and applicable Laws, orders, statutes, and regulations of courts or regulatory bodies (state or federal) having jurisdiction over a Party or any Transaction.

**"Replacement Price"** shall have the meaning defined in Section 3.5(a).

## CONFIDENTIAL AGREEMENT

**"Sales Price"** shall have the meaning defined in Section 3.5(b).

**"Scheduling"** or **"Schedule"** means the acts of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Power to be delivered hourly on any given day or days during the Period of Delivery at a specified Delivery Point.

**"Seller"** means the Party to a Transaction who is obligated to sell and deliver or cause to be delivered Power during a Period of Delivery.

**"Transaction"** means a particular transaction agreed to by the Parties relating to the purchase and sale of Power pursuant to this Master Agreement.

**"Transaction Agreement"** means a written or oral agreement executed or reached by the Parties to form and effectuate a Transaction. Written Transaction Agreements shall be substantially in the form of Exhibit "B-2"; oral Transaction Agreements will include similar information.

**"Transmission Charges"** means the amount, if any, to be paid by Buyer to Seller for transmission services as agreed to by the Parties in a Transaction.

**"Transmission Providers"** means the entity or entities transmitting Power on behalf of Seller or Buyer (which may include Buyer's or Seller's transmission function) to or from the Delivery Point in a particular Transaction.

**EXHIBIT "A"**  
**MASTER ENERGY PURCHASE AND SALE AGREEMENT**

NOTICES AND PAYMENT

COMPANY:  
NOTICES & CORRESPONDENCE:  
SOUTHWESTERN PUBLIC SERVICE COMPANY  
1099 18<sup>TH</sup> STREET, SUITE 3000  
DENVER, CO 80202  
ATTN: DIRECTOR, CONTRACT ADMINISTRATION  
FAX NO: (303) 308-7639  
PHONE NO: (303)308-2710

PAYMENTS:  
Southwestern Public Service Company  
Wire Transfer:  
BNK: Wells Fargo Minnesota  
ABA: #091000019 ACH, #121 000 248 WIRE  
ACCT Name: Southwestern Public Service Company  
ACCT: BU#2391424617  
Confirmation:Melissa Burkhardt  
Phone No.: (303) 308-2714  
Fax No.: (303) 308-6144

INVOICES:  
TAMMY GORDON, ACCOUNTING MANAGER  
FAX NO: (303) 308-7657  
PHONE NO: (303) 308-7739

NOTICES & CORRESPONDENCE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PAYMENTS:  
\_\_\_\_\_  
\_\_\_\_\_  
ABA #  
Account #  
Confirmation:  
Phone No.: ( )

INVOICES:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COUNTERPARTY:  
NOTICES & CORRESPONDENCE:

PAYMENTS:  
ABA No.:  
Account No.:  
Confirmation:  
Phone No.: ( )

ATTN:  
FAX No.: ( )  
PHONE NO.: ( )

**INVOICES:**

**ATTN:**  
**FAX No.:** ( )  
**PHONE No.:** ( )

**OR TO SUCH OTHER ADDRESS AS COUNTERPARTY OR \_\_\_\_\_ SHALL FROM TIME TO TIME DESIGNATE BY LETTER  
PROPERLY ADDRESSED.**

**EXHIBIT "B-1"**  
**MASTER ENERGY PURCHASE AND SALE AGREEMENT**

**FORM OF CONFIRMATION FOR  
TRANSACTIONS FORMED UNDER SECTION 1.2(ii)**

[DATE]

[ADDRESS]

Attn.: \_\_\_\_\_

**CONFIRMATION LETTER**

This letter shall confirm the agreement reached on \_\_\_\_\_, 200\_\_ between  
\_\_\_\_\_ ("Counterparty") and Southwestern Public Service Company (the "Company")  
regarding the sale/purchase of Power under the terms and conditions as follows:

**SELLER:** \_\_\_\_\_

**BUYER:** \_\_\_\_\_

**PRODUCT:** \_\_\_\_\_

**CAPACITY:** \_\_\_\_\_

**ENERGY:** \_\_\_\_\_

**DELIVERY PERIOD:** \_\_\_\_\_

**DELIVERY HOURS:** \_\_\_\_\_

**DELIVERY POINT:** \_\_\_\_\_

**CONTRACT QUANTITY:** \_\_\_\_\_

**CONTRACT PRICE:** \_\_\_\_\_

**DEMAND CHARGES:** \_\_\_\_\_

**ENERGY PRICE:** \_\_\_\_\_

**TRANSMISSION CHARGES:** \_\_\_\_\_

**ANCILLARY SERVICES** \_\_\_\_\_

**OTHER (INCLUDING SPECIAL** \_\_\_\_\_

**PENALTIES)** \_\_\_\_\_



**FIRMNESS/CURTAILMENT:**  
**FIRM/NONFIRM**  
**SPECIAL CURTAILMENT**  
**PROVISIONS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULING:**

\_\_\_\_\_

**OTHER:**

\_\_\_\_\_

This Confirmation Letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_, 200\_\_ (the "Master Agreement") between Counterparty and the Company, and constitutes part of and is subject to all of the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in this Master Agreement.

Please confirm that the terms stated herein accurately reflect the agreement between you and the Company by returning an executed copy of this letter by facsimile to the Company. If you do not return this Confirmation Letter or object to this Confirmation Letter within two Business Days of your receipt of it, you will have accepted and agreed to all of the terms included herein, including the terms and provisions of the Agreement.

"COUNTERPARTY"

By:  
Title:  
Date:

"COMPANY"

By:  
Title:  
Date:

**EXHIBIT "B-2"**  
**MASTER ENERGY PURCHASE AND SALE AGREEMENT**

**FORM OF TRANSACTION AGREEMENT FOR  
TRANSACTIONS FORMED UNDER SECTION 1.2(i)**

[DATE]

[ADDRESS]

Attn.: \_\_\_\_\_

**TRANSACTION LETTER**

This Transaction Agreement shall form and effectuate the current proposal between \_\_\_\_\_ ("Counterparty") and Southwestern Public Service Company (the "Company") regarding the purchase and sale of Power under the following terms and conditions:

**SELLER:** \_\_\_\_\_

**BUYER:** \_\_\_\_\_

**PRODUCT:** \_\_\_\_\_

**CAPACITY:** \_\_\_\_\_

**ENERGY:** \_\_\_\_\_

**DELIVERY PERIOD:** \_\_\_\_\_

**DELIVERY HOURS:** \_\_\_\_\_

**DELIVERY POINT:** \_\_\_\_\_

**CONTRACT QUANTITY:** \_\_\_\_\_

**CONTRACT PRICE:**

**DEMAND CHARGES:** \_\_\_\_\_

**ENERGY PRICE:** \_\_\_\_\_

**TRANSMISSION CHARGES:** \_\_\_\_\_

**ANCILLARY SERVICES:** \_\_\_\_\_

**OTHER (INCLUDING SPECIAL PENALTIES):** \_\_\_\_\_

**FIRMNESS/CURTAILMENT:**  
**FIRM/NONFIRM**  
**SPECIAL CURTAILMENT**  
**PROVISIONS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULING:**

\_\_\_\_\_

**OTHER:**

\_\_\_\_\_

This Transaction Agreement is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_, 200\_\_ (the "Master Agreement") between Counterparty and the Company, and constitutes part of and is subject to all of the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in this Master Agreement.

Please execute this Transaction Agreement and return an executed copy to the Company no later than \_\_\_ a.m. on \_\_\_\_\_, 200\_\_ ("Notification Time"). Your execution should reflect the appropriate party in your organization who has the authority to cause Counterparty to enter into this Transaction. In the event Counterparty fails to execute and deliver this Transaction Agreement by the Notification Time or alters the terms of this Transaction Agreement in any manner, there will be no Transaction pursuant to this Transaction Agreement.

**"COUNTERPARTY"**

By:  
Title:  
Date:

**"COMPANY"**

By:  
Title:  
Date:

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**COOKE UNIT CONTINGENT POWER SERVICE  
TRANSACTION AGREEMENT**

between

City of Lubbock, Texas

and

Southwestern Public Service Company

This Unit Contingent Power Service Transaction Agreement, entered into and effective as of the 30 day of June, 2004, shall form and effectuate the current Agreement between the City of Lubbock, Texas ("Lubbock") and Southwestern Public Service Company (the "Customer" or "SPS") regarding the purchase and sale of Power. Customer and Lubbock may be referred to individually herein as a "Party" and collectively as the "Parties".

The Parties are entering into this Transaction Agreement pursuant to and in accordance with the Amended Master Power Purchase and Sale Agreement of even date (the "Master Agreement") between the Customer and Lubbock, and constitutes part of and is subject to all of the terms and provisions of such Master Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed to them in this Master Agreement. Any conflict between the terms of the Master Agreement and this Transaction Agreement shall be resolved in favor of this Transaction Agreement.

**Section 1 – Unit Contingent Power Service**

1.1 The Customer agrees to purchase and Lubbock agrees to provide, during the term of this Transaction Agreement, Unit Contingent Power Service. Lubbock shall provide Unit Contingent Power Service from the generation resources listed in Attachment A to this Transaction Agreement ("Generation Resources"). Lubbock and Customer understand that any Lubbock generation resources not listed in Attachment A are not part of this Transaction Agreement. Lubbock may sell the output from any such unlisted generation resources to either Customer or a third-party under separate contract.

1.2 The term "Unit Contingent Power Service" shall mean that quantity of firm capacity and associated energy that Lubbock will make continuously available to the Customer from the Generation Resources. Unit Contingent Power Service is a firm service that Lubbock may only curtail for reasons of (i) Force Majeure, or (ii) forced outages of any of the Generation Resources, or (iii) when any portion of the firm transmission from the Lubbock's generation resources is curtailed by the applicable Transmission Provider using regional reliability Transmission Loading Relief ("FLR") procedures or due to Force Majeure outages of Lubbock's transmission facilities.

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1.3 Lubbock is responsible for operation and maintenance of the Generation Resources and all related expenses including, but not limited to, overhaul, insurance, chemicals, labor, overtime and catastrophic failures to any Generation Resources. Lubbock shall maintain and operate the Generation Resources in accordance with Good Utility Practice(s). "Good Utility Practice(s)" means the practices, methods, and acts that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Generation Resources, Good Utility Practice(s) include, but are not limited to, taking reasonable steps to ensure that (1) the Generation Resources are maintained with equipment, components, materials, and supplies that are manufactured to a standard of durability that is consistent with their anticipated use for utility and/or industrial applications; (2) sufficient equipment materials, resources, and supplies are available to meet the Generation Resources' needs; (3) sufficient operating personnel are available, either at a facility, remotely, or on call, at all times and are adequately experienced and trained and licensed as necessary to operate the Generation Resources properly, efficiently, and in coordination with an appropriate transmission system operator and are capable of responding to foreseeable emergency conditions whether caused by events on or off the sites of the Generation Resources; (4) appropriate maintenance and repairs are performed to the Generation Resource on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools; (5) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; and (6) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers or the general public.

1.4 Lubbock shall only operate the Generation Resources when Customer schedules energy in accordance with Section 4.

**Section 2 - Term of the Transaction Agreement**

2.1 This Transaction Agreement shall have a term of fifteen (15) years commencing on Hour Ending ("HE") 0100 Central Prevailing Time ("CPT"), July 1, 2004 and ending on HE 2400 CPT, June 30, 2019.

2.2 Upon its effectiveness, this Transaction Agreement shall supersede and cancel the Unit Contingent Power Service Transaction Agreement dated July 15, 2003 and as amended August 19, 2003.

2.3 Upon its effectiveness, this Transaction Agreement shall cancel the Transaction Agreement for Supplemental Power Service dated July 15, 2003.

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**Section 3 - Rates for Unit Contingent Power Service**

3.1 For each month that Customer purchases Unit Contingent Power Service under this Transaction Agreement, the Customer shall pay Lubbock the Demand Charge, the O&M Charge, and the Fuel Charge, as set forth below:

- Demand Charge:** \$2,120 per MW-month times the capacity listed for the Generation Resources in Attachment A. Customer shall pay Demand Charge each calendar month whether or not energy is scheduled from the Generation Resources.
- O&M Charge:** \$3.50 per MWh of energy scheduled and delivered.
- Fuel Charge:** SPS shall reimburse Lubbock for its identifiable fuel expenses incurred in the operation of the Generation Resources for all energy purchased by SPS. Fuel expenses include gas transportation expense. SPS may also directly purchase fuel for operating the Generation Resources.

**Section 4 - Scheduling**

4.1 Transmission scheduling and services shall comply with the policies of the North American Electric Council's ("NERC") policies and the applicable open access transmission tariff, as it may be amended or superceded from time to time. The Customer may schedule energy in whole Megawatt increments from each of the Lubbock units up to that unit's available capacity. The Customer shall schedule all energy by notifying Lubbock as described in the Operating Guidelines found in Attachment B of this Agreement. The Customer may schedule energy with less notice when the Southwest Power Pool (or any succeeding entity) requests that the Generation Resources be operated or redispatched.

**Section 5 - Metering**

5.1 "Metering Device(s)" means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Power output from, or input to, the Generation Resources.

5.2 Customer shall be charged for the net generation being produced by the Generation Resources. For those generators that do not have Metering Devices capable of producing a net output reading, a 3.1% loss factor shall be applied to the gross generation in order to determine the net energy purchased by Customer.

5.3 All Metering Devices used to measure the Power made available to Customer by Lubbock shall be owned, installed, and maintained by Lubbock. Metering Devices shall be inspected and tested at least annually. Lubbock shall provide Customer with reasonable advance notice of, and permit a representative of Customer to witness and verify, such inspections or tests of Metering Devices. If any Metering Devices are found to be defective

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or inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by Lubbock at Lubbock's expense.

5.4 If a Metering Device is found to be defective or inaccurate (if testing indicates an error of more than 1%), the Parties shall estimate the amount of necessary adjustment on the basis of deliveries of net power and energy from the Generation Resource during periods of similar operating conditions when the Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made. In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the previous test of the Metering Device to the test that found the Metering Device to be defective or inaccurate, or (ii) the 180 days immediately preceding the test that found the Metering Device to be defective or inaccurate. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Customer, Customer shall use the corrected measurements to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Customer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Customer to Lubbock; if the difference is a negative, that difference shall take the form of an offset to payments due Lubbock from Customer.

5.5 Lubbock shall provide Customer instantaneous real-time data regarding the output of each of the Generation Resources.

**Section 6 -- Operation and Maintenance**

6.1 Lubbock and Customer shall develop a joint, mutually agreed schedule for maintenance of the Generation Resources for each calendar year during the term of this Transaction Agreement ("Maintenance Schedule"). Customer agrees not to call on a unit affected by the Maintenance Schedule. Lubbock agrees to coordinate with Customer in accommodating all other maintenance events ("Unscheduled Maintenance"). The Customer may request that such Unscheduled Maintenance be delayed, when reasonably practicable, temporarily to accommodate the load needs of the Customer including its obligations to Lubbock. Notwithstanding the foregoing, nothing in this Agreement shall require Lubbock to run any Generation Resource in need of maintenance to the extent that such operation would result in damage to the unit.

6.2 During regular maintenance outages and overhauls of Generation Resources, Customer has the right to inspect the overall condition of the Generation Resources and make recommendations regarding future maintenance. Lubbock shall provide Customer with a report summarizing the maintenance performed after completion of maintenance on any Generation Resource.

6.3 Lubbock shall at a minimum maintain current staffing levels for employees performing operation and maintenance duties on the Generation Resources. Lubbock shall

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provide Customer with quarterly reports on staffing levels, and indicate when any open positions are expected to be filled.

**Section 7 – Repayments for Curtailments**

7.1 If Lubbock curtails Unit Contingent Power Service during the period of May 15 through September 30 (“Summer Season”) during on-peak hours for any reason other than a TLR event or Force Majeure outage of Lubbock’s transmission facilities, Customer shall have the right to charge Lubbock the replacement cost (total cost to generate, acquire and deliver power and energy curtailed) of the power curtailed that day. On-peak hours are all hours from HE 0700 CPT through and including HE 2200 CPT, all weekdays and Saturdays excluding NERC approved holidays.

7.2 If a Generation Resource is out of service due to Unscheduled Maintenance or a forced outage for more than five (5) days in a calendar month, then Customer shall receive a credit to its demand payment to Lubbock equal to: (\$2,120 times capacity of unit listed in Attachment A) times (number of days unit is out of service divided by the number of days in the calendar month).

**Section 8 – Environmental Emissions**

8.1 Lubbock and Customer will work together to meet all regulations regarding environmental emissions from Lubbock’s generation units. By May 15 of each calendar year, Lubbock shall determine if, according to the provisions of Chapter 39 of the Public Utility Regulatory Act, there are excess allowances in a unit account and notify Customer of such excess. Customer shall be entitled to such excess allowances at no cost, provided that it makes a request of Lubbock to transfer the allowances and provides Lubbock with all necessary information regarding the account to which Lubbock should transfer the allowances.

**Section 9 – Transmission Arrangements and Delivery Point**

9.1 Unless the Parties mutually agree to an alternative Delivery Point, Lubbock shall deliver Scheduled Energy to the Customer at the interconnection between SPS and Lubbock (the “Delivery Point”). Lubbock shall have the responsibility to arrange such transmission services to deliver Scheduled Energy to the Delivery Point on a firm basis, and Customer shall be responsible for all necessary transmission services and cost beyond the Delivery Point.

**Section 10 – Operating Committee**

10.1 An Operating Committee consisting of a representative of each of the Parties shall be formed. Within thirty (30) days after the date this Transaction Agreement is executed, each Party shall designate by written notice to the other Party the representative who will be authorized to act on its behalf on the Operating Committee. A Party may change its representative upon written notice to the other Party.



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10.2 The Operating Committee shall meet at least once per calendar year to review the past year's operation and the future year's expected performance of the Generation Resources. The Operating Committee shall also determine the retirement or life extension of the Generation Resources. Lubbock shall perform annual capacity tests on the units listed in Attachment A prior to Summer Season, as agreed upon by the Operating Committee, and the capacity amounts of the Generation Resources will be adjusted in Attachment A to conform with test results.

10.3 The Operating Committee shall be responsible for updating the Maintenance Schedule described in Section 6, above and the Operating Guidelines in Attachment B.

**Section 11 – Disputes**

11.1 Any dispute or need of interpretation between the Parties involving or arising under this Agreement first shall be referred for resolution to the Operating Committee. The representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within thirty (30) days after the notifying Party's notice was received by the other Party, or within such other period as the Parties may jointly agree, then the matter shall be referred to an Executive Officer of Customer and Lubbock's Director of Electric Utilities. If the officers are unable to agree to a resolution of the dispute within thirty (30) days, the Parties shall submit the dispute to arbitration in accordance with the arbitration procedure set forth in Section 11.2.

11.2 Any dispute or need of interpretation involving or arising under this Agreement which cannot be resolved pursuant to Section 11.1 shall be submitted to binding arbitration by one arbitrator qualified by education, experience or training to render a decision upon the issues in dispute and who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be mutually agreed upon by the Parties within 30 days after written notice from either Party requesting arbitration, or failing agreement, the arbitration shall be conducted by a panel of three arbitrators having the qualifications set forth in the preceding sentence, one to be selected by each Party and the third arbitrator to be selected by the two arbitrators selected by the Parties. If either Party fails to notify the other Party of the arbitrator selected by it within 10 days after receiving notice of the other Party's arbitrator, or if the two arbitrators selected fail to select a third arbitrator within 10 days after notice is given of the selection of the second arbitrator, then such arbitrator shall be selected under the expedited rules of the American Arbitration Association (the "AAA"). The Parties shall divide equally the cost of the hearing; shall each pay for its own arbitrator and split the cost of the third arbitrator or split the cost of one if only one is used and each Party shall be responsible for its own expenses and those of its counsel or other representative. The commercial arbitration rules of AAA shall apply to the extent not inconsistent with the rules specified above. Such arbitration shall be held in alternating locations of the home offices of the Parties, commencing with Company's home office, or in any other mutually agreed upon location.

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**Section 12 – Defaults and Remedies**

12.1 In addition to the Events of Default outlined in the Master Agreement, the following shall also constitute an Event of Default pursuant to this Transaction Agreement: (i) Lubbock's abandonment of operation of any of the Generation Resources without Operating Committee approval, and (ii) Lubbock's failure to operate the Generation Resources pursuant to Good Utility Practice as defined in this Transaction Agreement.

12.2 In addition to the remedies specified in the Master Agreement, if an Event of Default listed in Section 11.1 occurs at any time during the term of this Transaction Agreement, Customer may (i) immediately terminate all payments to Lubbock made pursuant to this Transaction Agreement, (ii) receive payment from Lubbock in amount equal to the Demand Charges paid by Customer to Lubbock over the previous eighteen (18) months, and/or (iii) perform all required maintenance and overhauls of the Generation Resources pursuant to Good Utility Practice with Lubbock paying Customer for all such maintenance and overhaul expenses incurred by Customer.

**Section 13 – Sale of Generation Resources**

13.1 Lubbock may not sell any of the Generation Resources without the approval of Customer. Customer will only be required to approve such a sale if the purchaser agrees to a contract arrangement with Customer whereby it will make power available from the purchased Generation Resource(s) at terms and conditions (including price) that are equivalent to those set forth in this Agreement. Notwithstanding the foregoing, Lubbock and Customer may mutually agree to the sale of a Generation Resource without Customer retaining any rights to Power.

**Section 14 – Additions to and Retirement of Generation Resources**

14.1 In the event Lubbock wants to construct new generation or add third-party generation, SPS shall have the first Right of Refusal to invest in the generation unit. Said Right of Refusal shall expire six (6) months after written notification by Lubbock to SPS of Lubbock's intent to acquire new generation resources. SPS may also want to construct generation for its own use on Lubbock plant sites. In such an event, Lubbock shall allow SPS to utilize such generation site(s) when feasible and to the extent that said use does not conflict with Lubbock's existing or planned use of the site or its bond covenants. SPS shall compensate Lubbock for the use of the site(s).

14.2 It is expected that over time SPS will construct or purchase additional capacity or Lubbock's existing capacity will be retired or no longer economical to operate. In either case, Customer shall have the right to reduce the amount of Unit Contingent Power Service it purchases from Lubbock by providing Lubbock one-year written notice, however such notice cannot be given prior to June 30, 2007.

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14.3 Lubbock and Customer may through mutual agreement add and/or delete Generation Resources. Parties may also mutually agree to modify the dependable capacity for any Generation Resource listed in Attachment A.

**Section 15 – Early Termination**

15.1 Lubbock shall have the right to terminate this Transaction Agreement early, but only if (i) Customer is required to sell a portion of its generation resources in order to accommodate retail competition, and such sale causes an increase in the Power charges to Lubbock pursuant to the West Texas Municipal Power Agency Transaction Agreement for Total Requirements Power Service dated June 20, 2004 or (ii) Lubbock constructs coal fired generation capacity. In case (i) Lubbock may cancel this Transaction Agreement upon a minimum of five (5) years written notice to Customer, however, such notice cannot be given prior to December 31, 2007. In case (ii) Lubbock may cancel this Transaction Agreement upon a minimum of five (5) years written notice to SPS. However, such written notice cannot be given prior to December 31, 2010.

15.2 Notwithstanding the provisions of Section 4.1 of the Master Agreement, a Party must first follow the procedures for dispute resolution set out in Section 11.1 and Section 11.2 (*i.e.*, referral to the Operating Committee with subsequent referral to each Party's chief executive officer) before it may seek to terminate this Transaction Agreement on the basis that the other Party has failed to perform any material covenant set forth in the Master Agreement or this Transaction Agreement. Unless otherwise agreed to by the Parties, where a Party refers to the Operating Committee any matter involving a claim of such a breach, the Operating Committee shall have a period of thirty (30) days to attempt to resolve the matter. In the event that the Operating Committee is unable to resolve the matter within such thirty-day period, the matter shall be referred to the chief executive officers for resolution, with the thirty (30) day period for dispute resolution specified in Section 11 to apply.

**Section 16 – Adequate Assurance of Performance**

16.1 Notwithstanding the provisions of Section 4.4 of the Master Agreement, a Party may only request, and the other Party shall only be required to provide, Adequate Assurance of Performance with respect to this Transaction for amounts due and owing (including any amounts in dispute for which payment may have been withheld in accordance with Section 6.1(b) of the Master Agreement, and amounts projected to become due and owing (assuming no default of the Master Agreement or this Transaction Agreement) for services to be provided pursuant to this Transaction Agreement during the sixty (60) day period following such request.

**Section 17 – Miscellaneous**

17.1 This Transaction Agreement and the subsequent operations hereunder are subject to the approval of any regulatory authorities as may now or hereafter have jurisdiction. It is intended that all payments made to Lubbock for capacity, energy or both

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purchased by Customer under this Transaction Agreement shall be included in calculating the rates to be paid by SPS's customers. Notwithstanding any other provision of this Transaction Agreement to the contrary, in the event that during the term of this Transaction Agreement or any extension thereof, any regulatory authority disallows for rate making purposes any portion of the costs incurred by SPS under the terms of this Transaction Agreement, SPS may terminate this Transaction Agreement. In the alternative, the Parties may agree to adjust the level of payments paid by SPS to Lubbock to such level as may be recognized by such jurisdictional authority for payment by said customers. In the event of termination of the West Texas Municipal Power Agency Transaction Agreement for Total Requirements Power Service, SPS may terminate this Transaction Agreement by providing at least ninety (90) days written notice.

**Section 18 - Signature**

The signatories hereto represent that they have been appropriately authorized to enter this Transaction Agreement on behalf of the Party for whom they sign. This Transaction Agreement is executed as of the date first above written.

CITY OF LUBBOCK, TEXAS

By: Carroll McDonald

Printed Name: Carroll McDonald

Title: Director of Electric Utilities

CITY OF LUBBOCK, TEXAS

By: W.R. Collier

Printed Name: W.R. Collier

Title: Chairman of Electric Utility Board

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: Paul J. Benavira

Printed Name: Paul J. Benavira

Title: VICE PRESIDENT

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**ATTACHMENT A**

**LUBBOCK GENERATION RESOURCES**

Unit Power Resources subject to SPS dispatch:

Cooke Steam Unit 1	40 MW
Cooke Steam Unit 2	44 MW
Cooke GT Unit 1	10 MW
Cooke GT Unit 2	15 MW
<u>Cooke GT Unit 3</u>	<u>15 MW</u>
Total	124 MW

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**ATTACHMENT B**

**OPERATING GUIDELINES**

These Operating Guidelines will be established for each unit unless otherwise mutually agreed to by the Parties:

Unit Name	Notification Time		
	Prior to Start	Min Up Time	Min. Down Time
Cooke Steam Unit 1	6 hours	120 hours	6 hours
Cooke Steam Unit 2	6 hours	8 hours	6 hours
Cooke GT Unit 1	2 hours	2 hours	2 hours
Cooke GT Unit 2	2 hours	1 hour	2 hours
Cooke GT Unit 3	2 hours	2 hours	2 hours

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Document #  
182707

**First Amendment  
To The**

**Cooke Unit Contingent Power Service  
TRANSACTION AGREEMENT  
between  
City of Lubbock, Texas  
and  
Southwestern Public Service Company**

This is an amendment to the Transaction Agreement, dated June 30, 2004, between City of Lubbock, Texas ("Lubbock") and Southwestern Public Service ("SPS"). Lubbock and SPS each may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

In consideration of the mutual covenants and promises between the Parties agree to amend the Transaction Agreement as follows:

**Section 7 – Repayments for Curtailments**

**Section 7.1** shall be replaced in its entirety with the following:

If Lubbock curtails Unit Contingent Power Service during the period of May 15 through September 30 ("Summer Season") during On-peak hours for any reason other than a TLR event or Force Majeure outage of Lubbock's transmission facilities, Customer shall have the right to charge Lubbock the replacement cost of the power curtailed that day calculated as follows:

Replacement Costs = Total replacement power charges (TRPC) – Lubbock estimate (LE)\*MWh curtailed, where:

TRPC = total cost to generate, acquire, and deliver power and energy curtailed and replaced;

LE = Heat Rate times gas cost as calculated by Customer;

MWh curtailed = MW of generation curtailed and replaced times duration of curtailment.

On-peak hours are all hours from HE 0700 CPT through and including HE 2200 CPT, all weekdays and Saturdays excluding NERC approved holidays. For a multi-day outage Lubbock is responsible for reimbursing SPS replacement costs for the first day only of such outage.

IN WITNESS WHEREOF, the Parties have caused this Amendment to the Agreement to be executed in their respective names by the proper officers thereunto duly authorized as on this 5<sup>th</sup> day of April, 2005.

CITY OF LUBBOCK, TEXAS

By: W.R. Collier

Printed Name: W.R. Collier

Title: Chairman of Electric Utility Board

SOUTHWESTERN PUBLIC SERVICE COMPANY

By: Paul J. Bonavia

Printed Name: PAUL J. BONAVIA

Title: VICE PRESIDENT





1800 Larimer Street, Suite  
1000  
Denver, CO 80202

March 14, 2016

Mr. David McCalla, P.E  
Director of Electric Utilities  
Lubbock Power & Light  
1301 Broadway  
Lubbock, Texas 79401  
dmccalla@mail.ci.lubbock.tx.us

Subject: Cooke Unit Contingent Power Service Agreement -Removal of Generation Resources

Dear Mr. McCalla:

Southwestern Public Service Company ("SPS") and Lubbock Power & Light are parties to the Cooke Unit Contingent Power Service Transaction Agreement ("Agreement") between the City of Lubbock, Texas ("Lubbock") and SPS effective June 30, 2004. Unless otherwise noted all capitalized terms in this letter have the meaning set forth in the Agreement.

Section 14.3 of the Agreement provides that SPS and Lubbock "may through mutual agreement add and/or delete Generation Resources." SPS and Lubbock have discussed the removal of the Cooke Steam Unit 1 ("Cooke 1") and Cooke Steam Unit 2 ("Cooke 2") Generation Resources from the Agreement. This Letter Agreement confirms that pursuant to Section 14.3 of the Agreement Lubbock and SPS agree to the deletion of the Cooke 1 and Cooke 2 Generation Resources from the Agreement effective April 1, 2016. SPS is entitled to a credit to the SPS demand payment to Lubbock in the event either Cooke 1 or Cooke 2 are out of service due to a forced outage or Unscheduled Maintenance for more than five (5) days in a calendar month, as more particularly described in Section 7.2 of the Agreement through March 31, 2016.

A revised Attachment A to the Agreement is attached reflecting the deletion of Cooke 1 and Cooke 2 from the Agreement and the most recently tested capacity levels of the remaining Generation Resources under the Agreement, Cooke GT2 and Cooke GT3.

Please indicate Lubbock's approval of this Letter Agreement by signing below and returning a copy to us.

Southwestern Public Service Company



Tim Kawakami  
Director, Purchased Power  
Xcel Energy Services Inc. Authorized Agent for Southwestern Public Service Company

City of Lubbock, Texas, by and through Lubbock Power & Light



David McCalla  
Director of Electric Utilities  
Lubbock Power & Light

**ATTACHMENT A**  
**LUBBOCK GENERATION RESOURCES**

**Unit Power Resources subject to SPS dispatch:**

Cooke GT Unit 2	16 MW
Cooke GT Unit 3	17 MW
<hr/>	
Total	33 MW

*Document # 185796*

**POWER PURCHASE AGREEMENT**  
**BY AND BETWEEN**  
**LEA POWER PARTNERS, LLC**  
**AND**  
**SOUTHWESTERN PUBLIC SERVICE COMPANY**

**Power Purchase Agreement**

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## Power Purchase Agreement

POWER PURCHASE AGREEMENT  
BETWEEN  
LEA POWER PARTNERS, LLC  
AND  
SOUTHWESTERN PUBLIC SERVICE COMPANY

THIS POWER PURCHASE AGREEMENT (the "PPA" and the "Agreement") is made this 20<sup>th</sup> day of OCTOBER, 2006 (the "Execution Date"), by and between Lea Power Partners, LLC, a Delaware limited liability company ("Seller"), with a principal place of business at Colorado Energy Management, LLC, 2575 Park Lane, Suite 200, Lafayette, CO 80026, and Southwestern Public Service Company ("SPS"), a New Mexico corporation with managing offices in Denver, Colorado Seller and SPS are hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS Seller desires to develop, design, construct, own and operate an electric generating plant which is capable of operation utilizing natural gas as fuel for generation, which has an expected Net Capability of 604 MW, and which is further defined below as the Facility; and

WHEREAS Seller intends for the Facility to be an Exempt Wholesale Generator in accordance with the provisions of 18 C F R Section 366.1; and

WHEREAS Seller intends to locate the Facility at Lea County, near Hobbs, NM and to interconnect the Facility with the SPS electric system, and

WHEREAS Seller desires to sell to SPS the electric capacity and associated energy produced by the Facility, and SPS desires to buy the same from Seller, and

WHEREAS Seller has responded to SPS's solicitation of bids for the provision of unit contingent electric capacity and energy and SPS has accepted Seller's offer in accordance with the terms and conditions set forth in this PPA;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following

### Article 1 – Definitions and Rules of Interpretation

1.1 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this PPA, whether in the singular or the plural or in the present or past tense. Other terms used in this PPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are

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used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- (A) The masculine shall include the feminine and neuter,
- (B) References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this PPA;
- (C) The Exhibits attached hereto are incorporated in and are intended to be a part of this PPA, provided, that for a conflict between the terms of any Exhibit and the terms of this PPA, the terms of this PPA shall take precedence,
- (D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof;
- (E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (1) where the PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (2) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable;
- (F) Use of the words "include" or "including" or similar words shall be interpreted as "include, without limitation" or "including, without limitation;" and
- (G) Use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like

12 Interpretation with Interconnection Agreement Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that SPS's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider.

- (A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Interconnection Provider
- (B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or SPS's rights, duties and

### Power Purchase Agreement

obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Interconnection Provider

(C) Seller expressly recognizes that, for the purposes of this PPA, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with SPS or an Affiliate of SPS.

1.3 Interpretation with Arrangements for Electric Supply to the Facility The Parties recognize that Seller will enter into separate arrangements for the supply of electric services to the Facility, including the supply of turbine unit start-up and shut-down power and energy

(A) The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing arrangements and that the terms of this PPA are not binding upon the supplier of such electric services

(B) Notwithstanding any other provision in this PPA, nothing in the arrangements for the supply of electric services to the Facility shall alter or modify Seller's or SPS's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the supplier of such electric services

(C) Seller expressly recognizes that, for the purposes of this PPA, the supplier of electric services to the Facility shall be deemed to be a separate entity and separate contracting party whether or not the arrangements for the supply of electric services to the Facility are entered into with SPS or an Affiliate of SPS.

1.4 Definitions The following terms shall have the meanings set forth herein.

(A) "Abandonment" means (1) the relinquishment of all possession and control of the Facility by Seller, other than a transfer permitted under this PPA, or (2) if prior to the Commercial Operation Date, complete cessation of design, construction, testing and inspection of the Facility for thirty (30) consecutive Days by Seller and/or Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or request by, SPS, or an event of Force Majeure.

(B) "Acceptable Natural Gas Fuel" means the least restrictive of any of the following:

(1) natural gas fuel delivered to the Fuel Delivery Point (a) under the applicable gas tariff in effect as of Execution Date (the natural gas quality specifications of which are attached hereto as Exhibits D-1, D-2, and D-3 to this PPA), or (b) under any successor tariff;

(2) Intentionally Omitted,

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(3) natural gas fuel delivered by any upstream pipeline interconnected to a Fuel Delivery Point the actual gas quality of which meets or exceeds the natural gas quality specifications set forth in Section 1.4(B)(1);

(4) natural gas fuel which complies with each of the manufacturer's natural gas fuel quality specifications for the Facility combustion turbine generating units (which specifications are attached as Exhibit D-4 to this PPA); or

(5) natural gas fuel the burning of which in the Facility combustion turbine generating units (a) would not void the manufacturer's warranty for such turbine units (if the warranty therefor then remains in effect), and (b) would not be contrary to Good Utility Practice.

(C) Intentionally Omitted.

(D) "Actual Net Heat Rate" means the net heat rate for the Facility, stated in Btu/kWh, Higher Heating Value ("HHV"), as adjusted to Reference Conditions, resulting from a heat rate test conducted in accordance with the terms and conditions set forth in Section 8.5, which shall be used for determining the Heat Rate Adjustment to payments as specified in Sections 8.3 and 8.4.

(E) "Affiliate" of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

(F) "Automatic Generation Control," or "AGC," means the automatic regulation within predetermined limits of the power output of electric generators within a Control Area in response to changes in system load, system frequency, tie line load, or the relation of these to each other, so as to maintain the scheduled system frequency and/or the established interchange with other Control Areas. This regulation is accomplished through communication links between the Energy Markets Control Center energy management system computer and the generator(s) equipped for such control. For a generator to be considered capable of AGC by SPS, the generator must meet the Requirements and Compliance Standards for Dispatchability.

(G) "Business Day" means any calendar day that is not a Saturday, a Sunday, or a NERC recognized holiday

(H) "Commercial Operation" means the period beginning on the Commercial Operation Date and continuing through the Term.

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(I) "Commercial Operation Date" or "COD" means the date that SPS provides notification to Seller, pursuant to Section 4.7, of SPS's declaration that all of the Conditions specified in Section 4.7 have occurred or otherwise been satisfied.

(J) "Commercial Operation Milestone" means the Construction Milestone for the Commercial Operation Date. The Commercial Operation Milestone is specified in Exhibit B as June 1, 2008.

(K) "Commercial Operation Year" means any consecutive twelve (12) month period, during the Term of this PPA, commencing with the Commercial Operation Date or any of its anniversaries.

(L) "Conditions" shall have the meaning set forth in Section 4.7.

(M) "Construction Milestone(s)" means the date(s) set forth in Exhibit B by which Seller agrees to achieve the corresponding result(s) specified for such date(s), including the Commercial Operation Milestone.

(N) "Contract Capacity" shall have the meaning set forth in Section 7.1.

(O) "Contract Energy" shall have the meaning set forth in Section 7.2.

(P) "Control Area" means the system of electrical generation, distribution, and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

(Q) "Day" means a calendar day.

(R) "Electric Metering Device(s)" means all metering equipment, and data processing equipment used to measure, record, or transmit data relating to the electric power and energy output from the Facility. Electric Metering Devices include the metering current transformers ("CTs") and the metering voltage transformers ("VTs").

(S) "Emergency" means any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of SPS's load or generation supply, that could adversely affect the reliability of the SPS system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

(T) "Energy Markets Control Center," or "EMCC," means SPS's merchant representative(s) responsible for dispatch of generating units, including the Facility.

(U) "Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or

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character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable for the purposes contemplated by this PPA

(V) "Event of Default" shall have the meaning set forth in Article 12.

(W) "Excess Capacity" means the net power output that the Facility can produce and deliver to the Point of Delivery, if any, in excess of the Net Capability, as demonstrated and determined from time to time by the seasonal capacity testing required pursuant to Section 10.4

(X) "Excess Energy" means the amount of energy that can be produced and delivered to the Point of Delivery by a specified amount of Excess Capacity.

(Y) "Facility" means Seller's electric generating facility, Seller's Interconnection Facilities, and Seller's Natural Gas Interconnection Facilities, as identified and described in Article 3 and Exhibit C to this PPA, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Point of Delivery, protective and associated equipment, natural gas compression, heating and filter/separation equipment and associated piping and control systems, above ground and underground fuel piping systems, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the electric capacity and energy subject to this PPA.

(Z) "Facility Debt" means the obligations of Seller to any lender pursuant to the Financing Documents, including without limitation, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

(AA) "Facility Lender" means, collectively, any lender(s) providing any Facility Debt and any successor(s) or assigns thereto.

(BB) "FERC" means the Federal Energy Regulatory Commission or any successor agency.

(CC) "Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, or

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refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

(DD) "Forced Outage" means any condition at a Facility that requires immediate removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Facility conditions and/or alarms.

(EE) "Force Majeure" shall have the meaning set forth in Article 14.

(FF) "Fuel Delivery Point" means the natural gas delivery system point at which SPS makes available and delivers to Seller the natural gas fuel consumed by the Facility to produce the Contract Energy dispatched by SPS, which Fuel Delivery Point will be located on the north boundary of the Site. Unless the Fuel Delivery Point is changed, pursuant to Section 5.6(B), the Fuel Delivery Point shall be the point of natural gas interconnection, and custody transfer, between the natural gas delivery system provided by or on behalf of the Gas Provider, and the Facility. Such Fuel Delivery Point is specified in Exhibit C to this PPA.

(GG) "Gas Provider" means the entity that will secure the Acceptable Natural Gas and cause such commodity to be transported to the Fuel Delivery Point

(HH) "Generation Benefits" means all environmental, economic, and other related credits, offsets, allowances, or benefits that are directly attributable to electric energy generated by the Facility and delivered to SPS during the Term, including air emissions credits and emissions reductions credits, offsets, allowances, or benefits whether promulgated by a Governmental Authority or by or through any other means. Generation Benefits includes not only the described credits, offsets, allowances, or benefits that are now available, but also the described credits, offsets, allowances, or benefits that may become available in the future for electric energy generated by the Facility during the Term

(II) "Good Utility Practice(s)" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the natural gas industry and electric power generation industry, SPP and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Facility, Good Utility Practice(s) include taking reasonable steps to ensure that:

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(1) equipment, materials, resources, and supplies, including fuel and spare parts inventories, are available to meet the Facility's needs;

(2) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly, efficiently, and in coordination with SPS and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;

(3) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(4) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(5) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as steam pressure, temperature, and moisture content, chemical content of make-up water, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and

(6) equipment and components meet or exceed the standard of durability that is generally used for gas-fired generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency conditions.

(JJ) "Governmental Authority" means any federal, state, local, tribal, or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal

(KK) "Hazardous Materials" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority, any applicable State, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (1) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of local, state, or federal law, (2) petroleum, including any fraction, derivative or additive, (3) asbestos; (4)



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polychlorinated biphenyls, (5) radioactive material; (6) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (7) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (8) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (9) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (10) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

(LL) "Interconnection Agreement" means the separate agreement between Seller and the Interconnection Provider for interconnection of the Facility to the Interconnection Provider's System, as such agreement may be amended from time to time

(MM) "Interconnection Facilities" means Interconnection Provider's Interconnection Facilities and Seller's Interconnection Facilities.

(NN) "Interconnection Provider" means collectively, SPP and the person or entity that owns and operates the transmission lines, Interconnection Provider's Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Point of Delivery, and any successor(s) or assigns thereto

(OO) "Interconnection Provider's Interconnection Facilities" means the facilities necessary to connect Interconnection Provider's existing electric system to the Point of Delivery, including breakers, bus work, bus relays, and associated equipment installed by the Interconnection Provider for the direct purpose of interconnecting the Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Interconnection Provider's Interconnection Facilities shall be governed by the Interconnection Agreement.

(PP) "Interconnection Provider's System" means the contiguously interconnected electric transmission and subtransmission facilities, including Interconnection Provider's Interconnection Facilities, over which the Interconnection Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Point of Delivery

(QQ) "Key Components" means the combustion turbine generator, steam turbine generator, and step-up transformer

(RR) "Natural Gas Interconnection Facilities" means Seller's, or Seller's agent's, pipeline, compression and related facilities required to receive, regulate and meter natural gas fuel and to transport such fuel from the Fuel Delivery Point to the Facility's generating unit(s) for the generation of electric energy under this PPA,

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including those facilities required to heat and/or filter/separate such natural gas fuel as Seller, in its sole judgment, deems necessary to install.

(SS) "NERC" means the North American Electric Reliability Council or any successor organization.

(TT) "Net Capability" or "NC" means the maximum net power output that the Facility is expected to be able to produce and deliver to SPS at the Point of Delivery. The Net Capability is specified in Section 3.4.

(UU) "Network Resource" means Network Resource as defined in Section 1.26 of the SPP OATT.

(VV) "NMPRC" means the New Mexico Public Regulation Commission.

(WW) "On-Peak Months" means the calendar months of January, February, June, July, August, September and December.

(XX) "Operating Committee" means one representative each from SPS and Seller appointed pursuant to Section 10.5.

(YY) "Operating Records" means all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that the Seller uses or maintains for the operation of the Facility.

(ZZ) "Operating Reserve" means the undispached portion of the Contract Capacity, which (1) is maintained by SPS to provide for regulation, load forecasting error, forced and scheduled outages, and system reliability and (2) qualifies as operating reserve available to SPS in accordance with the definitions and descriptions set forth in the Minimum Operating Reliability Criteria, as such criteria are published and/or updated from time to time by SPP.

(AAA) "Point of Delivery" means the electric system point at which Seller makes available to SPS and delivers to SPS the capacity and energy being provided by Seller to SPS under this PPA. The Point of Delivery shall be specified in Exhibit C to this PPA.

(BBB) "PPA" means this power purchase agreement between Seller and SPS, including the Exhibits.

(CCC) "Predicted Net Heat Rate" means the predicted net heat rate for the Facility, stated in Btu/kWh, Higher Heating Value ("HHV"), at Reference Conditions and adjusted to reflect the turbine manufacturer's estimated degradation in equipment performance over the period of Commercial Operation from equipment conditions as specified in Exhibit H. The initial Predicted Net Heat Rate at Reference

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Conditions shall be the lesser of (1) 7583 Btu/kWh HHV or (2) the Actual Net Heat Rate resulting from the initial heat rate test of the Facility pursuant to Section 8.5. The Predicted Net Heat Rate degradation adjustment, as specified in Exhibit H, shall be used to adjust such initial Predicted Net Heat Rate, and thereby establish the Predicted Net Heat Rate, over the Commercial Operation period

(DDD) "Reference Conditions" means the Facility operating and ambient conditions used to establish the Predicted Net Heat Rate and to provide a reference for adjustment in determining the Actual Net Heat Rate from heat rate testing of the Facility pursuant to Section 8.5. The ambient Reference Conditions for the Facility shall be an ambient temperature of ninety-five (95) degrees Fahrenheit (F), twenty percent (20%) ambient relative humidity, and standard ambient pressure (14.696 psia at mean sea level) adjusted to the Site elevation of 3700 feet above mean sea level. The operating Reference Conditions for the Facility shall be the design parameters for the Facility generating equipment as follows:

Net Summer Fired Capacity 502 MW  
Fuel Composition: Natural Gas HHV between 1000 and 1080 BTU/SCF  
Intake Pressure Drop: 5.0 INWC  
Exhaust Pressure Drop: 18.2 INWC  
Firing/Exhaust Temperature: 1144 Deg F  
Use of Bleed Air: No  
Water and/or Steam Injections Rate: None  
Generator Power Factor: 1.0  
Boiler Blowdown % 1%  
Fuel Temperature 280 Deg F  
Inlet Chillers: Off  
Inlet Chilled Water Storage On  
(Inlet Chilled Water Temperature shall be at a temperature consistent with the Inlet Chilled Water Temperature during normal operation at that load and the same ambient conditions.)  
Thermal Energy Export: None

Seller may change the Reference Conditions based upon the manufacturer's reference conditions for any substitute equipment.

(EEE) "Replacement Power Costs" means the actual costs incurred by SPS following an Event of Default which are reasonable and necessary to replace that capacity and energy which Seller, in accordance with this PPA, would have produced at the Facility and delivered to SPS, but failed to so provide, less (1) the sum of any payments from SPS to Seller, under this PPA, which would have been made but were eliminated as a result of such failure and (2) all variable fuel supply costs and variable fuel delivery costs that SPS would have incurred for Seller to produce and deliver the amount of replaced energy from the Facility as Contract Energy hereunder, but which were eliminated as a result of Seller's failure. Replacement Power Costs may include the reasonable amounts paid or incurred by SPS for replacement capacity, replacement

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energy, fuel to produce replacement energy, transmission of replacement capacity and energy, and directly associated transaction costs

(FFF) "Requirements and Compliance Standards for Dispatchability" means SPS's Requirements and Compliance Standards for Dispatchability, as such may be updated or revised from time to time by SPS. SPS's current Requirements and Compliance Standards for Dispatchability are attached hereto as Exhibit A.

(GGG) "Scheduled Outage/Derating" means a planned interruption/reduction of the Facility's generation that both (1) has been coordinated in advance with SPS, with a mutually agreed start date and duration and (2) is required for inspection, or preventive or corrective maintenance.

(HHH) "Security Fund" means the letter of credit, guaranty, and/or other collateral that Seller is required to establish and maintain, pursuant to Section 11.1, as security for Seller's performance under this PPA.

(III) "Seller's EPC Contract(s)" means Seller's engineering, procurement and construction contract(s) for the Facility.

(JJJ) "Seller's Interconnection Facilities" means the equipment between the high side disconnect of the step-up transformer and the Point of Delivery, including all related relaying protection and physical structures as well as all transmission facilities required to access the Interconnection Provider's System at the Point of Delivery, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer it includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Facility and is conceptually depicted in Exhibit C.

(KKK) "Site" means the parcel of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Section 3.2 and Exhibit C.

(LLL) "SPP" means the Southwest Power Pool, a NERC regional electric reliability council and Regional Transmission Organization, or any successor organization(s).

(MMM) "SPP OATT" means the Open Access Transmission Tariff offered by the SPP, as amended from time to time

(NNN) "Successful Facility Start" means, in response to a request from SPS to start the Facility, Seller's start and operation of the Facility that achieves the

## Power Purchase Agreement

minimum loading level specified in Exhibit C for specified conditions for start up of the Facility after the time SPS requested the Facility start to begin and upon achieving the aforementioned minimum loading level, generates continuously for a period of not less than one (1) hour while synchronized to Interconnection Provider's System at or above such minimum loading level without experiencing any abnormal operating conditions. If Seller initiates a Facility start requested by SPS, but fails to meet the above specified requirements for a Successful Facility Start solely as a result of (1) the cancellation of the Facility start by SPS within the applicable time period, (2) a request from SPS, within one (1) hour from Facility start, to shut down the Facility, or (3) an SPS or SPS system performance failure, then the initiated Facility start shall nevertheless qualify as a Successful Facility Start. Seller shall not be credited a Successful Facility Start following a turbine trip where SPS directs the Seller to restart the Facility, pursuant to Section 7.4, even if the restart would otherwise meet the qualifications for a Successful Facility Start.

(OOO) "Term" means the period of time during which this PPA shall remain in full force and effect.

(PPP) "Test Energy" means that energy which is produced by the Facility, delivered to SPS at the Point of Delivery, and purchased by SPS, pursuant to Section 4.8, in order to perform testing of the Facility.

(QQQ) "Unsuccessful Facility Start" means Seller's failure to achieve a Successful Facility Start. Seller will not be charged an Unsuccessful Facility Start if Seller has notified SPS in advance of the requested start of (1) a Forced Outage pursuant to Section 10.3(A) or (2) a Scheduled Outage/Derating, pursuant to Section 10.1, that results in the Facility being unavailable when the start is requested. Seller shall be charged an Unsuccessful Facility Start following a turbine trip where SPS directs the Seller to restart the Facility, pursuant to Section 7.4, and the restart fails to meet the qualifications for a Successful Facility Start.

## Article 2 - Term and Termination

This PPA shall become effective as of Execution Date, and shall remain in full force and effect through the earlier to occur of (A) September 30, 2033 or (B) the twenty-fifth (25<sup>th</sup>) anniversary of the Commercial Operation Date so long as the conditions precedent included in Section 6.3 are met and subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this PPA, repayment of principal and interest associated with security funds, and the indemnifications specified in this PPA.

## Power Purchase Agreement

### Article 3 - Facility Description

3.1 Summary Description. Seller shall construct, own, operate, and maintain the Facility, which shall be natural gas-fueled, combined cycle using two (2) MHI Frame 501F combustion turbines, two (2) Aalborg Industries heat recovery steam generators, and a GE steam turbine, or acceptable substitutes, with dry cooling and zero (0) liquid discharge electric generation facility having a designed net power output capability of approximately 604 MW. Exhibit C provides a further description of the Facility, including the following:

(A) identification of the equipment and components which make up the Facility and

(B) the minimum loading level(s) that will be available for dispatch by SPS, with AGC and without AGC, for each possible operating configuration of the Facility generating unit(s).

3.2 Location. The Facility shall be located on the Site and shall be identified as Seller's Hobbs Generating Station. The legal description of the Site is the southwest quarter of Section 24, Township 18 South, Range 36 East, Lea County, New Mexico, approximately nine (9) miles west of the City of Hobbs, New Mexico. A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery, the location of the Fuel Delivery Point, and the location of the important fuel delivery and electric facilities associated with the Site is included in Exhibit C.

3.3 General Design of the Facility. Seller shall construct the Facility according to Good Utility Practice(s) and the Interconnection Agreement. During Commercial Operation, Seller shall maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement. In addition to the requirements of the Interconnection Agreement, the Facility shall at all times:

(A) have the required panel space and 125Vdc battery supplied voltage to accommodate the Electric Metering Devices, generator telemetering equipment and communications equipment;

(B) use communication circuits from the Facility to SPS's EMCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required for AGC and fuel management by SPS,

(C) be capable of transmitting fuel flows for generation and other Facility operating information to SPS's EMCC on a real-time basis;

(D) be capable of AGC by SPS, by separate signal, for each individual generating unit and, if applicable, that portion of the Facility operated in combined-cycle mode,

### Power Purchase Agreement

(E) be capable of fully operating all Facility combustion turbine generating units using, as directed by SPS, natural gas as combustion fuel;

(F) be capable of operating at, and making available for dispatch by SPS, the minimum loading level(s) specified in Exhibit C for operations with AGC and without AGC for each possible operating configuration of the Facility generating unit(s); and

(G) be capable of operating, or continuing to operate without interruption, in combined-cycle mode in the event of a planned or unplanned outage of one or more, but not all, Facility combustion turbine generating unit(s)

3.4 Net Capability. The Net Capability is 604 MW, as measured at the Point of Delivery. The expected Facility summer production capability available to SPS hereunder at the Point of Delivery is 502 MW.

### Article 4 - Commercial Operation

4.1 Commercial Operation. Subject to extension as specifically provided for herein, the Facility shall achieve the Commercial Operation Date, and shall be fully capable of reliably producing the Contract Capacity and Contract Energy to be provided under this PPA and delivering such power and energy to SPS at the Point of Delivery, no later than the Commercial Operation Milestone; provided, that Seller shall not be obligated to establish a Commercial Operation Date under this PPA that is earlier than the Commercial Operation Milestone and SPS shall not be obligated to establish a Commercial Operation Date under this PPA that is earlier than April 1, 2008.

4.2 Construction Milestones. In order to achieve the Commercial Operation Date by the Commercial Operation Milestone, Seller agrees to meet the Construction Milestones set forth in Exhibit B.

4.3 Site Report. Seller shall conduct a Phase I environmental investigation of the Site and shall provide SPS, on or before 90 days after Execution Date, with a copy of the report summarizing such investigation, together with any data or information generated pursuant to such investigation. Seller shall provide to SPS, with such report, confirmation from an environmental engineer that the Site has been inspected for Environmental Contamination and that the Site complies with all applicable governmental laws, regulations, or requirements relating to environmental or occupational health and safety matters and Hazardous Materials. The term "all applicable governmental laws" in this Section 4.3 shall include all statutes identified in Article 1 under the definition of "Hazardous Materials", and all federal, state, tribal, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials. Such report, or other written confirmation provided by Seller, shall include a confirmation that, based upon such investigation and

## Power Purchase Agreement

to the best of Seller's knowledge, no conditions involving Environmental Contamination exist at or under the Site

4.4 Facility Contracts Seller shall provide to SPS, within the time frames specified by the Construction Milestones, copies of the following major contracts which govern the design and construction of the Facility, and the ability of Seller to deliver capacity and energy to SPS at the Point of Delivery: contracts for the manufacture, delivery and installation of the generating and step-up transformation equipment; Seller's EPC Contract(s), or other general contractor agreements, material operating agreements; applicable electric transmission and/or interconnection agreements; and applicable natural gas transportation and/or interconnection agreements. Upon reasonable notice and request by SPS, Seller shall provide SPS with other Facility construction contracts and major engineering drawings. Seller shall also provide SPS with reasonable evidence that it has the capability to finance construction of the Facility. Information that is commercially sensitive, confidential or proprietary may be redacted from the documents provided to SPS pursuant to this Section 4.4. Seller shall provide sufficient information for SPS to be reasonably assured that Seller has contracted with financially responsible vendors as part of the Facility construction process.

4.5 Progress Reports. Seller shall submit to SPS, on the first Day of each calendar month until the Commercial Operation Date is achieved, progress reports in a form reasonably satisfactory to SPS. These progress reports shall notify SPS of the current status of each Construction Milestone

4.6 SPS's Rights During Construction. SPS shall have the right to monitor the construction, start-up, and testing of the Facility and Seller shall comply with all reasonable requests of SPS with respect to the monitoring of these events. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by SPS during and after completion of construction. All persons visiting the Facility on behalf of SPS shall comply with all of Seller's applicable safety and health rules and requirements. SPS's technical review and inspection of the Facility shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Facility

4.7 Conditions to Commercial Operation SPS will notify Seller when the Facility has achieved the Commercial Operation Date, which notice will be neither unreasonably withheld nor delayed by SPS. This notification is contingent upon Seller providing evidence reasonably acceptable to SPS of the satisfaction or occurrence of all of the conditions set forth in this Section 4.7 ("Conditions") and shall include a declaration by SPS to that effect. The Parties agree that review and approval of such Conditions may occur on an on-going and incremental basis, pending resolution of any dispute, as such Conditions are satisfied. The Conditions are:

(A) Seller has successfully completed that testing of the Facility which is required by the Financing Documents, the Facility's governmental permits, the Interconnection Agreement, Seller's operating agreements, Seller's EPC Contract(s),



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and manufacturers' warranties for the commencement of commercial operations at the Facility;

(B) the Facility has (1) achieved three (3) successful starts of each combustion turbine generating unit in simple-cycle operation without experiencing any abnormal operating conditions, (2) achieved one (1) successful start of each combustion turbine generating unit, and the applicable steam turbine generating unit, in combined-cycle operation without experiencing any abnormal operating conditions, (3) generated in each possible combined-cycle operating configuration while synchronized to Interconnection Provider's System at base load capacity without experiencing any abnormal operating conditions, and (4) generated continuously for a period of not less than sixteen (16) hours while synchronized to Interconnection Provider's System at a net capacity output of at least 90% of the Net Capability without experiencing any abnormal operating conditions;

(C) the Facility has met the requirements for AGC by SPS, has achieved initial synchronization with the Interconnection Provider's System, and has demonstrated the reliability of its communications systems and communications with SPS's EMCC;

(D) an independent professional engineer's certification has been obtained by Seller (and has been provided to SPS) stating that the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this PPA,

(E) Seller is both obligated under, and in compliance with, the Interconnection Agreement and the interconnection of the Facility to the Interconnection Provider's System has been completed in accordance with the Interconnection Agreement and has operated at full Facility output capacity without experiencing any abnormal or unsafe operating conditions on any interconnected system;

(F) Seller has made all arrangements and executed all agreements required to deliver the Contract Capacity and Contract Energy from the Facility to the Point of Delivery in accordance with the provisions of this PPA;

(G) all physical natural gas interconnection and metering facilities, as described in Section 5.6(A), have been completed and are available for the delivery and receipt of natural gas fuel at the Fuel Delivery Point, in accordance with all applicable gas tariffs;

(H) all arrangements for the supply of required electric services to the Facility, including the supply of turbine unit start-up and shut-down power and energy, have been completed by Seller separate from this PPA, are in effect, and are available for the supply of such electric services to the Facility,

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(I) the security arrangements meeting the requirements of Article 11 have been established;

(J) certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to SPS; and

(K) Seller has submitted to SPS a certificate of an officer of Seller familiar with the Facility after due inquiry stating that all necessary permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and/or operate the Facility in compliance with applicable law and this PPA have been obtained and are in full force and effect, and that Seller is in compliance with the terms and conditions of this PPA in all material respects

4.8 Test Energy. Seller shall coordinate the production and delivery of Test Energy with SPS. SPS shall cooperate with Seller to facilitate Seller's testing of the Facility and shall purchase Test Energy as follows:

(A) SPS shall accept all Test Energy delivered to the Point of Delivery prior to the Commercial Operation Date and purchase such delivered Test Energy at the Qualifying Facility energy payment rate set forth in SPS's retail electric tariff in effect during the period of such delivery. Unless otherwise agreed to by the Parties in writing, the payment resulting from the application of such Qualifying Facility energy payment rate to the amount of such delivered Test Energy shall be the sole and exclusive compensation that SPS shall be obligated to make to Seller for the generation and delivery of such Test Energy. Further, Seller shall be responsible for the procurement and costs of all fuel required to produce energy from the Facility prior to the Commercial Operation Date;

(B) After the Commercial Operation Date, SPS shall arrange for the required fuel delivery, dispatch the Facility and purchase Test Energy when reasonably requested to do so by Seller to accommodate Seller's testing of the Facility, including heat rate testing pursuant to Section 8.5, seasonal capacity testing pursuant to Section 10.4, and any other testing of the Facility which Seller is required to perform, or cause to be performed, pursuant to this PPA. SPS shall not be required to purchase such Test Energy in amounts greater than the amount of energy associated with the Contract Capacity. If Seller requests SPS to dispatch and purchase Test Energy pursuant to this Section 4.8(B) that would not otherwise be economically dispatched by SPS as Contract Energy, (1) SPS shall purchase such Test Energy at the Qualifying Facility energy payment rate set forth in SPS's retail electric tariff in effect during the period of such delivery, (2) Seller shall reimburse SPS for any fuel, fuel transportation, imbalance, and related costs incurred by SPS, as determined solely by SPS, to provide the fuel used to produce such Test Energy, and (3) SPS shall have no obligation to make any payments to Seller pursuant to Section 8.3, Section 8.4 or Section 8.6 in connection with the purchase of such Test Energy. To the extent that Seller requests SPS to dispatch and purchase Test Energy pursuant to this Section 4.8(B) that would

## Power Purchase Agreement

otherwise be economically dispatched by SPS as Contract Energy, SPS shall purchase such Test Energy as Contract Energy and in accordance with the provisions of Article 8. The Parties shall use good faith efforts to schedule the delivery of Test Energy during such time periods when such energy would otherwise be economically dispatched by SPS as Contract Energy; and

(C) Notwithstanding the provisions of Section 4.8(B), if, at any time during Commercial Operation, Seller's testing of the Facility (including heat rate testing pursuant to Section 8.5, seasonal capacity testing pursuant to Section 10.4, and any other testing of the Facility which Seller is required to perform, or cause to be performed, pursuant to this PPA) restricts the amount of Contract Capacity that is available from the Facility for dispatch and receipt by SPS or SPS's AGC of the Facility, these availability restrictions shall be reflected in the Monthly Capacity Payment and/or Dispatchability Payment calculations specified in Sections 8.1 and 8.2, respectively. Also notwithstanding the provisions of Section 4.8(B), if, at any time during Commercial Operation, Seller's change to a prearranged schedule for testing of the Facility, without sufficient prior notice to SPS, causes SPS to incur balancing or other transportation penalties and/or additional charges associated with natural gas fuel delivery to the Facility, Seller shall reimburse SPS for all such penalties and/or additional charges

4.9 Partial Completion Declaration In the event that the Conditions have been satisfied with respect to not less than one combustion turbine generator, but not all of the Facility, if Seller so requests, SPS shall issue a "Partial Completion Declaration" stating that Commercial Operation Date has been achieved with respect to that unit. From and after the date of a Partial Completion Declaration, all of the rights and duties of the Parties under this PPA shall apply in respect of such unit, including payments for capacity and energy under Article 8, which shall be prorated based on the Net Capability of the unit included in the Partial Completion Declaration, the dispatch and maintenance requirements of this PPA, and the liquidated damages, if applicable, due under Article 12.5 for the unit not included in the Partial Completion Declaration. In the event of a Partial Completion, Seller shall have the cure period specified in Section 12.1(C) within which to achieve operation of the remaining units.

### Article 5 – Delivery, Availability Reporting, Metering and Fuel Supply

#### 5.1 Delivery Arrangements.

(A) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm transmission service basis, the Contract Capacity, Contract Energy, and Test Energy from the Facility to SPS at the Point of Delivery. SPS shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to receive the Contract Capacity, Contract Energy and Test Energy at the Point of Delivery and deliver such capacity and energy to points beyond the Point of Delivery

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(B) Seller shall be responsible for making, maintaining, and paying the costs associated with an interconnection request with the SPP for interconnecting the Facility to the Interconnection Provider's System. The estimated cost of the interconnection is \$2,700,000.00 (actual costs as determined by SPS). The Capacity Price will be increased or decreased by the appropriate value in the following table for each \$100,000.00 increment above or below the estimated cost of \$2,700,000.00.

Commercial Operation Period	Capacity Price
6/1/2008 - 4/30/2033	\$0.00230

The interconnection request shall state (1) that Seller is requesting that SPP undertake the analysis and study necessary for "Energy Resource Interconnection Service," as that term is defined by the SPP OATT, (2) that Seller is requesting that SPP perform the Feasibility and System Impact Studies together, and (3) that network transmission service will be requested under the Xcel Energy Open Access Transmission Tariff (as described in Section 5.1(C)). Seller shall also be responsible for timely executing an Interconnection Agreement with the SPP that shall specify that the interconnection service being obtained is Energy Resource Interconnection Service and for timely taking those actions required to ensure timely processing of Seller's request.

(C) SPS shall be responsible for making, maintaining, and paying the costs associated with a request to the transmission function of SPS, or SPP, or both, for delivery of the output of the Facility to SPS's customers on a firm network resource basis under the terms and conditions of the Xcel Energy Open Access Transmission Tariff. SPS shall also be responsible for registering the Facility with the SPP pursuant to SPP requirements, and shall have all responsibilities attendant to such registration (e.g. submission of schedules and offers for the Facility). Seller shall assist SPS in these efforts as requested. In the event that SPS participates in any energy, ancillary service, or capacity market operated by the SPP, the Parties shall amend this PPA to reflect their individual rights and responsibilities, including cost obligations and duties related to coordination of day ahead and real time activities, associated with SPS's participation in such market or markets.

#### 5.2 Availability Reporting.

(A) Seller shall be responsible for providing accurate and timely updates on the current availability of the Contract Capacity to SPS's EMCC ("Reported Availability"). SPS shall have the right to verify at any time, without prior notice to Seller, Seller's current Reported Availability. To verify Seller's Reported Availability, SPS shall dispatch the Contract Capacity to the level of Reported Availability ("Availability Verification Test"). If (1) the tested availability (rounded upward to the next whole MW) is less than ninety-seven percent (97%) of the Reported Availability (rounded upward to the next whole MW), or (2) such tested availability is more than five (5) MW below the Reported Availability, the results of the test shall be identified as a

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"Deficiency". In the event of a Deficiency, the Contract Capacity availability shall be derated to the level of the tested available capacity for the then current hour and all subsequent hours until Seller reports a revised level of available Contract Capacity. Upon receiving notice from Seller of a revised Reported Availability, SPS shall have the option of conducting a second Availability Verification Test. If SPS chooses not to conduct a second Availability Verification Test at that time, the Contract Capacity will be considered available to the full level of Seller's Reported Availability until SPS conducts a subsequent Availability Verification Test. The resulting amount of Contract Capacity available for any individual hour shall be integrated over the hour, on a prorated basis, to reflect any updates in Seller's Reported Availability made effective during such hour.

(B) SPS will notify Seller as soon as possible by telephone and thereafter in writing whenever an Availability Verification Test has identified a Deficiency from Seller's Reported Availability. The second and any subsequent Deficiencies in any billing month shall result in a retroactive derating of the Contract Capacity availability to the capacity level achieved in the most recent Availability Verification Test. The period for retroactive adjustment will be all prior hours in which Seller's most recent Reported Availability was continuously in effect and unverified by SPS. In no event will the period for retroactive availability adjustments exceed ten (10) Days or extend beyond the first Day of the billing month. Three (3) Deficiencies in any two (2) consecutive billing months shall result in a five percent (5%) reduction in the Capacity Price, as set forth in Section 8.1, applicable to the subsequent two billing months.

### 5.3 Electric Metering Devices

(A) All Electric Metering Devices used to measure the net capacity and energy made available to SPS by Seller under this PPA and to monitor and coordinate operation of the Facility shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to SPS under this PPA. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. Seller shall provide SPS access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide SPS the reasonable opportunity to be present at any time such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Article 5. Seller shall obtain any consent or other agreement from the Interconnection Provider necessary to allow SPS access to the Electric Metering Devices.

(B) Either Party (the "Installing Party") may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to those installed and maintained pursuant to the Interconnection Agreement, which installation and maintenance shall be performed in a manner acceptable to SPS. The Installing Party, at its own expense, shall inspect and test its Back-Up Metering upon installation and at least annually thereafter. The Installing Party shall provide the other Party (the "Non-Installing Party") with reasonable advance notice of, and permit a representative of the Non-Installing Party to witness and verify such inspections and tests, provided, however, that the Non-Installing Party shall not unreasonably interfere with or disrupt

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the activities of the Installing Party and shall comply with all safety standards of the Installing Party. Upon request by the Non-Installing Party, the Installing Party shall perform additional inspections or tests of the Installing Party's Back-Up Metering and shall permit a qualified representative of the Non-Installing Party to inspect or witness the testing of such Back-Up Metering, provided, however, that the Non-Installing Party shall not unreasonably interfere with or disrupt the activities of the Installing Party and shall comply with all safety standards of the Installing Party. The actual expense of any such requested additional inspection or testing shall be borne by the Non-Installing Party, unless, upon such inspection or testing, the Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article 5, in which event the expense of the requested additional inspection or testing shall be borne by the Installing Party. If requested by the Non-Installing Party in writing, the Installing Party shall provide copies of any inspection or testing reports to the Non-Installing Party.

(C) If any Electric Metering Devices or Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Back-Up Metering fails to register, or if the measurement made by an Electric Metering Device or Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, provided, however, that the Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If the Back-up Metering is installed on the low side of Seller's step-up transformer, the Back-up Metering data shall be adjusted for losses. If Seller did not install Back-Up Metering, or Seller's Back-up Metering is also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of net capacity and energy from the Facility during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made,

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (1) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate or (2) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate, and

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(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by SPS, SPS shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by SPS for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by SPS to Seller; if the difference is a negative number, that difference shall be paid by Seller to SPS, or at the discretion of SPS, may take the form of an offset to payments due Seller by SPS. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless SPS elects payment via an offset.

### 5.5 Natural Gas Fuel Delivery.

(A) SPS shall procure and deliver, or cause to be delivered, to Seller at the Fuel Delivery Point, all natural gas fuel required for Seller to produce the Contract Energy dispatched by SPS

(B) All natural gas fuel delivered to Seller at the Fuel Delivery Point for the purpose of generating Contract Energy shall be Acceptable Natural Gas Fuel. If SPS is unable to procure and deliver Acceptable Natural Gas Fuel to the Fuel Delivery Point, SPS shall have the right to (1) cease dispatching Contract Energy from the Facility, (2) require Seller to modify (at SPS's risk and cost) the Facility turbine units and/or other equipment so as to allow the Facility to utilize the natural gas fuel supply available from the upstream natural gas pipeline(s) at the Fuel Delivery Point, provided that such modification would not void the manufacturer's warranty for such equipment then in effect and would not materially and adversely impact the operation of such equipment, or (3) construct and operate an appropriate natural gas conditioning facility (at SPS's risk and cost) at a mutually agreeable and reasonably convenient location on the Site, so that the natural gas fuel delivered by SPS may be conditioned to conform to the specifications for Acceptable Natural Gas Fuel.

(C) Seller shall be obligated to accept delivery of all Acceptable Natural Gas Fuel delivered by SPS to the Fuel Delivery Point for the purpose of generating the Contract Energy dispatched by SPS; provided, that (1) the Contract Capacity required to generate such Contract Energy is available, (2) all such natural gas fuel is required for the Facility to produce the Contract Energy dispatched by SPS, and (3) all such natural gas fuel is delivered to the Fuel Delivery Point at a pressure of not less than 450 psig.

### 5.6 Natural Gas Fuel Supply Interconnection and Metering.

(A) Seller shall be responsible for all natural gas interconnection and metering arrangements, and the associated costs, required to interconnect the Facility to, and receive Acceptable Natural Gas Fuel at the Fuel Delivery Point, at adequate

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delivery pressure and volume, and to fully operate the Facility turbine units, using such natural gas fuel, over the Commercial Operation period. Such arrangements include the construction, operation and maintenance of the Natural Gas Interconnection Facilities and natural gas metering facilities, including any natural gas compression, regulation, heating and filter/separation equipment required to fully operate the Facility generating unit(s) over the Commercial Operation period using the Acceptable Natural Gas Fuel delivered to the Fuel Delivery Point by or on behalf of the Gas Provider. SPS shall also be responsible for causing deliveries of natural gas fuel at the Fuel Delivery Point at a pressure of not less than that specified in Section 5.5(C) and for causing the natural gas interconnection and metering facilities utilized by Gas Provider to be of sufficient size and specifications to provide natural gas deliveries to the Fuel Delivery Point sufficient for the full operation of the Facility generating unit(s) over the Commercial Operation period. If Seller elects to install other natural gas-fired equipment that is not used for the direct conversion of natural gas fuel to electric energy (such as natural gas-fired auxiliary boiler(s), natural gas in-line heater(s) used to heat the natural gas fuel, or building heating equipment), Seller shall either (1) separately meter and supply, at Seller's expense, the natural gas fuel consumed by such natural gas-fired equipment or (2) separately meter and establish a separate, stand alone natural gas supply agreement with SPS to provide the natural gas fuel consumed by such natural gas-fired equipment. Notwithstanding, Seller shall be responsible for the payment of all costs of facilities necessary to receive the Acceptable Natural Gas Fuel at the Fuel Delivery Point plus an estimated capital contribution of \$2,475,000.00 (actual costs as determined by SPS) of the cost to provide facilities required to provide capacity to deliver the Acceptable Natural Gas Fuel from the Gas Provider and/or upstream gas transportation providers to the Fuel Delivery Point, including the cost of the pipeline, metering, heating, and filtering. The Capacity Price will be increased or decreased by the appropriate value in the following table for each \$100,000.00 increment above or below the estimated cost of \$2,475,000.00.

Commercial Operation Period	Capacity Price
6/1/2008 - 4/30/2033	\$0.00230

(B) Seller shall accommodate SPS's reasonable request to interconnect the Facility with one or more additional natural gas delivery systems at or near the Fuel Delivery Point identified in Exhibit C and to designate such additional interconnection as an additional Fuel Delivery Point, provided that (1) SPS, or a third party designated by SPS, shall be responsible for providing and installing (at SPS's cost) all natural gas interconnection and metering facilities required to establish such additional interconnection; (2) such additional interconnection will not interfere with the operation of the Facility, other than during the time necessary to physically connect the additional interconnecting facilities; and (3) such additional interconnection will deliver Acceptable Natural Gas Fuel to the Fuel Delivery Point at a pressure of not less than that specified in Section 5.5(C). Seller shall grant SPS, or a third party designated by SPS, an easement and access to the location of the Fuel Delivery Point identified in Exhibit C for the purpose of constructing and maintaining the additional natural gas



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interconnection and metering facilities required at such additional natural gas interconnection point.

(C) Unless otherwise provided for under separate agreement between the Parties, Seller shall be the operator of the Fuel Delivery Point identified in Exhibit C and any Fuel Delivery Point(s) established pursuant to Section 5.6(B). SPS shall be responsible for all volume confirmations, allocations, and balancing functions as well as gas regulation and maintenance and testing arrangements for all natural gas metering at such Fuel Delivery Point(s). Seller shall be responsible for all natural gas physical flow activities, such as flow control, valve operation, and contacting the delivering pipeline to initiate gas flow to the Fuel Delivery Point.

(D) All natural gas custody transfer metering at the Fuel Delivery Point(s) shall be installed and maintained in accordance with accepted natural gas industry standards and shall comply with the requirements of all applicable gas tariffs. The aforementioned natural gas metering equipment shall be tested as least once every three (3) months. SPS shall have the right to have testing done on a more frequent basis, provided that SPS pays for the cost of such additional testing. The protocol for such natural gas metering equipment testing shall comply with all applicable gas tariffs. Seller shall provide SPS with at least ten (10) Days advance notice of such tests and a representative of SPS shall be permitted to witness such tests, provided, however, that such SPS representative shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Seller shall provide copies of all test data and testing reports to SPS if requested by SPS in writing. Seller shall install (at SPS's cost) check metering, in connection with the natural gas custody transfer metering, on Seller's downstream natural gas facilities. Disputes regarding the allocation of natural gas volumes and associated billings with the delivering pipeline, including meter reading adjustments for prior periods, shall be resolved in accordance with the delivering pipeline's tariff.

### Article 6 - Obligation to Sell and Purchase Capacity and Energy

6.1 Sale and Purchase. Beginning on the Commercial Operation Date, Seller shall supply from the Facility and sell to SPS, and SPS shall receive and purchase, the Contract Capacity and Contract Energy, as specified in Article 7. Seller shall deliver the Contract Capacity and Contract Energy to, and make such capacity and energy available for dispatch and receipt by SPS at, the Point of Delivery. To the extent the Facility is available to operate, all of the Contract Capacity and Contract Energy shall be made available for delivery to the Point of Delivery and receipt by SPS as dispatched by SPS under this PPA. Seller shall not curtail or interrupt deliveries of Contract Capacity and/or Contract Energy for economic reasons.

6.2 SPS Conditions Precedent. INTENTIONALLY DELETED

6.3 Seller Conditions Precedent. Notwithstanding any provisions of this PPA to the contrary, Seller shall have the right, unless waived by Seller in writing, to

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terminate this PPA, without any further financial or other obligation to SPS as a result of such termination, by notice to SPS on or before seven (7) Days following Execution Date, if, Seller fails to complete the requirements set out in Section 6.3 (A) by seven (7) days following Execution Date. Absent such notice of termination by Seller, this contingency shall be deemed waived and this PPA shall remain in full force and effect thereafter.

(A) Approval of this PPA by the Management Policy Committee of MDU Resources Group, Inc., the Board of Directors of Centennial Energy Resources, LLC, and the Board of Directors of MDU Resources Group, Inc., each in their sole discretion.

### 6.4 Title and Risk of Loss

(A) As between the Parties, Seller shall be deemed to be in control of the Contract Capacity, Contract Energy and Test Energy output from the Facility up to and until delivery and receipt at the Point of Delivery and SPS shall be deemed to be in control of such capacity and energy from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Contract Capacity, Contract Energy and Test Energy shall transfer from Seller to SPS at the Point of Delivery.

(B) Commencing on the Commercial Operation Date, title and risk of loss related to the natural gas fuel supplied to the Facility to produce Contract Energy and Test Energy shall transfer to Seller at the Fuel Delivery Point.

6.5 House Power and Maintenance Power. This PPA does not provide for the supply of any electric service by SPS to Seller or to the Facility.

## Article 7 - Contract Capacity and Energy

7.1 Contract Capacity. The Contract Capacity provided and sold by Seller and purchased by SPS hereunder shall be all of the net generating capacity available at any time from the Facility at the Point of Delivery, not to exceed the Net Capability. The Contract Capacity purchased by SPS shall include any and all uncommitted and undispached capacity available from the Facility, which, in combination with the capacity that has been committed and dispatched by SPS hereunder, shall not exceed the Net Capability.

7.2 Contract Energy. The Contract Energy provided by Seller and received by SPS hereunder shall be the metered, net energy output generated by the Contract Capacity as delivered and adjusted for losses to the Point of Delivery; less any such energy which has not been dispatched by SPS, and less any Test Energy separately purchased by SPS pursuant to Section 4.8(B) that has been uneconomically dispatched by SPS at Seller's request.

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### 7.3 Excess Capacity and Excess Energy.

(A) The Parties acknowledge that during the Term of this PPA, Seller may have available for sale commercially viable amounts of Excess Capacity and Excess Energy. Seller shall have the right to offer such Excess Capacity and Excess Energy for sale to other purchasers, or to SPS, in any manner that is consistent with Seller's obligations and SPS's rights under this PPA. The sale of Excess Energy will be subordinate to SPS's right to dispatch Contract Energy from the Facility and all such Excess Energy sales must be separately scheduled with SPS so as to distinguish such sales from Contract Energy being purchased by SPS under this PPA.

(B) If, during the Term of this PPA, Seller desires to sell Excess Capacity and the associated Excess Energy, Seller shall first comply with this Section 7.3(B)

(1) Before selling any Excess Capacity or Excess Energy to any third party, Seller shall first offer to sell such Excess Capacity and Excess Energy to SPS, by notice to SPS (an "Offer Notice"). Any Offer Notice shall specify (a) the amount of Excess Capacity and associated Excess Energy available for sale (the "Offered Amount"), (b) the minimum price that Seller is willing to accept for such Excess Capacity and Excess Energy (the "Offered Pricing"), (c) the date on which such Excess Capacity and Excess Energy will first be available (the "Offered Date"), and (d) the minimum term over which Seller is willing to accept the Offered Pricing for the Offered Amount (the "Offered Term").

(2) SPS shall have ten (10) Business Days following receipt of an Offer Notice within which to elect, by notice to Seller, whether to accept the Offered Amount at the Offered Pricing, over the Offered Term, beginning on the Offered Date. Any failure to respond to Seller's Offer Notice within such specified period shall automatically be deemed a rejection by SPS of Seller's offer. If (and only if) SPS rejects Seller's offer, Seller shall be free thereafter to sell not more than the Offered Amount of Excess Capacity and Excess Energy, at not less than the Offered Pricing, for not longer than the Offered Term, beginning on the Offered Date or at any time within two weeks thereafter.

(3) If (a) any governmental permits restrict the amount of energy that may be produced by the Facility and (b) Seller has sold Excess Capacity and/or Excess Energy to one or more third parties during the Term of this PPA, all generation from the Facility will be dedicated first to fulfillment of Seller's obligations to SPS under this PPA (including Seller's Operating Reserve obligations), and second to fulfillment of such third party sales contracts. All such contracts with third party purchasers shall specifically reference SPS's superior right to dispatch the Facility.

(4) During the Term of this PPA, Seller may not sell any Excess Capacity or Excess Energy to third parties without (a) compliance with this Section 7.3(B) and (b) establishing natural gas metering, nomination, allocation and balancing

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procedures, agreed to in writing by SPS, that will separately identify, between Contract Energy and Test Energy sold to SPS under this PPA and Excess Energy sold to third parties, the respective natural gas fuel used to provide such electric energy, and any associated balancing costs.

7.4 Dispatch. SPS's EMCC operator shall have the right to determine the dispatch control of the Facility, including Facility generating unit starts, shutdowns and loading levels associated with the Contract Capacity and Contract Energy. Nothing in this Agreement shall be construed to require SPS to dispatch the Facility (A) during any particular period of the Term, (B) for any minimum number of starts, or (C) for any particular length of time. For any generating unit trip, Seller shall restart such unit only if so directed by the EMCC.

7.5 Operating Reserve. All Operating Reserve associated with the Contract Capacity shall be deemed to have been purchased by SPS, shall be made available to SPS as Operating Reserve, and shall be activated by Seller when needed and called upon by SPS. Upon achieving the Commercial Operation Date, Seller shall use reasonable commercial efforts to maximize the Operating Reserve available to SPS from the Contract Capacity, consistent with and subject to Good Utility Practice, provided that Seller shall not be required to make any extraordinary capital expenditures or incur any significant increased operating expenses in connection with such efforts.

7.6 Permit Restriction of Contract Energy. It is the expectation of the Parties that the amount of Contract Energy available for dispatch and receipt by SPS shall not be restricted, due to any governmental permit applicable to or affecting the Facility, to less than 100% ("Planned Restricted Energy") during any period of Commercial Operation. Neither the Parties nor their Affiliates (including any person acting on their behalf) shall take any action that would result in or materially contribute to a restriction, under the Facility's present or future governmental permits, in the amount of Contract Energy available for dispatch and receipt by SPS to a level that is less than the Planned Restricted Energy during any period of Commercial Operation. If, through no action of the Parties or their Affiliates, any present or future governmental permit(s) restrict the amount of electric energy that may be produced by the Facility and, as a result of such restriction, Seller, at any time during any period of Commercial Operation, restricts the amount of Contract Energy that is available for dispatch and receipt by SPS to an amount which is less than the Planned Restricted Energy ("Restricted Energy") or restricts SPS's AGC of the Contract Capacity, (A) these availability restrictions (resulting from the difference between the Planned Restricted Energy and the Restricted Energy) shall be reflected in the Monthly Capacity Payment and/or Dispatchability Payment calculations specified in Sections 8.1 and 8.2, respectively and (B) Seller shall reserve one hundred percent (100%) of the amount of electric energy that may be produced by the Facility, less that energy production needed for required testing of the Facility, for the delivery of Contract Energy to SPS. Nothing in this PPA shall be construed to create an obligation of Seller to operate the Facility, or permission for SPS to dispatch Contract Energy, in violation of the Facility's governmental permits.

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### Article 8 - Payment Calculations

8.1 Payment for Contract Capacity. Commencing on the Commercial Operation Date, SPS shall pay Seller a Monthly Capacity Payment for Contract Capacity based on the following formula:

Monthly Capacity Payment =  $NC \times CAF \times CP$ , where:

NC = Net Capability (as specified in Section 3.4)

CAF (Capacity Availability Factor, Twelve Month Rolling Average) =

$(AE + SME) / PE$ , where:

AE = Available Energy, stated in Megawatt-hours (MWh), is the amount of energy associated with the Contract Capacity that is available from the Facility for dispatch and receipt by SPS, regardless of whether SPS dispatches Contract Energy for receipt at that level, in the monthly billing period and the previous eleven monthly billing periods, taking into account all planned and unplanned deratings of the Facility. The Contract Capacity which is unavailable for dispatch and receipt by SPS will be considered to be available for the purposes of determining Available Energy when, and only when: (A) the Facility is disconnected from SPS's system pursuant to the Interconnection Agreement and the disconnection is not caused by actions of Seller or problems with the Facility, (B) the Contract Capacity is unavailable due to SPS's failure or inability to supply Acceptable Natural Gas Fuel to the Fuel Delivery Point; (C) the Contract Capacity and associated energy cannot be delivered by Seller or received by SPS due to an Emergency, or an event of Force Majeure, affecting SPS's electric system; (D) the Contract Capacity and associated energy cannot be received by SPS at the Point of Delivery due to transmission constraints affecting SPS's electric system, (E) the unavailability of the Contract Capacity is caused by, or results from, SPS's failure to perform its obligations under this PPA; or (F) the Facility cannot operate because it has exhausted the limits of the operating restrictions imposed by any governmental permit(s) (or any subsequent amendments thereto) applicable to or affecting the Facility, provided, that if such permit restriction(s) result in the restriction of the amount of Contract Energy that is available for dispatch and receipt by SPS to an amount which is less than the Planned Restricted Energy set forth in Section 7.6, then the Contract Capacity shall be considered unavailable to the extent that Seller cannot deliver Contract Energy to SPS in an amount equal to the Planned Restricted Energy set forth in Section 7.6. Without limiting the foregoing, the Contract Capacity will be considered to be

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unavailable for the purposes of determining Available Energy when, and to the extent that, Seller is unable to provide or deliver such Contract Capacity and the associated energy due to an event of Force Majeure, not on SPS's system, affecting Seller or the Facility. Available Energy shall be calculated as the sum, for all hours in the billing period, of the amount of energy associated with the Contract Capacity available during each individual hour.

SME = Scheduled Maintenance Energy, stated in MWh, is the amount of energy associated with the Contract Capacity that is not available from the Facility for dispatch and receipt by SPS, in the monthly billing period and the previous eleven monthly billing periods, due to Scheduled Outages/Deratings that meet the requirements for credited Scheduled Maintenance Energy specified in Section 10.1. Scheduled Maintenance Energy shall be calculated as the sum, for all hours in the billing period, of the amount of energy associated with the Contract Capacity that is unavailable during each individual hour due to a Scheduled Outage/Derating that meets the specified requirements for credited Scheduled Maintenance Energy.

PE = Period Energy, stated in MWh, shall be calculated, for the monthly billing period and the previous eleven monthly billing periods, as the product of the Net Capability and the total number of hours in the billing period and the previous eleven monthly billing periods.

Notwithstanding the above, for each of the first eleven monthly billing periods after the Commercial Operation Date, CAF shall be determined with data from the monthly billing period in question only, rather than including data from the previous monthly billing periods

CP = Capacity Price, stated in \$/kW-month, as set forth, by Commercial Operation period, in the following table.

Commercial Operation Period	Capacity Price
6/1/2008 - 4/30/2033	\$7.31

8.2 Payment for Dispatchability. Commencing on the Commercial Operation Date and subject to the provisions of Exhibit A, including the initial verification of compliance, SPS shall pay Seller a monthly Dispatchability Payment (prorated to reflect the actual number of Days of Commercial Operation in the first and last monthly billing periods) based on the following formula:

Monthly Dispatchability Payment = NC x DAF x \$0.25/kW-month, where

NC = Net Capability (as specified in Section 3.4)

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DAF = Dispatch Availability Factor, Twelve Month Rolling Average, where the factor is based on the number of hours the Facility is on AGC by SPS, as determined by SPS, and the number of hours the Facility is on line adjusted for Ramp Rate Availability. DAF is derived from the following formula:

$DAF = (\text{Hours on-control} / \text{Hours on-line}) \times \text{RAF}$ , where

Hours on-control = the total number of hours during the monthly billing period and the preceding eleven monthly billing periods when the Facility's generating unit(s) are receiving and responding to dispatch pulses transmitted from SPS's EMCC. Any hour for which SPS requests that the Contract Capacity be dispatched without AGC by SPS will be counted as an Hour on-control so that the ratio of (Hours on-control/Hours on-line) will be one (1) for such hour.

Hours on-line = the total number of hours during the monthly billing period and the preceding eleven monthly billing periods when the Facility's generating unit(s) are synchronized to the interconnected system and available to generate electric energy

RAF = Ramp Rate Availability Factor, where RAF is determined by the following table subsequent to verification testing by SPS as set forth in Exhibit A:

Tested Contract Capacity Ramp Rate Performance	RAF
Contract Capacity ramps at a rate which is greater than or equal to one hundred percent (100%) of the rate set forth in Exhibit A under "Dispatchability Requirements."	1.00
Contract Capacity ramps at a rate which is greater than or equal to seventy-five percent (75%), but less than one hundred percent (100%), of the rate set forth in Exhibit A under "Dispatchability Requirements "	0.75
Contract Capacity ramps at a rate which is greater than or equal to fifty percent (50%), but less than seventy-five percent (75%), of the rate set forth in Exhibit A under "Dispatchability Requirements "	0.50
Contract Capacity ramps at a rate which is less than fifty percent (50%) of the rate set forth in Exhibit A under "Dispatchability Requirements."	0.00

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Notwithstanding the above, for each of the first eleven monthly billing periods following the Commercial Operation Date, Hours on-control and Hours on-line shall be determined with data from the monthly billing period in question only, rather than including data from the previous monthly billing periods.

8.3 Payment for Energy Tolling. Commencing on the Commercial Operation Date, SPS shall pay Seller a monthly Tolling Payment for the Contract Energy which is dispatched by SPS and delivered by Seller to SPS during the billing month. SPS shall not pay a Tolling Payment for energy scheduled to others. If the Heat Rate Adjustment ("HRA") results in a negative Tolling Payment for any billing month, the negative balance shall be offset against the payments determined pursuant to Sections 8.1. The monthly Tolling Payment shall be determined by the following formula:

Monthly Tolling Payment = (E x TP) – HRA, where.

- E = Contract Energy, stated in MWh, which is dispatched by SPS and delivered by Seller to SPS during the billing month;
- TP = Tolling Price, which shall be amounts, in dollars/MWh set out in Table 8.3; and
- HRA = Heat Rate Adjustment, determined as a dollar amount pursuant to Section 8.4



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Table 8.3 Energy Tolling Price

Period	Contract Year	Tolling Price (\$/MWh)	Period	Contract Year	Tolling Price (\$/MWh)
1	6/1/2008 - 4/30/2009	\$1.75	14	5/1/2021 - 4/30/2022	\$2.35
2	5/1/2009 - 4/30/2010	\$1.79	15	5/1/2022 - 4/30/2023	\$2.41
3	5/1/2010 - 4/30/2011	\$1.83	16	5/1/2023 - 4/30/2024	\$2.46
4	5/1/2011 - 4/30/2012	\$1.87	17	5/1/2024 - 4/30/2025	\$2.52
5	5/1/2012 - 4/30/2013	\$1.92	18	5/1/2025 - 4/30/2026	\$2.58
6	5/1/2013 - 4/30/2014	\$1.96	19	5/1/2026 - 4/30/2027	\$2.64
7	5/1/2014 - 4/30/2015	\$2.01	20	5/1/2027 - 4/30/2028	\$2.70
8	5/1/2015 - 4/30/2016	\$2.05	21	5/1/2028 - 4/30/2029	\$2.76
9	5/1/2016 - 4/30/2017	\$2.10	22	5/1/2029 - 4/30/2030	\$2.82
10	5/1/2017 - 4/30/2018	\$2.15	23	5/1/2030 - 4/30/2031	\$2.89
11	5/1/2018 - 4/30/2019	\$2.20	24	5/1/2031 - 4/30/2032	\$2.95
12	5/1/2019 - 4/30/2020	\$2.25	25	5/1/2032 - 4/30/2033	\$3.02
13	5/1/2020 - 4/30/2021	\$2.30			

8.4 Heat Rate Adjustment to Payments.

(A) If the Actual Net Heat Rate for the Facility is greater than the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be used to reduce payments to Seller as specified in Section 8.3 and shall be determined by the following formula:

Heat Rate Adjustment = Fuel Delivered × Price of Fuel × (1 - (P/A)), where:

"Fuel Delivered" is the amount of natural gas energy provided by SPS and consumed by the Facility to produce the Contract Energy dispatched by SPS and delivered by Seller to SPS in the billing month, stated in MMBtu,

"Price of Fuel" is the average unit cost of the Fuel Delivered, stated in \$/MMBtu, calculated as the total cost of the Fuel Delivered divided by the Fuel Delivered. The total cost of the Fuel Delivered shall include SPS's actual commodity cost of the Fuel Delivered; any transportation, handling, natural gas storage and ancillary natural gas service costs incurred by SPS associated with the Fuel Delivered; and all natural gas demand charges incurred by SPS associated with the Fuel Delivered,

"P" is the Predicted Net Heat Rate at the time of the most recent heat rate test; and

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"A" is the Actual Net Heat Rate for the Facility as determined from the most recent heat rate test

(B) If the Actual Net Heat Rate for the Facility is less than ninety-seven percent (97%) of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be used to increase payments to Seller as specified in Section 8.3 and shall be determined by the following formula.

Heat Rate Adjustment = Fuel Delivered x Commodity Price x (1 - [(P x 0.97)/A]) x 0.50, where

"Fuel Delivered" is the amount of natural gas energy provided by SPS and consumed by the Facility to produce the Contract Energy dispatched by SPS and delivered by Seller to SPS in the billing month, stated in MMBtu;

"Commodity Price" is the average unit commodity cost of the Fuel Delivered, stated in \$/MMBtu, calculated as SPS's actual commodity cost of the Fuel Delivered divided by the Fuel Delivered;

"P" is the Predicted Net Heat Rate at the time of the most recent heat rate test; and

"A" is the Actual Net Heat Rate for the Facility as determined from the most recent heat rate test.

(C) If the Actual Net Heat Rate for the Facility is equal to or less than the Predicted Net Heat Rate, and is equal to or greater than ninety-seven percent (97%) of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be deemed to be zero dollars (\$0.00) for the payment calculations specified in Section 8.3.

#### 8.5 Heat Rate Testing

(A) The Actual Net Heat Rate shall be determined by heat rate testing at the maximum design load operation for the Facility turbine generator(s), with valves wide open on the steam generator and sufficient duct firing to generate 502 MW at Design Conditions for the Facility ambient conditions during the test, at an ambient temperature of not less than seventy (70) degrees F, with, if applicable, cooling of intake air, and, if applicable, supplemental fuel firing of 350 MMBtu/hour required to provide power augmentation and produce the maximum design net power generation from the combined total of the Facility combustion and steam turbine generators for the Facility ambient conditions during the test. The results of such testing shall be adjusted to Reference Conditions using the final design correction curves for the Facility (specifically, the design correction curves reflecting expected Facility equipment performance after all equipment tuning and adjustments have been completed) to

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determine the Actual Net Heat Rate. For the purposes of heat rate testing and determination of the Actual Net Heat Rate, (1) fuel input shall be measured at the Fuel Delivery Point and adjusted, as necessary, for any natural gas fuel consumed by natural gas-fired equipment that is not used for the direct conversion of natural gas fuel to electric energy as discussed in Section 5.6(A) and (2) electric output shall be measured at the Point of Delivery. Testing shall be performed in accordance with the current ASME test code(s) applicable to the Facility generating unit(s), or in accordance with other mutually agreed upon test code(s)/procedures. Each Party shall have the right to request and schedule a heat rate test on a Business Day, not more often than once during any calendar year and upon written notice to the other Party at least one hundred twenty (120) Days prior to the Day of such test, pursuant to the procedures set forth in this Section 8.5. Seller shall perform the heat rate test under SPS observation and concurrence. SPS shall have the right to install, during the heat rate test and at SPS's expense, any temporary, redundant test equipment complying with the governing test code(s) that SPS deems necessary for the purpose of verifying test measurements obtained by, or on behalf of, Seller.

(B) Seller shall prepare and submit to SPS for review and approval, at least ninety (90) Days prior to each heat rate test, the proposed heat rate test procedure. Such test procedure shall include (1) specification of the governing test code(s), (2) the extent to which the test code(s) will be followed, (3) provisions for testing, including collection of test data, and (4) methodology for calculating test results, including the planned method of adjusting the test net heat rate to each of the Reference Conditions. Seller shall be responsible for the full scope of heat rate testing, including furnishing the test instrumentation, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report.

(C) Within sixty (60) Days following performance of each heat rate test, Seller shall provide to SPS for review and approval (1) all raw test data, calculations, fuel analyses and a final test report, in written and, to the extent possible, electronic format, (2) all as-built equipment specifications, correction curves, equations and other information necessary for review of the heat rate test results which have not been previously submitted to SPS, and (3) a fully functioning electronic model, in Gate-cycle or a similar program, that SPS can use to verify Seller's calculations of, and adjustments to, test data. The final test report shall include clear and complete explanations of the calculations resulting in the test net heat rate and the adjustment of the test net heat rate to the Reference Conditions. Uncertainty, as defined in the ASME power test codes, shall not be used to adjust heat rate test results.

(D) In connection with any heat rate test, SPS may also require Seller to perform heat rate testing at up to five (5) SPS specified load points for each possible Facility operating configuration (i.e. with and without supplemental fuel firing and each simple cycle and combined cycle unit operating mode) for the sole purpose of developing an accurate dispatch heat rate curve for each possible Facility operating configuration.

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(E) Seller shall notify SPS of any generation equipment tuning and adjustment that may impact the heat rate performance of the Facility or the accuracy of the correction curves utilized to adjust the results of the most recent heat rate test. Upon such notification, SPS may require Seller to perform additional heat rate testing of the Facility and provide new correction curves which reflect the actual post-tuning condition of the Facility equipment.

(F) Seller shall perform the initial heat rate test on or before ninety (90) days following the Commercial Operation Date, but in no event, later than September 30, 2008. If the initial heat rate test is performed after the Commercial Operation Date, the Actual Net Heat Rate resulting from such initial heat rate test shall apply retroactively from the Commercial Operation Date for the purposes of determining the Heat Rate Adjustment pursuant to Section 8.4. The heat rate test performed by Seller, or on behalf of Seller, prior to Seller's acceptance of the Facility's generating unit(s) and auxiliary equipment may constitute the initial heat rate test, provided, that such test is performed in accordance with all the requirements for heat rate testing set forth in this Section 8.5. Notwithstanding the foregoing, if Seller elects to establish such Facility equipment acceptance heat rate test as the initial heat rate test under this PPA, the requirement that the heat rate test be performed at an ambient temperature of not less than seventy (70) degrees F shall be waived for such initial heat rate test.

8.6 Payment for Turbine Starts. Commencing on the Commercial Operation Date, (A) SPS shall pay Seller a Monthly Turbine Start Payment or (B) if the Monthly Turbine Start Payment is a negative number, Seller shall credit SPS a Monthly Turbine Start Payment. The Monthly Turbine Start Payment shall be based on the following formula.

Monthly Turbine Start Payment =  $(N1 - N2) \times TSP$ , where:

N1 = Number of Successful Facility Starts during the billing month,

N2 = Number of Unsuccessful Facility Starts during the billing month; and,

TSP = Turbine Start Price, which shall be the amounts, in dollars per turbine start set out in Table 8.6.

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Table 8.6

Period	Contract Year	\$ per Facility Start
1	6/1/2008 - 4/30/2009	\$4,000.00
2	5/1/2009 - 4/30/2010	\$4,000.00
3	5/1/2010 - 4/30/2011	\$4,080.00
4	5/1/2011 - 4/30/2012	\$4,160.00
5	5/1/2012 - 4/30/2013	\$4,240.00
6	5/1/2013 - 4/30/2014	\$4,330.00
7	5/1/2014 - 4/30/2015	\$4,400.00
8	5/1/2015 - 4/30/2016	\$4,500.00
9	5/1/2016 - 4/30/2017	\$4,590.00
10	5/1/2017 - 4/30/2018	\$4,680.00
11	5/1/2018 - 4/30/2019	\$4,780.00
12	5/1/2019 - 4/30/2020	\$4,870.00
13	5/1/2020 - 4/30/2021	\$4,970.00
14	5/1/2021 - 4/30/2022	\$5,070.00
15	5/1/2022 - 4/30/2023	\$5,170.00
16	5/1/2023 - 4/30/2024	\$5,280.00
17	5/1/2024 - 4/30/2025	\$5,380.00
18	5/1/2025 - 4/30/2026	\$5,490.00
19	5/1/2026 - 4/30/2027	\$5,600.00
20	5/1/2027 - 4/30/2028	\$5,710.00
21	5/1/2028 - 4/30/2029	\$5,830.00
22	5/1/2029 - 4/30/2030	\$5,940.00
23	5/1/2030 - 4/30/2031	\$6,060.00
24	5/1/2031 - 4/30/2032	\$6,180.00
25	5/1/2032 - 4/30/2033	\$6,300.00

**Article 9 - Billing and Payment**

**9.1 Billing Statement and Invoices.**

(A) The monthly billing period shall be the calendar month. No later than ten (10) Business Days after receiving the information specified in Sections 10.3 (B) and 13.5, SPS shall provide to Seller, by first-class mail, a statement showing the payment amount due Seller by SPS for the services provided by Seller and purchased by SPS, under this PPA, during the previous calendar month billing period. The statement will show metered energy from the Facility, all billing parameters, rates and factors, and any other data reasonably pertinent to the calculation of monthly payments due to Seller. SPS shall not be limited to Seller's reported operational data in calculating the monthly payment(s), and SPS may make that calculation on the basis of

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all information available to SPS, including results of seasonal capacity tests, results of ramp rate tests, and Facility responses to requests for changes in operation.

(B) After receiving the statement of payments due Seller provided by SPS pursuant to Section 9.1(A), Seller shall provide to SPS, by first-class mail, an invoice for the amount due Seller by SPS, under this PPA, for the billing period covered by the statement. If Seller disputes any amount in the statement provided by SPS, Seller shall include with Seller's invoice an explanation of the items in dispute, as well as all supporting documentation upon which Seller relies to dispute the SPS statement. Billing disputes shall be resolved in accordance with Section 9.5.

9.2 Metered Billing Data. All billing data based on metered deliveries to SPS shall be collected by the Electric Metering Device(s) in accordance with Article 5.

9.3 Reactive Power Service Compensation. The Parties recognize that, although Seller's obligation to provide reactive power service from the Facility to the Interconnection Provider's System and any compensation Seller receives for such reactive power service are to be set forth in a free-standing agreement(s) separate from this PPA, the compensation that Seller receives from SPS under this PPA includes full compensation for Seller's fixed and variable costs for providing such reactive power service. Therefore, Seller shall credit SPS as an offset to Seller's monthly invoice for any compensation that Seller receives, apart from that provided under this PPA, for the provision of reactive power service from the Facility during the Term. Such credit shall differentiate, if possible, between compensation for the fixed costs and the variable costs of providing reactive power service.

9.4 Payments. Unless otherwise specified herein, payments due under this PPA shall be due and payable by check or by electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day following receipt of the billing invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Business Day following receipt of the billing invoice. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to one hundred twenty-five percent (125%) of the LIBOR three month rate published on the date of the invoice in *The Wall Street Journal* (or, if *The Wall Street Journal* is not published on that Day, the next succeeding date of publication). If the due date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.5 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 13.9. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late

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payment interest charges calculated on the amount owed in accordance with the provisions of Section 9.4. SPS at any time may offset against any and all amounts that may be due and owed to Seller under this PPA, any and all undisputed amounts, including damages and other payments, that are owed by Seller to SPS pursuant to this PPA or are past due under other accounts Seller has with SPS for other services. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4

### Article 10 - Operations and Maintenance

#### 10.1 Scheduled Maintenance

(A) Seller shall provide a schedule of the expected Scheduled Outages/Deratings for the Facility ("Maintenance Schedule") for the first Commercial Operation Year prior to February 1, 2008. Thereafter, on or before every February 1<sup>st</sup>, Seller shall submit an annual Maintenance Schedule for the next successive Commercial Operation Year; each scheduled outage shall include the start time and expected duration of the outage. On or before February 1, 2009, and every February 1<sup>st</sup> thereafter, Seller shall also supply a long-term Maintenance Schedule that will encompass the following four Commercial Operation Years. Any change in the annual Maintenance Schedule, by either Party, shall be furnished to the other Party with reasonable advance notice. Reasonable advance notice of any change in the Maintenance Schedule is as follows:

<u>Scheduled Outage Expected Duration</u>	<u>Advance Notice Required</u>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days
(3) Major overhauls (over 5 Days)	at least 90 Days

(B) Seller shall not schedule any maintenance outages for the Facility, excluding outages associated with Emergencies and Forced Outages, during any Business Day of an On-Peak Month without the prior written approval of SPS.

(C) SPS shall provide Seller the opportunity to use three hundred forty seven thousand nine hundred (347,900) hours of Scheduled Maintenance Energy (SME) during each Commercial Operation Year as a credit towards Seller's Capacity Availability Factor (CAF) pursuant to the payment calculation specified in Section 8.1, provided, that such SME is scheduled in advance with SPS pursuant to this Article and approved in writing by SPS prior to Seller's use of such SME. If Seller uses less than three hundred forty seven thousand nine hundred (347,900) hours of SME in a Commercial Operation Year, Seller may carry over for use in the next Commercial Operation Year unused SME as additional credit towards Seller's CAF during the next Commercial Operation Year, provided, that such SME carried over shall also be scheduled in advance with SPS pursuant to this Article and approved in writing by SPS

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prior to Seller's use of such SME, and provided further, that the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, beginning with the second Commercial Operation Year and including carry over SME, shall not exceed four hundred thirty four thousand eight hundred eighty (434,880) hours of SME for that Commercial Operation Year. SME may not be advanced from future Commercial Operation Years.

(D) To the extent practicable and consistent with other provisions of this PPA, Scheduled Outages/Deratings shall be coordinated between the Parties and shall be scheduled to take place during calendar months that are not On-Peak Months. Notwithstanding the foregoing, SPS shall have the right to change the start date of any Scheduled Outage/Derating proposed by Seller in the Maintenance Schedule provided to SPS pursuant to Section 10.1(A); provided, that (i) the changed start date must be within forty-five (45) Days, earlier or later, of the start date set forth for such outage/derating in the most recent Maintenance Schedule provided by Seller; and (ii) Seller is able to reschedule its maintenance personnel and contractors without any material adverse impact to Seller.

(E) Not less than twelve (12) hours prior to commencement of any planned maintenance outage for the Facility previously scheduled by Seller or SPS in accordance with Sections 10.1(A) through 10.1(D), SPS may request, by phone, that Seller defer such scheduled maintenance. Subject to Good Utility Practice, Seller shall use commercially reasonable efforts to comply with any such request and reschedule such deferred maintenance to a subsequent date mutually agreed upon between the Parties. In connection with any such request by SPS for deferral of scheduled maintenance, Seller shall provide to SPS, in advance, a non-binding good faith estimate of the incremental direct costs to be incurred by Seller in order to comply with such request. If SPS desires Seller to incur such incremental costs at SPS's expense, SPS shall promptly advise Seller to that effect. Seller may then invoice SPS for, and SPS shall pay Seller for, all of the actual incremental direct costs incurred by Seller in connection with such deferral and rescheduling of maintenance.

10.2 Facility Operation. Seller shall staff, control, and operate the Facility consistent at all times with Good Utility Practice(s) and the Operating Procedures developed pursuant to Section 10.5. Personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility or capable of being at the Facility on no more than thirty (30) minutes notice, and shall be continuously reachable by phone or pager. Seller shall staff, control, and operate the Facility consistent at all times with Good Utility Practice(s) and the Operating Procedures developed pursuant to Section 10.5. Personnel capable of starting, operating, and stopping the Facility shall be continuously available at the Facility during all hours of every Day during Commercial Operation.

10.3 Outage and Performance Reporting. Seller shall comply with all current SPS, NERC, and SPP generating unit outage reporting requirements, as they may be revised from time to time, and as they apply to the Facility, including the following:



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(A) When Forced Outages occur, Seller shall notify SPS's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one (1) hour after the Forced Outage occurs. Seller shall immediately inform SPS's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by SPS's EMCC for the duration of each Forced Outage; and

(B) Seller shall report to SPS information on Facility performance during a calendar month within five (5) Business Days after the end of the calendar month. For each turbine generator, and using definitions provided by, and/or consistent with, the NERC Generation Availability Data System ("GADS") Manual, or any successor document, the data reported shall include planned derated hours, unplanned derated hours, average derated kW from Net Capability during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of turbine starts, hours on-control and hours on-line.

10.4 Seasonal Net Dependable Capability SPS has certain planning, operating and reporting requirements that require the establishment of the seasonal net dependable capability for the Facility. Seller represents its best projection of the Facility's summer net dependable capability to be 526 MW and the Facility's winter net dependable capability to be 560 MW. To determine the seasonal net dependable capability of the Facility, Seller shall cause both a summer and winter seasonal capacity test of the Facility ("Test") to be performed in accordance with the procedures identified in SPS's Seasonal Capacity Test Requirements for Small Power Producers and Cogenerators, as such may be modified by SPS from time to time and the appropriate SPP criteria. A copy of the current Seasonal Capacity Test Requirements for Small Power Producers and Cogenerators is attached hereto as Exhibit E. Seller shall cause the applicable initial summer or winter Test to be performed within sixty (60) Days following the Commercial Operation Date. Subsequent to the Commercial Operation Date and prior to the first anniversary of the Commercial Operation Date, the other applicable summer or winter Test shall be conducted. Each Party shall bear its own costs of conducting an initially scheduled Test, but if a subsequent or rescheduled Test is required, such subsequent or rescheduled Test shall be at Seller's expense in accordance with Exhibit E. A Test result shall not change the Net Capability.

### 10.5 Operating Committee and Operating Procedures.

(A) SPS and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of electric capacity and energy hereunder. Such representatives shall constitute the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this PPA.

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(B) Prior to the Commercial Operation Date, the Operating Committee shall develop mutually agreeable written Operating Procedures which shall include method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable SPS and Seller operating centers, operations and maintenance scheduling and reporting; daily capacity and energy reports; unit operations log; and such other matters as may be mutually agreed upon by the Parties.

10.6 Access to Facility Appropriate representatives of SPS shall at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Facility to read meters and to perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this PPA. While at the Facility, such representatives shall observe such reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

10.7 Reliability Standards. Seller shall operate the Facility in a manner that complies with all national and regional reliability standards, including standards set by SPP, NERC, the FERC, and the NMPRC, or any successor agencies setting reliability standards for the operation of generation facilities. To the extent that Seller or the Facility contributes in whole or in part to actions which result in monetary penalties being assessed to SPS by SPP, NERC, or any successor agency, for lack of compliance with reliability standards, Seller shall reimburse SPS for its share of such monetary penalties.

### Article 11 - Security for Performance

#### 11.1 Security Fund.

(A) Seller shall establish, fund, and maintain a Security Fund, pursuant to the provisions of this Article 11, which shall be available to pay any amount due SPS pursuant to this PPA, and to provide SPS security that Seller will construct the Facility to meet the Construction Milestones. The Security Fund shall also provide security to SPS to cover damages should the Facility fail to achieve the Commercial Operation Date or otherwise not operate in accordance with this PPA. Seller shall timely establish the Security Fund at a level of seventy five million five hundred thousand dollars (\$75,500,000) within seven (7) days after receipt of all Facility Construction Permits in accordance with the timeline set out in the Construction Milestones, and shall maintain the Security Fund at such required level throughout the remainder of the Term. Seller shall replenish the Security Fund to the level required in Exhibit B within fifteen (15) Business Days after any draw on the Security Fund by SPS. Prior to receipt of all of the Facility Construction Permits, Seller shall make Facility investments in material accordance with the Facility capital expenditure budget attached hereto as Exhibit J and provide to SPS evidence of those investments satisfactory to SPS. If Seller fails to make such Facility investments, then within seven (7) Days after the last Day of the month in which the missed scheduled Facility investment(s) should have been made,

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Seller shall establish the Security Fund at a level of seventy-five million five hundred thousand dollars (\$75,500,000). For purposes of this paragraph 11.1(A), "Facility Construction Permits" means all governmental permits required to lawfully begin construction of the Facility. The table below sets out the Facility Construction Permits.

PERMIT	ISSUING AGENCY
PSD Construction Air Permit	NMED-AQB
Location/Site Permit	NMPRC
NPDES general storm water discharge permit from Construction Site	EPA Region 6 NMED-SWQB

(B) In addition to any other remedy available to it, SPS may, before or after termination of this PPA, draw from the Security Fund such amounts as are necessary to recover amounts owing to it pursuant to this PPA, as provided in this PPA. SPS may draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Section 11.1, and from all such forms, and in any sequence SPS may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to SPS shall not prejudice SPS's rights to recover such damages or amounts in any other manner. SPS may draw upon the Security Fund (1) for any uncured Seller's Event of Default, provided that Seller has not tendered sums necessary to cure the default, (2) for Seller's failure to pay Delay Damages within 10 Days of the presentation by SPS of a written claim for such Delay Damages to Seller; (3) after the Commercial Operation Date, damages associated with Replacement Power Costs within 10 Days of presentation by SPS of a written claim for such Replacement Power Costs; (4) for any amount owed by Seller to SPS for Indemnity in amounts determined pursuant to Section 17(D) of this PPA; and (5) in accordance with the provisions of Section 12.8(C) and Section 12.12.

(C) The Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("Issuer") acceptable to SPS, and shall be in the form of one or more of the following instruments. Seller may change the form of the Security Fund at any time and from time to time upon reasonable prior notice to SPS, but the Security Fund must at all times be comprised of one or any combination of the following:

(1) An irrevocable standby letter of credit or a performance bond, in form and substance acceptable to SPS, from an Issuer with a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to A- or better as determined by both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources acceptable to SPS). In addition, if such unsecured credit rating of the Issuer is exactly equivalent to A-, the Issuer must not be on credit watch or have a negative outlook by a rating agency. Security provided in this form shall be consistent with this PPA and include a provision for at least thirty (30) Days advance notice to SPS of any expiration or earlier termination of the security so as to allow SPS sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. The form of such security

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must meet SPS's requirements to ensure that claims or draw-downs can be made unilaterally by SPS in accordance with the terms of this PPA. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the Term of this PPA) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein, SPS shall have the right to draw immediately upon the security and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with Section 11.1(C)(2), until and unless Seller provides a substitute form of such security meeting the requirements of this Article 11. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Brochure No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including Articles 13(b) and 17 of the UCP, in which case the terms of the Letter of Credit as follow shall govern:

*"With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.*

*In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business."*

(2) United States currency, deposited with Issuer in which SPS holds a first and exclusive perfected security interest, either (a) in an account under which SPS is designated as beneficiary with sole authority to draft from the account or otherwise access the security or (b) held by Issuer as escrow agent with instructions to pay claims made by SPS pursuant to this PPA, such instructions to be in a form satisfactory to SPS. Security provided in this form shall include a requirement for immediate notice to SPS from Issuer and Seller if the sums held as security in the account or trust do not at any time meet the required level for the Security Fund as set forth in this Section 11.1. Funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. After the Commercial Operation Date is achieved, annual account sweeps for recovery of interest earned by the Security Fund shall be allowed by Seller. At such times as the balance in the escrow account exceeds the amount of Seller's obligation to provide

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security hereunder, SPS shall remit to Seller on demand any excess in the escrow account above Seller's obligations; and/or

(3) A guarantee, in form and substance satisfactory to SPS, from an Issuer with a senior unsecured credit rating (unenhanced by third-party support) equivalent to BBB+ or better as determined by both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources acceptable to SPS). In addition, if such senior unsecured credit rating of the Issuer is exactly equivalent to BBB+, the Issuer must not be on credit watch or have a negative outlook by a rating agency.

(D) SPS may re-evaluate from time to time the value of all non-cash security posted by Seller for possible downgrade or for other negative circumstances. If SPS has commercially reasonable grounds to believe that there has been a material adverse change in the creditworthiness of the Issuer, then Seller shall be required to convert the Security Fund instrument provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either Section 11.1(C)(1) or Section 11.1(C)(2) no later than thirty (30) Days after receiving notice from SPS that such conversion of the Security Fund instrument is required pursuant to this Section 11.1(D).

(E) Promptly following the end of the Term and the completion of all of Seller's obligations under this PPA, SPS shall release the Security Fund (including any accumulated interest, if applicable) to Seller.

(F) Seller shall reimburse SPS for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by SPS in connection with the preparation, negotiation, execution and/or release of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Section 11.1.

#### 11.2 Additional Security.

(A) Prior to the Commercial Operation Date, Seller and/or SPS, as the case may be, shall execute and record, as appropriate, separate agreements, documents, or instruments under which Seller will provide SPS, in a form reasonably acceptable to SPS and the Facility Lender, with fully perfected subordinated security interest(s), and/or mortgage lien (collectively the "Subordinated Mortgage") in the Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller acquires in order to construct and/or operate the Facility. The Subordinated Mortgage shall be given to secure Seller's continuing performance and any amounts that may be owed by Seller to SPS pursuant to this PPA, including any damages excluded from the limitation on Seller's liability for the limited purposes set forth in Sections 12.7(A) through (F). Seller agrees, and shall cause the Facility Lender to agree and the Financing Documents to provide, (1) that the lien of such Subordinated Mortgage shall be subordinate to the lien of the Facility Lender and (2) that, as long as SPS is not in material default of its obligations under this PPA, the Facility and any

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party taking possession of the Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of this Agreement (including the obligation to reinstate the Subordinated Mortgage, subject to the terms of this Section 11.2, following any foreclosure by the Facility Lender) and shall assume all of Seller's obligations hereunder, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. The collateral secured by the Subordinated Mortgage shall not include the pledge, assignment, or other interest in any stock or ownership interest in Seller; provided that Seller shall not pledge or assign, or cause or permit to be pledged or assigned, any stock or ownership interest in Seller as collateral to any party other than the Facility Lender without the prior consent of SPS.

(B) SPS agrees to cooperate with Seller and diligently negotiate in good faith, at Seller's request, to establish the form of these agreements and to execute and deliver such agreements as reasonably necessary to enable Seller to meet the Construction Milestones. The Parties shall confirm, define, and perfect such Subordinated Mortgage by executing, filing, and recording, at the expense of Seller, the Subordinated Mortgage. In addition, Seller agrees to execute and file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by SPS to confirm and continue the validity, priority, and perfection of the Subordinated Mortgage. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to SPS by reason of any breach or default by Seller under this PPA or the early termination of this PPA as provided for herein. The Subordinated Mortgage shall be discharged and released, and SPS shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term of this PPA, including any extension of the Term, and satisfaction by Seller of all obligations hereunder.

(C) The Subordinated Mortgage shall provide that if SPS acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 11.2(A), Seller shall take all steps necessary to transfer all permits and licenses necessary to operate the Facility to SPS, and shall diligently prosecute and cooperate in these transfers.

(D) Seller shall reimburse SPS for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by SPS in connection with the preparation, negotiation, execution, and/or the discharge and release of the Subordinated Mortgage and any related documents.

### Article 12 - Default and Remedies

#### 12.1 Events of Default of Seller

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(A) Any of the following shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this PPA or any of its rights hereunder for the benefit of creditors (except for an assignment to the Facility Lender as security under the Financing Documents as permitted by this PPA);
- (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise,
- (4) The sale by Seller to a third party, or diversion by Seller for any use, of Contract Capacity or Contract Energy committed to SPS by Seller other than in mitigation of damages for any breach by SPS of this Agreement; and/or
- (5) Seller's actual fraud, waste, tampering with SPS-owned facilities, or other material intentional misrepresentation or misconduct in connection with this PPA and/or the operation of the Facility.

(B) Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from SPS to Seller and the Facility Lender as provided for in Section 13.1

- (1) Seller's failure to establish and maintain the funding of the Security Fund in accordance with Article 11,
- (2) Seller's Abandonment of construction or operation of the Facility;
- (3) Seller's failure, after the fifteenth (15<sup>th</sup>) full month following the Commercial Operation Date, to maintain a CAF, pursuant to Section 8.1, greater than sixty percent (60%) on a twelve-month rolling average basis; provided, that to the extent such failure of performance is attributable to an event of Force Majeure, the contribution of such event of Force Majeure to such failure of performance shall be eliminated from the CAF calculation for the purposes of, and only for the purposes of, establishing an Event of Default of Seller pursuant to this Section 12.1(B)(4), and provided further, that the event of Force Majeure contributing, in whole or in part, to such failure of performance is subject to the provisions of Section 14.3;
- (4) Seller's failure to maintain in effect any agreements required to deliver the Contract Capacity and Contract Energy to the Point of Delivery pursuant to Section 5.1, including the Interconnection Agreement,

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(5) Seller's failure to comply with the requirements of Section 11.2; and/or

(6) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on SPS.

(C) Seller's failure to meet the Construction Milestone(s) shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within forty-five (45) Days after the date of written notice from SPS to Seller and the Facility Lender as provided for in Section 13.1; provided, however, that Seller and Facility Lender shall have an additional one hundred five (105) Day period to achieve the Commercial Operation Date, provided that, on or before the expiration of the initial forty-five (45) Day period, an independent engineer, mutually agreed to by the Parties, retained by SPS and paid for by Seller, provides a written opinion to SPS stating that Seller's plan for achieving the Commercial Operation Date is reasonably achievable within such additional one hundred five (105) Day cure period, plus the cure period referenced in Section 12.2. This provision would allow for a total cure period of one hundred fifty (150) Days, not including the Facility Lender cure period referenced in Section 12.2 if all conditions of this Section are met. Subject to the limitation on damages set forth in Section 12.7, Delay Damages under Section 12.5(A) shall continue accruing until the occurrence of one of the following events: (1) the Commercial Operation Date is achieved or (2) this PPA is terminated.

(D) Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from SPS to Seller and the Facility Lender as provided for in Section 13.1:

(1) Seller's failure to make any payment required under this PPA;

(2) Seller's assignment of this PPA, or any direct or indirect change of control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Facility, except as permitted in accordance with Article 19;

(3) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on SPS, and/or

(4) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any other Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period



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12.2 Facility Lender's Right to Cure Default of Seller. Seller shall provide SPS with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, SPS shall provide notice of any Event of Default of Seller to the Facility Lender, and SPS will accept a cure to an Event of Default of Seller performed by the Facility Lender, so long as the cure is accomplished within a reasonable cure period after Seller's cure period set forth in Section 12.1(C), but not to exceed one hundred twenty (120) Days

12.3 Key Component Mechanical Failure Right to Cure. To the extent Seller fails to achieve the Construction Milestone(s) by the end of the cure periods afforded in Sections 12.1 and 12.2 caused solely by the destruction or failure of a Key Component (resulting in the necessity for replacement or material repair of such Key Component) through no fault of the Seller, which results in a failure to satisfy any of the conditions set forth in Section 4.7 and so long as at least part of the Facility has been accepted under Section 4.9, the Seller and the Facility Lender, as the case may be, will be granted an additional ninety (90) days to cure the failure to the Key Components and achieve the Commercial Operation Date. Subject to the limitations on damages set forth in Section 12.7, Delay Damages under Section 12.5(A) shall continue accruing until the occurrence of the following events: (1) the Commercial Operation Date is achieved, or (2) this PPA is terminated. For avoidance of doubt, claims under this Section 12.3 cannot later be claimed as Force Majeure.

### 12.4 Events of Default of SPS.

(A) Any of the following shall constitute an Event of Default of SPS upon its occurrence and no cure period shall be applicable:

(1) SPS's dissolution or liquidation provided that division of SPS into multiple entities shall not constitute dissolution or liquidation;

(2) SPS's assignment of this PPA or any of its rights hereunder for the benefit of creditors; and/or

(3) SPS's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or SPS voluntarily taking advantage of any such law or act by answer or otherwise

(B) SPS's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller, shall constitute an Event of Default of SPS upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from Seller to SPS as provided for in Section 13.1.

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(C) Any of the following shall constitute an Event of Default of SPS upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Seller to SPS as provided for in Section 13.1:

(1) SPS's failure to make any payment due hereunder (subject to SPS's rights with respect to disputed payments under Section 9.5 and net of outstanding damages and any other rights of offset that SPS may have pursuant to this PPA),

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against SPS that could materially impact SPS's ability to perform its obligations hereunder, provided, however, that SPS does not obtain a stay or dismissal of the filing within the cure period;

(3) SPS's assignment of this PPA, except as permitted in accordance with Article 19; and/or

(4) Any representation or warranty made by SPS in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.5 Damages Prior to Termination. Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the non-defaulting Party shall have the right to collect damages accruing prior to the termination of this PPA from the defaulting Party as set forth below, and the payment of any such damages accruing prior to the cure of an Event of Default shall constitute a part of the cure

(A) Delay Damages.

(1) If Seller fails to meet any Construction Milestone set forth in Exhibit B, subject to extension for Force Majeure or delay attributable to SPS under Section 14.4, Seller shall pay damages to SPS on account of such delay ("Delay Damages") in the amounts specified below:

DELAY	DELAY DAMAGES
Failure to meet any Construction Milestone set forth in Exhibit B, except for Commercial Operation Milestone	\$5 per MW of Net Capability per Day
Failure to meet the Commercial Operation Milestone set forth in Exhibit B	\$200 per MW of Net Capability per Day during On-Peak Months, and, \$100 per MW of Net Capability per Day during months other than On-Peak Months

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(2) All Delay Damages shall begin to accrue on the Day after the applicable missed Construction Milestone and shall continue to accrue until the result specified for such Construction Milestone is achieved. Delay Damages shall be payable in lieu of actual damages accrued for the period during which Delay Damages are assessed. All Delay Damages shall be cumulative.

(3) Notwithstanding the foregoing, if Seller meets the Commercial Operation Milestone, all Delay Damages paid by Seller to SPS based upon a failure to meet one or more earlier Construction Milestones, less any expense amounts incurred by SPS pursuant to Section 12.8, shall be refunded to Seller, without interest, with payments due Seller for the first monthly billing period following the Commercial Operation Date.

(4) Notwithstanding the foregoing, Seller may provide replacement electric capacity and energy to SPS by delivering such electric capacity and energy into the SPS system at the SPP SPS load node (or as otherwise agreed to by SPS in its sole discretion) for a period of time not to exceed 90 days following the COD milestone, but only until Seller achieves the COD milestone or this PPA is terminated. Notwithstanding any other provision of this PPA, Seller's inability to deliver replacement electric capacity and energy as provided in this Section 12.5(A)(4) shall not constitute Force Majeure under this PPA. Notwithstanding, such provision of replacement electric capacity and energy shall not operate to cure any Event of Default of Seller, but shall only serve to avoid payment of Delay Damages for non-delivery of electric capacity and energy from the Facility.

(B) Actual Damages. For all Events of Default (other than Seller's failure to meet a Construction Milestone, for which SPS shall be entitled to collect Delay Damages pursuant to Section 12.5(A)), the non-defaulting Party shall be entitled to receive from the defaulting Party all of the damages incurred by the non-defaulting Party in connection with such Event of Default, provided, that if an Event of Default has occurred and has continued uncured for a period of three hundred sixty-five (365) Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.6. If Seller is the defaulting Party, the Parties agree that the damages recoverable by SPS hereunder on account of an Event of Default of Seller shall include Replacement Power Costs.

12.6 Termination. Upon the occurrence of an Event of Default which has not been cured within the applicable cure period, the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and thirty (30) Days after the notice thereof, upon which this PPA shall terminate. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.6, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the limitation on damages set

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forth in Section 12.7, all of the damages incurred by the non-defaulting Party in connection with such termination including, if Seller is the defaulting Party, the value of all future Replacement Power Costs for the then remaining Term. In lieu of SPS's right of termination under this Section 12.6, SPS shall have the right at such time to exercise its option to purchase contained in Section 20.18(A).

**12.7 Limitation on Damages** Except as otherwise provided in this Section 12.7, Seller's aggregate financial liability to SPS for Delay Damages, pursuant to Section 12.5(A), shall not exceed thirty-seven million seven hundred fifty thousand dollars (\$37,750,000). Also, Seller's aggregate financial liability to SPS for Replacement Power Costs and other damages, excluding Delay Damages, shall not exceed seventy five million five hundred thousand dollars (\$75,500,000). If at any time during the Term, SPS incurs damages in excess of the limitations set forth above which Seller does not agree to pay when billed by SPS in accordance with Section 12.12, SPS shall have the right to declare a termination of this PPA under Section 12.6. The limitations on damages set forth in this Section 12.7 shall not apply to damages arising out of any of the following events:

(A) actual fraud, waste, tampering with SPS-owned facilities, or other material intentional misrepresentation or misconduct sanctioned by, or at the direction of, Seller in connection with this PPA and/or the operation of the Facility;

(B) the sale by Seller to a third party, or diversion by Seller for any use, of Contract Capacity or Contract Energy committed to SPS under this PPA, except in mitigation of SPS's breach of purchase or payment obligations under this PPA;

(C) Seller's failure to apply any insurance proceeds to reconstruction of the Facility following a casualty;

(D) any claim for indemnification under Article 17;

(E) any Environmental Contamination caused by Seller; and/or

(F) the filing of an involuntary bankruptcy petition against Seller (other than by SPS), which petition is not dismissed within sixty (60) Days of its filing, or the filing of a voluntary petition in bankruptcy by Seller.

### **12.8 Operation by SPS Following Event of Default of Seller.**

(A) Prior to any termination of this PPA due to an Event of Default of Seller, SPS shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this PPA) during the period provided for herein. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, and operate the Facility that is equal to or superior to SPS's right under this Section 12.8

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(B) SPS shall give Seller and the Facility Lender ten (10) Days notice in advance of the contemplated exercise of SPS's rights under this Section 12.8. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice. Upon such notice, SPS, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Site and the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints SPS as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as SPS may reasonably deem necessary or appropriate to exercise SPS's step-in rights under this Section 12.8.

(C) SPS shall be entitled to immediately draw upon the Security Fund in such amounts necessary to cover any expenses incurred by SPS in exercising its rights under this Section 12.8.

(D) During any period that SPS is in possession of and constructing and/or operating the Facility pursuant to the foregoing Sections, SPS shall perform and comply with all of the obligations of Seller under this PPA and shall use the proceeds from the sale of electricity generated by the Facility to first, reimburse SPS for any and all expenses reasonably incurred by SPS (including a return on capital at SPS's authorized return on equity most recently determined by the NMPRC) in taking possession of and operating the Facility, and to second, remit any remaining proceeds to Seller.

(E) During any period that SPS is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and SPS shall assume possession, operation, and control solely as agent for Seller.

(1) If SPS is in possession and control of the Facility for an interim period, Seller may resume operation and SPS shall relinquish its right to operate when Seller demonstrates to SPS's reasonable satisfaction that it will remove those grounds that originally gave rise to SPS's right to operate the Facility, as provided above, in that Seller (a) will resume operation of the Facility in accordance with the provisions of this PPA and (b) has cured any Events of Default of Seller which allowed SPS to exercise its rights under this Section 12.8.

(2) If SPS is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and SPS shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

(F) SPS's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by SPS of any liability attributable to Seller.

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If at any time after exercising its rights to take possession of and operate the Facility SPS elects to return such possession and operation to Seller, SPS shall provide Seller with at least fifteen (15) Days advance notice of the date SPS intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date

(G) If SPS assumes operation of the Facility under this Section 12.8, SPS shall operate the Facility in conformance with Good Utility Practice.

**12.9 Specific Performance.** In addition to the other remedies specified in this Article 12, if any Event of Default of Seller is not cured within the applicable cure period set forth herein, SPS may elect to treat this PPA as being in full force and effect and SPS shall have the right to specific performance. If the breach by Seller arises from a failure by third party operating the Facility pursuant to an operating agreement entered into with Seller, and Seller fails or refuses to enforce its rights under the operating agreement which would result in the cure, or partial cure, of the Event of Default, SPS's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement. Likewise, for any breach of this PPA by SPS, other than payment obligations, Seller shall have the right to specific performance

**12.10 Remedies Cumulative.** Subject to the exclusivity of Delay Damages provided in Section 12.5(A) and the limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

**12.11 Waiver and Exclusion of Other Damages.** The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification therefor from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss

**12.12 Payment of Amounts Due to SPS** Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, SPS may send Seller an invoice for such damages (including Delay Damages) or other amounts as are

## Power Purchase Agreement

due to SPS at such time from Seller under this PPA and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges. SPS may withdraw funds from the Security Fund as needed to provide payment for such invoice if the invoice is not paid by Seller on or before the tenth (10th) Business Day following the invoice due date.

12.13 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the PPA

### Article 13 - Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in Exhibit F as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Operating Committee, or a different person. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this PPA.

13.4 Operating Records. Seller and SPS shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by state or federal regulatory authorities and SPP in the prescribed format.

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13.5 Operating Log. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each clock hour; changes in operating status; Scheduled Outage/Deratings and Forced Outages; number of generating unit starts, and any unusual conditions found during inspections. Seller must maintain accurate and up-to-date logs of dispatched and scheduled energy, including Test Energy, and other records needed in order to comply with this PPA, including clear separation of the hours each generating unit is operated for the generation of Contract Energy and the hours each generating unit is operated for other purposes. Seller shall maintain hourly metering information from the natural gas meter station. The hourly metering information shall be in electronic format and shall include MCF, Dth, and the Gross Heating Value of the natural gas fuel delivered by each supplier. Seller shall maintain, in electronic format, accurate hourly information regarding energy generated for sales to others. By the fifth (5<sup>th</sup>) Day of each calendar month, Seller shall submit to SPS, in electronic format, a copy of the Operating Log for the previous calendar month.

13.6 Billing and Payment Records. To facilitate payment and verification, Seller and SPS shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility.

13.7 Examination of Records. Seller and SPS may examine the financial and Operating Records and data kept by the other Party relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, upon request and during normal business hours.

### 13.8 Exhibits.

(A) Exhibit A and/or Exhibit E may be changed from time to time unilaterally by SPS at SPS's sole discretion. SPS shall provide reasonable prior notice to Seller of any such change in order to permit Seller to effect or address such change in a timely and economical manner.

(B) Either Party may change the information for their notice addresses in Exhibit F at any time without the approval of the other Party. Exhibit B, Exhibit C, Exhibit D-1, Exhibit D-2, Exhibit D-3, Exhibit H and Exhibit I may be changed at any time with the mutual consent of both Parties. Exhibit G may be changed in accordance with Section 16.2(B).

### 13.9 Dispute Resolution

(A) For any dispute arising under this PPA (a "Dispute"), within ten (10) Days following the delivered date of a written request by either Party (a "Dispute Notice"), each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives") and the Parties'



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Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. If the Parties' Representatives cannot resolve the Dispute within thirty (30) Days after commencement of negotiations, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (1) shall independently prepare a written summary of the Dispute describing the issues and claims, (2) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (3) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal remedies.

(B) Notwithstanding any provision in this PPA to the contrary, if no Dispute Notice has been issued within twenty-four (24) months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

(C) Seller and SPS each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and SPS related hereto and expressly agree to have any disputes arising under or in connection with this PPA be adjudicated by a judge of the court having jurisdiction without a jury.

#### Article 14 - Force Majeure

14.1 Definition of Force Majeure. The term "Force Majeure", as used in this PPA, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war, riots; fire; explosion, blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group), and actions by any Governmental Authority taken after Execution Date (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority or failure of a Governmental Authority to act on a timely basis to permit Seller to meet Construction Milestones, but only to the extent that the regulatory filings were timely and were of a quality that could be acted upon by the governmental authority) but only if such requirements, actions, or failures to act prevent or delay performance, and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority. The term

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Force Majeure does not include (A) any acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure; (B) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such mishap is caused by one of the following catastrophic equipment failure; acts of God; sudden actions of the elements, including floods, earthquakes, hurricanes, or tornadoes; sabotage, terrorism; war; riots; and emergency orders issued by a Governmental Authority; or (C) changes in market conditions that affect the cost of SPS's or Seller's supply of fuel or alternative supplies of fuel, or that affect demand or price for any of SPS's or Seller's products.

### 14.2 Applicability of Force Majeure.

(A) Neither Party shall be responsible or liable for any delay or failure in its performance under this PPA, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that

(1) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(2) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(4) when the non-performing Party is able to resume performance of its obligations under this PPA, that Party shall give the other Party written notice to that effect

(B) Except as otherwise expressly provided for in this PPA, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this PPA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

(C) During a condition of Force Majeure associated with the failure of a Governmental Authority to act on a timely basis to permit Seller to meet Construction Milestones, Seller

(1) shall receive a day-for-day extension of the COD resulting from the Force Majeure, and

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(2) shall use its best efforts to reduce the period of the extension in Section 14.2(C)(1). For purposes of this Section 14.2(C)(2) best efforts means a level of effort which, in the exercise of reasonable judgment in the light of facts known at the time a decision is made, can be expected to accomplish the desired result on a timely basis at a reasonable cost.

**14.3 Limitations on Effect of Force Majeure.** In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this PPA beyond its stated Term. If any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, as noticed pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

**14.4 Delays Attributable to SPS.** Seller shall be excused from a failure to meet any specified Construction Milestone where Seller can establish that such a failure is solely attributable to any delay or failure by SPS to perform activities necessary to place the Facility into operations or delay or failure by SPS to obtain any consents or approvals from Governmental Authorities or third parties required for SPS to perform its obligations under this PPA (whether or not caused by any conditions or events of Force Majeure) ("Delay Conditions"), provided, that for such a failure, the Construction Milestone that is not met due to the Delay Condition(s), and any affected Construction Milestones that follow, shall be extended for a period of time equal to the period of time between (A) the Construction Milestone that is not met due to the Delay Condition(s) and (B) the Day that SPS has corrected the Delay Condition(s).

## Article 15 – Representations, Warranties and Covenants

**15.1 Seller's Representations, Warranties and Covenants.** Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller, and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA;

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(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to SPS upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Seller, subject to the contingency identified in Section 6.3;

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility;

(E) To the best knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit I, which Seller anticipates will be obtained by Seller in the ordinary course of business, all permits, consents, approvals, licenses, authorizations, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect;

(F) Seller shall comply with all applicable local, state, and federal laws, regulations, and ordinances, including equal opportunity and affirmative action

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requirements and all applicable federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term of this PPA;

(G) Seller shall disclose to SPS, to the extent that, and as soon as it is known to Seller, any violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Site, alleged to exist by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination; and

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes SPS to contact and obtain information concerning the Facility and Interconnection Facilities directly from the Interconnection Provider and to the extent necessary Seller shall provide written notice to the Interconnection Provider confirming such authorization.

15.2 SPS's Representations, Warranties and Covenants. SPS hereby represents and warrants as follows:

(A) SPS is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of SPS, and SPS has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA;

(B) The execution, delivery, and performance of its obligations under this PPA by SPS have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of SPS's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to SPS or violate any provision in any corporate documents of SPS, the violation of which could have a material adverse effect on the ability of SPS to perform its obligations under this PPA;

(3) result in a breach or constitute a default under SPS's corporate charter or bylaws, or under any agreement relating to the management or affairs of SPS, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which SPS is a party or by which SPS or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected

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to have a material adverse effect on the ability of SPS to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of SPS now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of SPS to perform its obligations under this PPA,

(C) Intentionally omitted.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which SPS is a party or any judgment, order, statute, or regulation that is applicable to SPS; and

(E) To the best knowledge of SPS all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize SPS's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

### Article 16 - Insurance

16.1 Evidence of Insurance. Seller shall, on or before June 1 of each Commercial Operation Year and pursuant to the corresponding Construction Milestone, provide SPS with two copies of insurance certificates acceptable to SPS evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit G to this PPA. Such certificates shall (A) name SPS as an additional insured (except worker's compensation); (B) provide that SPS shall receive thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice shall be ten (10) Days for non-payment of premiums); (C) provide a waiver of any rights of subrogation against SPS, its affiliated entities and their officers, directors, agents, subcontractors, and employees, and (D) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers that SPS, in its reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld). All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by SPS. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

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### 16.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two (2) years after the Term. If any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) years after the Term.

(B) SPS shall have the right, at times deemed appropriate to SPS during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make all commercially reasonable efforts to comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide written notice to SPS, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain other insurance which would provide comparable protection against the risk to be insured and SPS shall not unreasonably withhold its consent to modify or waive such requirement.

### Article 17 - Indemnity

(A) Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party (the "Indemnified Party") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by an Event of Default under this PPA, violation of any applicable environmental laws, or by the negligent or tortious acts, errors, or omissions of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. The indemnification of third party claims provided under this Section 17(A) is not limited by the limitation on damages set forth in Section 12.7. Nothing in this Article 17 shall enlarge or relieve Seller or SPS of any liability to the other Party for any breach of this PPA. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party's liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any

### Power Purchase Agreement

insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

(B) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs

(C) If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement

(D) Except as otherwise provided in this Article 17, if a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

### Article 18 Legal and Regulatory Compliance

(A) Each Party shall at all times comply with all applicable laws, ordinances, rules, and regulations applicable to it, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting



## Power Purchase Agreement

Party in litigation, including administrative proceedings before utility regulatory commissions.

### Article 19 - Assignment and Other Transfer Restrictions

19.1 No Assignment Without Consent. Except as permitted in this Article 19, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided (A) at least thirty (30) Days prior notice of any such assignment shall be given to the other Party, (B) any assignee shall expressly assume the assignor's obligations hereunder, unless otherwise agreed to by the other Party, and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder if the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this PPA, (C) no such assignment shall impair any security given by Seller hereunder, and (D) before the PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies.

(A) Seller's consent shall not be required for SPS to assign this PPA to an Affiliate of SPS, provided that SPS provides assurances and executes documents reasonably required by Seller and the Facility Lender regarding SPS's continued liability for all of SPS's obligations under this PPA for any nonperformance on the part of such assignee. If the assignee has or obtains an investment grade unsecured bond rating equivalent to or better than the unsecured bond rating of SPS, then Seller agrees to relieve SPS from its obligations under this PPA if SPS requests to be so relieved in a written notice provided to Seller

(B) SPS's consent shall not be required for Seller to assign this PPA for collateral purposes to the Facility Lender. Seller shall notify SPS, pursuant to Section 13.1, of any such assignment to the Facility Lender no later than thirty (30) Days after the assignment.

19.2 Accommodation of Facility Lender. To facilitate Seller's obtaining of financing to construct and operate the Facility, SPS shall provide such consents to assignments, certifications, representations, information or other documents as may be reasonably requested by Seller or the Facility Lender in connection with the financing of the Facility; provided, that in responding to any such request, SPS shall have no obligation to provide any consent, or enter into any agreement, that materially adversely affects any of SPS's rights, benefits, risks and/or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, SPS for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by SPS in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender, and provided by SPS, pursuant to this Section 19.2.

## Power Purchase Agreement

19.3 Change of Control. Except during the first 90 days after the Execution Date, during which time Seller's members will be making initial investments in Seller, any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall require the prior written consent of SPS, which shall not be unreasonably withheld, conditioned, or delayed.

19.4 Notice of Facility Lender Action. Within ten (10) Days following Seller's receipt of each written notice from the Facility Lender of default, or Facility Lender's intent to exercise any remedies, under the Financing Documents, Seller shall deliver a copy of such notice to SPS.

19.5 Transfer Without Consent is Null and Void. Any sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of the PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

19.6 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of SPS, provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

## Article 20 - Miscellaneous

20.1 Waiver. Subject to the provisions of Section 13.9(B), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

### 20.2 Taxes.

(A) Except as provided for in Section 20.2(C), Seller shall be solely responsible for (1) any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, including taxes and impositions that vary based upon the amount of power produced, the amount and/or nature of fuel consumed, and/or the amount and/or nature of wastes produced by the Facility and (2) all *ad valorem* taxes relating to the Facility.

(B) SPS shall be solely responsible for fuel taxes imposed with respect to the purchase of fuel by SPS for use in or consumption by the Facility to produce the electric energy dispatched and received by SPS hereunder.

(C) SPS shall be solely responsible for the payment of any taxes and other impositions enacted or promulgated by Governmental Authorities after Execution Date, that are assessed based upon the quantity of carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy.

## Power Purchase Agreement

during the Term of this PPA. If (1) following Execution Date, any Governmental Authority imposes any enforceable limits or other enforceable compliance obligations related to carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy, (2) the limits or obligations are not imposed on a facility-specific basis, and (3) such limits or obligations can be mitigated by the acquisition or application by SPS of allowances, credits and/or eligible offsets, then, (a) SPS shall be responsible for compliance with the limits or compliance obligations from the Facility in its generation portfolio, and (b) SPS shall be solely responsible for the acquisition costs, application and management of such allowances, credits and/or offsets necessary to mitigate carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy. Nothing herein shall relieve Seller of its obligation to comply, at its sole cost, with any permit condition or emission limit or standard (including an emission limit or standard relating to carbon dioxide) imposed specifically on the Facility.

(D) The Parties shall cooperate to minimize tax exposure; however, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to SPS hereunder shall be sales for resale, with SPS reselling such electric energy. SPS shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.

### 20.3 Fines and Penalties.

(A) Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs for an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against SPS by any Governmental Authority due to noncompliance by Seller with this PPA, any requirements of law, any permit or contractual obligation, or, if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any requirements of law, permit, or contractual obligation, Seller shall indemnify and hold SPS harmless against any and all losses, liabilities, damages, and claims suffered or incurred by SPS, including claims for indemnity or contribution made by third parties against SPS, except to the extent SPS recovers any such losses, liabilities or damages through other provisions of this PPA.

### 20.4 Rate Chances

## Power Purchase Agreement

(A) The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this Agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (commonly known as the "Mobile-Sierra doctrine").

20.5 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, SPS does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

### 20.6 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in Section 12.8, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of SPS for any purpose; nor shall Seller represent to any person that he or she is or shall become a SPS employee.

20.7 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor SPS is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to SPS. All applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including but not limited to 41 C.F.R. §60-1.4(a)(1-7).

20.8 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive.

## Power Purchase Agreement

such cancellation, expiration, or termination, prior to the expiration of the applicable statute of limitations, including warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation

20.9 Severability. If any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect, provided, however, that the Parties shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.10 Complete Agreement, Amendments. The terms and provisions contained in this PPA constitute the entire agreement between SPS and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between SPS and Seller with respect to the sale of electric capacity and energy from the Facility. This PPA may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and provided further, that the Exhibits attached hereto may be changed according to the provisions of Section 13.8.

20.11 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article 20, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

20.12 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

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

20.14 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico. The Parties hereby submit to the exclusive jurisdiction of the courts of the State of New Mexico, and venue is hereby stipulated as Roswell, Chaves County, New Mexico.

20.15 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually-agreed-upon joint press release to be issued as of Execution Date describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship

## Power Purchase Agreement

(such information shall not include any of the commercial terms of this PPA). In the event during the Term, either Party is contacted by the media concerning this Agreement or Seller's relationship with SPS, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.

20.16 Generation Benefits SPS shall be entitled to receive, at no additional cost to SPS, (and upon request, Seller shall transfer to SPS at no additional cost) all Generation Benefits

20.17 Additional Defined Terms. For purposes of Sections 20.18 and 20.19, the following terms shall have the meanings stated

(A) Assets means the Business, the Facility, the Site, the Permits and Licenses, the Contracts, the Easements, the Motor Vehicles, the Warranties and Guaranties, the Books and Records, and the Other Assets.

(B) Books and Records means originals or copies of all of Seller's books, records, manuals, invoices, work orders, drawings, documents, books of account, correspondence, sales and credit reports, billing and usage data, literature, brochures, advertising material, and the like used by Seller in connection with the Business and the Assets and copies of all of Seller's data (in a format which allows transfer to Buyer's data systems) relating to customer billing, the Assets and location of the Assets.

(C) Business means Seller's going business of using the Assets for the generation of electric energy and the sale of electric capacity and electric energy from the Facility

(D) Contracts means all construction contracts, maintenance contracts, operating contracts, power purchase agreements, gas purchase agreements, interconnection agreements, real property leases, personal property leases, and any and all other contracts to which Seller is a party that are necessary or desirable for the construction, operation, and maintenance of the Facility in accordance with this PPA.

(E) Easements means all recorded and/or visible easements held or used by Seller for use in connection with Seller's operation of the Assets.

(F) Motor Vehicles means all Motor Vehicles used by Seller in the operation of the Assets.

(G) Other Assets includes all personal property and contract rights used or useful in the operation of the Assets and not otherwise included in the definition of Assets, including all equipment, supplies, and spare parts.

### Power Purchase Agreement

(H) Permits and Licenses means all permits and licenses issued by any Governmental Authority for the construction and operation of the Assets, as they may be renewed or changed from time to time.

(I) Warranties and Guaranties means any and all warranties and guaranties covering the equipment that makes up the Facility, spare parts, and supplies utilized in the operation and maintenance of the Facility

20.18 Purchase Option SPS shall have the option, exercisable any time after the seventeenth (17th) Commercial Operation Year to purchase the Assets from Seller at fair market value pursuant to the following procedures. Such option may be exercised by SPS no more than 3 times.

(A) SPS shall give written notice to Seller and the Facility Lender of its intent to purchase the Assets from Seller ("Purchase Notice") on a specified date at least twelve (12) months after such notice ("Closing Date").

(B) Seller and SPS shall negotiate in good faith to reach agreement on the sales price for the purchase and sale of the Assets. If the Parties have not reached Agreement on such sales price within ninety (90) days of the Purchase Notice, either Party may, by written notice, call for an appraisal of the Assets (the "Appraisal"). The Appraisal shall be conducted pursuant to the Appraisal Procedure provided in Section 20.18 (C)

(C) SPS and Seller shall each, within fifteen (15) days of the appraisal notice described in Section 20.18 (B) provide to the other Party a notice appointing an appraiser qualified to appraise gas-fired steam-generating and combustion turbine facilities.

(1) Each appraiser shall, within sixty (60) days, prepare a written appraisal of the fair market value of the Assets using the following assumptions:

(a) that the Assets are valued on the Closing Date;

(b) that the Assets are purchased as-is, subject to all Contracts then in force with respect to the Assets, including this PPA;

(c) that terms and conditions for the purchase and sale of the Assets will be consistent with other such industry agreements entered into at the same general time as the Appraisal; and

(d) that the residual value of the Assets, if any, beyond the PPA term be included.

(2) The appraisers shall exchange their appraisals by the end of the sixty (60) day period described in Section 20.18(C)(1) and shall seek to reach

### Power Purchase Agreement

agreement on the fair market value of the Assets. If, within thirty (30) days of the exchange of the appraisals they are unable to agree upon the fair market value of the Assets, a third independent appraiser shall be chosen within ten (10) days thereafter by the mutual consent of SPS's and Seller's appraisers or, if they are unable to agree on the appointment of a third appraiser, such appointment shall be made by the American Arbitration Association, or any successor organization thereto, from a panel of arbitrators having experience in the business of operating steam generators.

(3) The third independent appraiser shall review the appraisals from SPS's and Seller's appraisers and shall, within thirty (30) days of appointment, determine, in writing, his or her own appraisal of the fair market value of the Assets. If one of the appraisals is disparate from the median of the appraisals by more than twice the amount by which either of the other determinations are disparate from the median, then the determination of such appraiser shall be excluded, and the average fair market value of the remaining two appraisals shall be binding on the Parties. If none of the appraisals is so disparate, then all three appraisals shall be averaged and the result shall be the fair market value binding upon the Parties.

(D) Following the determination of fair market value of the Assets, SPS shall have thirty (30) days within which to agree to exercise its option to purchase the Assets at fair market value by sending notice of such acceptance to Seller. In the absence of such notice, SPS's option shall expire

(E) If SPS provides timely notice to Seller of its intent to exercise its purchase option, the Parties shall negotiate in good faith to reach a definitive agreement concerning the terms and conditions of the sale (other than the fair market value purchase price which shall be established as provided in Section 20.18(C)(3)) but will be subject to any closing adjustments as identified in the definitive agreement concerning the terms and conditions of the sale. The terms and conditions shall be those terms and conditions that reasonable industry gas-fired steam generation and combustion turbine buyers and sellers would typically agree to at the time of the option exercise. If the Parties are unable to reach such a definitive agreement within ninety (90) days of SPS's notice, then either party may provide written notice to the other calling for binding arbitration to determine the terms and conditions of the agreement upon which the Parties have been unable to agree.

(F) The parties shall conduct their binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association, or any successor organization thereto. The Party providing the notice described in Section 20.18 (E) shall initiate the arbitration by filing its claim and shall request that an arbitrator or arbitrators knowledgeable about gas-fired steam generating and combustion turbine facilities shall be appointed as arbitrator or arbitrators. The arbitrator or arbitrators selected shall have the authority to augment the purchase and sale agreement, pursuant to the standard described in Section 20.18 (E), to include any crucial terms upon which SPS and Seller have been unable to agree and the resulting purchase and sale agreement shall be binding upon both Parties. In conducting the



### Power Purchase Agreement

arbitration, the arbitrator or arbitrators shall endeavor to keep a schedule that will permit SPS to meet its intended Closing Date

(G) Both parties shall use good faith efforts to deliver all instruments required to assign the Assets to SPS and to eliminate all liens, claims, charges, security interests or other encumbrances of any type or nature securing the Assets prior to or on the Closing Date and to meet the Closing Date specified in SPS's Purchase Notice

20.19 Offer to Sell. If following COD at any time during the Term, Seller determines that Seller desires to sell all or any part of the Assets, Seller shall notify SPS of that desire. Following receipt of this notice, if SPS is interested in exploring the possibility of purchasing such interest in the Assets, SPS shall, within 30 days of receiving the notice, so notify Seller and the Parties shall each use good faith reasonable commercial efforts to negotiate, execute, deliver, and consummate a purchase and sale agreement for the sale of such interest in the Assets to SPS on terms to be negotiated by Seller and SPS. It is the intent of Seller and SPS that the purchase and sale agreement would contain terms of purchase and sale utilized in like transactions.


*[Remainder of this page intentionally left blank]*

**Power Purchase Agreement**

IN WITNESS WHEREOF, the Parties have executed this PPA.

**Seller:**

Lea Power Partners, LLC

By:   
William R. Connors  
Vice President - Origination,  
Contracts and Regulatory

**SPS:**

Southwestern Public Service Company

By   
Karen F. Hyde, Managing Director,  
Resource Planning and Acquisition  
Xcel Energy Services Inc.  
Acting as agent for  
Southwestern Public Service Company

## Power Purchase Agreement

### EXHIBIT A REQUIREMENTS AND COMPLIANCE STANDARDS FOR DISPATCHABILITY

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1 Dispatchability Requirements In order for Seller to qualify for the Dispatchability Payment set forth under Section 8.2, the Facility generating units must be dispatchable generating units. Dispatchable generating units shall be capable of providing

- A Automatic Generation Control (AGC) from the Energy Markets Control Center (EMCC),
- B A minimum regulating range of fifteen megawatts (15 MW) per unit or forty percent (40%) of the Net Capability of the units dispatched, whichever is greater, in automatic load regulation capacity,
- C Continuous response to EMCC pulsing at a minimum rate of five percent (5%) of the Net Capability per minute over the regulating range of increasing MW of the unit dispatched and five percent (5%) of the Net Capability per minute over the regulating range of decreasing MW of the unit dispatched, and
- D A low load point for the regulating range of the unit which is equal to or less than the minimum loading level for operation with AGC that is specified for the unit pursuant to Section 3.1

2 Operations Log Seller shall maintain an hourly operation log that identifies real-time unit operating information including current level of unit capacity availability, planned and unplanned maintenance outages or deratings, circuit breaker operation and any other significant events related to the operation of the generating unit. Any changes in the generating status or availability of the generating unit shall be reported immediately to the EMCC operator by telephone.

3 Telemetry/Generation Load Control Requirements

A SPS shall design, purchase, own, install and test, in accordance with the procedures set forth in this Exhibit, the telemetry equipment, generation load control equipment and the circuits from the Facility to the EMCC. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a signal to the governor of Seller's equipment. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by SPS.

B The telemetry and generation load equipment is to provide the following instantaneous net MW and MVAR levels, control status (available for automatic generation control), load regulation range limits, remote pulsing circuit, and any other parameters deemed necessary by SPS. Seller shall install at the Facility MW and MVAR indicating equipment which reflects the identical MW and MVAR values as those telemetered to the EMCC.

4 Initial Verification of Compliance Initial verification of Automatic Generation Control compliance (requirements 1 A through 1 D above) will be conducted at the Facility by SPS. Requests for initial verification shall be made by Seller to SPS, in writing, no later than thirty (30) Days prior to the date that Seller intends to energize the Interconnection Facilities. Subsequent requests for initial verification, if needed, would also require thirty (30) Days advance notice. SPS will use its best effort to accommodate Seller's request but reserves the sole right to reschedule test dates. Testing will be a coordinated effort between SPS and Seller with Seller providing technical support for Seller's equipment and with SPS supplying the test regulation signal and determination of Seller's compliance of these requirements. All dispatchability requirements, including initial verification of compliance, must be met to achieve the Commercial Operation Date.

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## Power Purchase Agreement

### EXHIBIT A REQUIREMENTS AND COMPLIANCE STANDARDS FOR DISPATCHABILITY

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5 Periodic Verification of Compliance Subsequent to the initial verification of AGC compliance as provided for above, SPS shall have the right, at any time and without prior notice to Seller, to verify the continued compliance of such requirements. Seller will be notified of test results for any noncompliance.

6 Automatic Generation Control Availability SPS will monitor Seller's ability to be automatically dispatched. It is the expectation of the Parties that the Facility will be available for automatic generation dispatch during one hundred percent (100%) of the Facility's on-line hours (excluding periods of failure of SPS's telemetry, during which Seller will manually be dispatched by SPS).

7 Verification Testing of Ramp Rate Availability Factor SPS shall have the right to routinely conduct, from the EMCC, verification testing of the Facility Ramp Rate Availability Factor (RAF), as described in Section 8.2, without prior notice to Seller. RAF verification testing shall be conducted over the minimum regulating range of unit(s) being tested, beginning at or below the applicable minimum load of such minimum regulating range and ending at the maximum reported available capacity during the hour of the test (the "specified ramp range"), taking into consideration non-standard ambient conditions which exist at the time of the test. The timed portion of the test used to determine the increasing ramp rate shall begin when the output level of the unit(s) being tested is at the minimum load point of the specified ramp range and shall end when such output is one (1) MW less than the maximum load point of the specified ramp range. The timed portion of the test used to determine the decreasing ramp rate shall begin when the output level of the unit(s) being tested is at the maximum load point of the specified ramp range and shall end when such output is one (1) MW greater than the minimum load point of the specified ramp range. The calculated ramp rate for determining RAF shall be the average of the increasing and decreasing ramp rates for the specified ramp range.

**Power Purchase Agreement**

**EXHIBIT B**

**CONSTRUCTION MILESTONES**

Page 1 of 1

NUMBER	CONSTRUCTION MILESTONE	RESULTS SELLER MUST ACCOMPLISH
1.	August 21, 2006	Evidence of Site control consistent with the requirements of the SPP
2.	October 2, 2006	Seller shall have filed its Air Emissions Permit Application
3.	October 31, 2006	Seller shall have filed its NMPRC Application for Site Approval
4	November 15, 2006	Seller shall provide SPS with a copy of the executed Facility EPC, or other general contractor agreements
5	Within 90 days following Execution Date	Seller shall complete and provide to SPS completed Exhibits to this PPA
6.	December 31, 2006	Seller shall have achieved closing on financing for the Facility or provided SPS with proof of financial capability to construct the Facility
7.	December 31, 2006	Seller shall provide SPS with evidence of complying with that insurance coverage required prior to the Commercial Operation Date
8.	March 2, 2007	Seller shall provide SPS with copies of executed purchase orders/contracts for the delivery and installation of Facility turbine(s)/generator(s) and the step-up transformer(s)
9.	March 2, 2007	Seller shall provide SPS with copies, as applicable, of executed Facility operating agreements and natural gas transportation and/or interconnection agreements
10	April 2, 2007	Seller shall provide SPS with copies, as applicable, of executed electric transmission and/or interconnection agreements
11.	April 2, 2007	Seller shall provide SPS with documentation that all governmental permits required to lawfully construct the Facility as required by this PPA have been obtained or will be obtained by the time needed to meet all Construction Milestones

**Power Purchase Agreement**

NUMBER	CONSTRUCTION MILESTONE	RESULTS SELLER MUST ACCOMPLISH
12	Within 7 Days Following Receipt of the Governmental Permits Set Forth in Construction Milestone No. 11	Seller shall establish the Security Fund in accordance with Section 11.1. in the amount of \$75,500,000 00.
13.	August 13, 2007	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities
14.	December 3, 2007	The turbine(s)/generator(s) shall have been delivered to and installed at the Site
15.	January 1, 2008	The step-up transformer shall have been delivered to and installed at the Site
16	January 1, 2008	Seller shall have the natural gas line and all other necessary fuel supply interconnection facilities in place
17	January 1, 2008	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized
18.	January 30, 2008	Start-up testing of the Facility commences
19	June 1, 2008	Commercial Operation Date is achieved (Commercial Operation Milestone)

**Power Purchase Agreement**

**EXHIBIT C  
FACILITY DESCRIPTION AND SITE MAPS**

## Power Purchase Agreement

**EXHIBIT C PAGE 1**

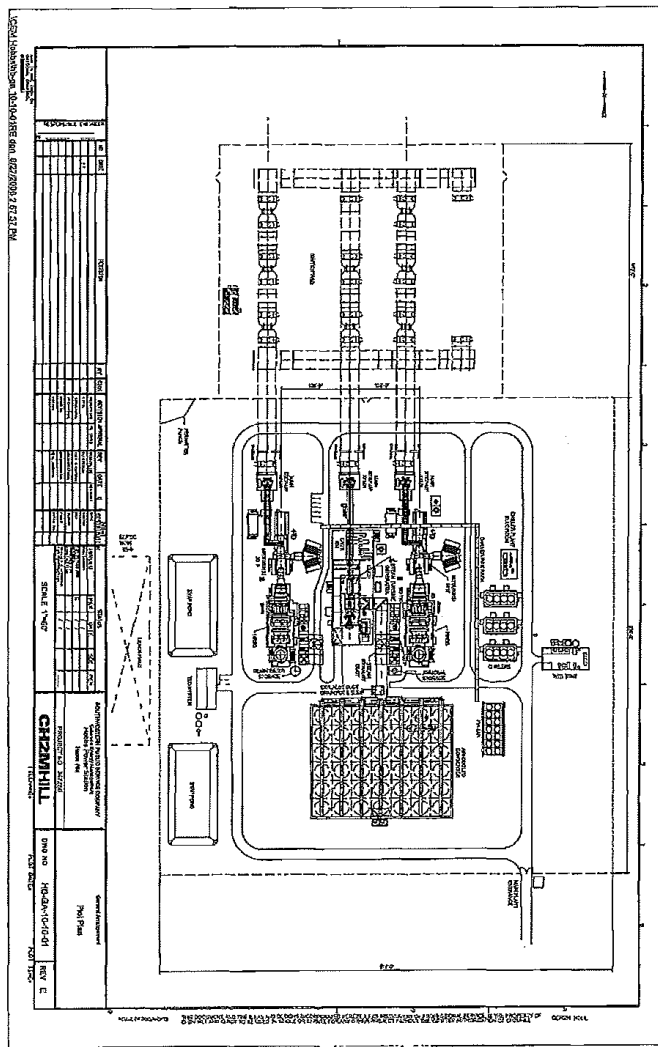
1. Project / Facility Name: Hobbs Generating Station
2. Generation Technology:  
Describe the number and type of proposed generator units:  
2 - MH 501F combustion turbine with chillers  
1 - GE D11- reheat steam turbine  
Configuration of generation equipment, i.e., CTs, HRSGs, steam turbines, etc.  
2x2x1 with the ability to run 1x1 if needed  
w AIR COOLED CONDENSER, ZERO LIQUID DISCHARGE, INLET CHILLERS AND CHILLED  
WATER STORAGE, GAS FUEL ONLY  
HRSG'S are Duct Fired to approx 300MMBTUHR and equiped with SCR and CO  
catalyst, manufactured by AALBORG IND  
Generation equipment model numbers, vendors, manufacturers, etc  
LATER
3. Expected Annual Forced Outage Rate (%): 2%  
(This rate should include only forced outages and unplanned maintenance, not planned maintenance.)
4. Expected Average Annual Maintenance Requirements (days/year): 24
5. Is proposed plant AGC controllable? Yes  No   
5.a Low AGC Point (lowest output than can be achieved while the unit is on AGC)  
Summer 274 Winter 352  
5. b High AGC Point (highest output than can be achieved while the unit is on AGC)  
Summer 528 Winter 604
6. Minimum on-line time 0  
(minimum time between the generator breaker closing and re-opening)
7. Minimum downtime 0  
(minimum time the generator needs to be off-line prior to restarting)
8. Start time - (unit has been off-line for six hours) 90 Minutes  
(the time it takes for the unit to start, close breaker and reach minimum load)
9. Start time - (unit has been off-line for eight hours) 120 Minutes  
(the time it takes for the unit to start, close breaker and reach minimum load)
10. Start time - unit has been off-line for 12 hours) 180 Minutes  
(the time it takes for the unit to start, close breaker and reach minimum load)
11. Start time - unit has been off-line for 3 days) 180 Minutes
12. Lowest operating point Summer 120 MW Winter 135 MW 1X1 CONFIGURATION  
(lowest point where the unit can maintain stability)
13. High operating limit Summer 528 MW Winter 604 MW  
(highest MW output the unit can maintain stability)
14. AGC Ramp Rate 20 MW/Minute W/O BURNERS, 5MWS/MIN W BURNERS  
(rate at which the unit responds to frequency changes while on control (MW/minute))
15. Normal Ramp Rate 25 MW/Minute W/O BURNERS, 10MWS/MIN W BURNERS  
(rate at which the unit can increase output while on manual control (MW/minute))
16. Emergency Ramp Rate SAME  
(rate at which the unit can increase output only for emergency situations (MW/minute))
17. Ten-minute Start Capability Yes  No

11/3/2006 8 2

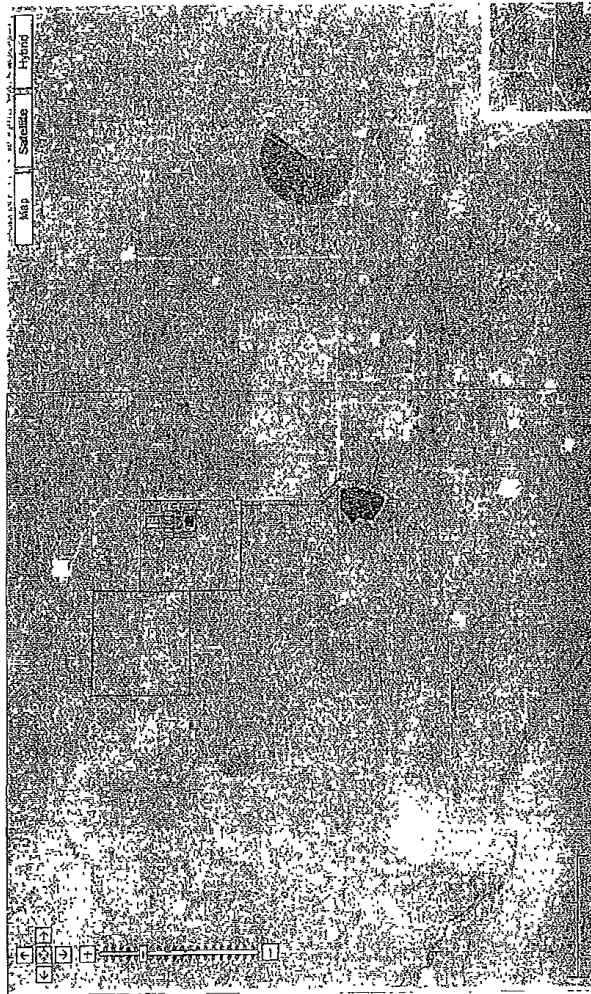
Exhibit C to  
EM PPA1  
B(3)-Exhibits Only Sec1.doc

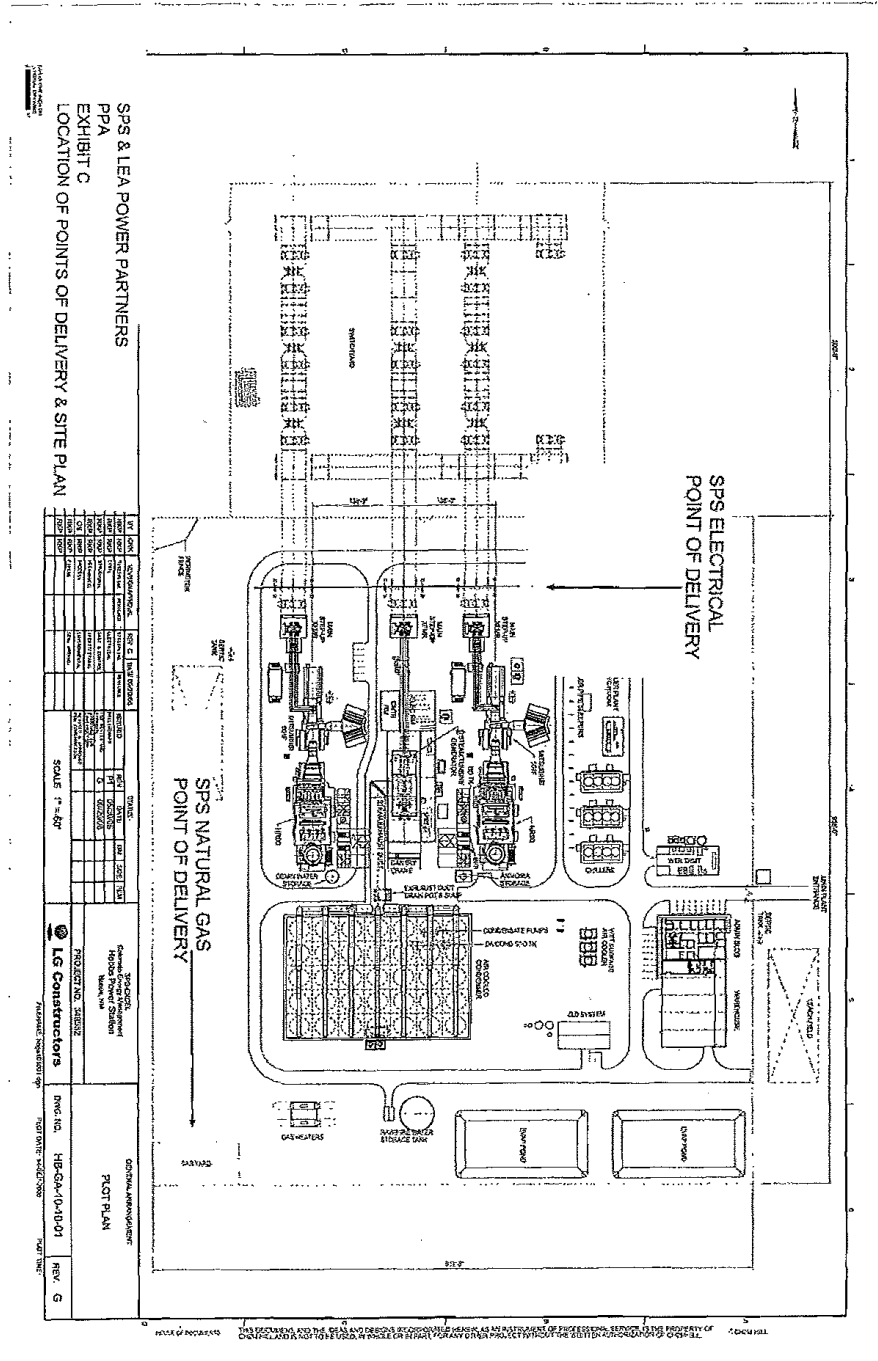


Power Purchase Agreement



### Power Purchase Agreement





SPS & LEA POWER PARTNERS  
 PPA  
 EXHIBIT C  
 LOCATION OF POINTS OF DELIVERY & SITE PLAN

NO.	DATE	DESCRIPTION	BY	CHKD.
1	08/14/19	ISSUED FOR PERMITTING	...	...
2	08/14/19	ISSUED FOR PERMITTING	...	...
3	08/14/19	ISSUED FOR PERMITTING	...	...
4	08/14/19	ISSUED FOR PERMITTING	...	...
5	08/14/19	ISSUED FOR PERMITTING	...	...
6	08/14/19	ISSUED FOR PERMITTING	...	...
7	08/14/19	ISSUED FOR PERMITTING	...	...
8	08/14/19	ISSUED FOR PERMITTING	...	...
9	08/14/19	ISSUED FOR PERMITTING	...	...
10	08/14/19	ISSUED FOR PERMITTING	...	...

SCALE: 1" = 50'  
 SPS & LEA POWER PARTNERS  
 PROJECT NO. 19-001  
 LG Constructors  
 CONSULTANT  
 PROJECT PLAN  
 DATE: 08/14/19  
 REV: G

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**Power Purchase Agreement**

**EXHIBIT D-1  
APPLICABLE TARIFF NATURAL GAS QUALITY SPECIFICATIONS**

## Power Purchase Agreement

Northern Natural Gas Page 1 of 1

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Welcome

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**Informational Postings**

**Gas Quality Requirements**

Date Requested: Jul 24 2006 10:25AM

All gas to be received from Shipper into the Northern pipeline system shall conform to the following specifications.

- a) The gas shall be commercially free from objectionable odors, solid matter, dust, gums and gum-forming constituents, or any other substance which might interfere with the merchantability of the gas, or cause injury to or interference with proper operation of the lines, meters, regulators, or other appliances through which it flows.
- b) Oxygen - less than or equal to 0.2% by volume.
- c) Hydrogen sulfide - less than or equal to 1/4 grain/Ccf
- d) Total Sulphur - less than or equal to 20 grain/Ccf
- e) Carbon Dioxide - less than or equal to 3.0% by volume
- f) Water - less than or equal to 6 pounds/MMcf.
- g) Heating Value - greater than or equal to 950 Btu/Cubic Foot.
- h) The temperature shall be less than or equal to 120 degrees Fahrenheit.

If any gas received by Northern shall fail at any time to conform to the specifications set forth above, Northern may refuse to accept delivery pending correction by the other party. Northern may, on a basis that is not unduly discriminatory, elect to accept gas which fails to meet specifications.

For further information regarding gas quality, please see Northern's FERC Gas Tariff, Sheet 281.

**Quality Information**

- [Gas Quality By Date](#)
- [Gas Quality By LR](#)
- [Station List Report](#)
- [Station Re-assignment List](#)
- [Total Sulfur](#)

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<http://www.northernnaturalgas.com/info postings/asp/gasQuality.asp>

7/24/2006

## Power Purchase Agreement

NNG - Tariff - Third Revised Sheet No 281

Page 1 of 1

NORTHERN NATURAL GAS COMPANY  
FERC Gas Tariff  
Third Revised Volume No 1

Third Revised Sheet No 281  
Superseding  
Second Revised Sheet No 281

### GENERAL TERMS AND CONDITIONS

#### 44 QUALITY

--- ---

All gas to be received from Shipper from the Northern pipeline system shall conform to the following specifications:

- a) The gas shall be essentially free from objectionable odors, solid matter, dust, gases and gas-forming constituents, or any other substances which might interfere with the marketability of the gas, or cause injury to or interference with proper operation of the lines, meters, regulators, or other appliances through which it flows
- b) Oxygen - less than or equal to 0.2% by volume
- c) Hydrogen sulfide - less than or equal to 1/4 grains/Ccf
- d) Total Sulphur - less than or equal to 10 grains/Ccf
- e) Carbon Dioxide - less than or equal to 2.0% by volume
- f) Water - less than or equal to 4 pounds/MMcf
- g) Heating Value - greater than or equal to 950 Btu/Cubic Foot
- h) The temperature shall be less than or equal to 120 degrees Fahrenheit

If any gas received by Northern shall fail at any time to conform to the specifications set forth above, Northern may refuse to accept delivery pending correction by the other party. Northern may, on a basis that is not unduly discriminatory, elect to accept gas which fails to meet specifications.

#### PROCESSING

A Shipper on Northern's system shall have the option to 1) receive a credit from Northern for liquid revenues, or 2) enter into a separate processing arrangement with a plant operator, pursuant to the provisions set forth in this Tariff.

Northern shall have the unconditional right to commingle gas received from any Shipper or source for transportation under this Tariff with gas received from other shippers or sources. Northern's obligation under this Tariff shall be to deliver thermally equivalent volumes, less fuel, from the points of receipt to the points of delivery under the terms and conditions of the applicable rate schedules of this Tariff, and each party tendering gas to Northern shall recognize that gas delivered by Northern has been commingled from various sources and will not be the same molecules, or contain the identical constituents, as the gas received by Northern. No party tendering gas to Northern shall have the right in any particular constituent in the gas tendered, including but not limited to, liquids and liquefiable hydrocarbons, while such constituents are extracted in the gas stream. However, in the event a Shipper or its designee elects to retain the right to process gas tendered to Northern, a Shipper or its designee which has contracted with any processing plant will be entitled to an agreed-upon share of plant products, revenues or other consideration, as the case may be, attributable to gas processed at a processing plant in accordance with the allocation methodology agreed to under subparagraph (a) or a Shipper or another party which has not contracted with any processing plant will be entitled to a share of the liquid revenues in accordance with the allocation methodology under subparagraph (b). Any Shipper may elect to retain the right or elect to appoint to its designee as the party with the right to process gas tendered to Northern for the removal of liquids and liquefiable hydrocarbons under the options set forth below. For the purposes of this Section, Shipper's designee may be any party designated by Shipper to Northern by written notice, (including but not limited to a working interest owner in a well from which Shipper purchases gas, a marketer, broker, or the operator of a gas processing plant) and such designee need not be a designee under Shipper's Service Agreement for any purpose such as nomination, scheduling, billing or payment.

Issued by Mary Kay Miller, V.P. Rates and Certification  
Effective November 1, 1998

<http://www.northernnaturalgas.com/infolistings/tariff/Current/28119981101.html>

7/24/2006

**Power Purchase Agreement**

**EXHIBIT D-2**

**APPLICABLE TARIFF NATURAL GAS QUALITY SPECIFICATIONS**

## Power Purchase Agreement

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El Paso Natural Gas Company  
FERC Gas Tariff  
Second Revised Volume No. 1A

Original Sheet No. 234

### TRANSPORTATION GENERAL TERMS AND CONDITIONS (Continued)

#### 5 QUALITY (Continued)

##### 5.10 (continued)

- (a) Liquids - The gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered. The gas shall in no event contain water vapor in excess of seven (7) pounds per million standard cubic feet.
- (b) Hydrocarbon Dew Point - The hydrocarbon dew point of the gas delivered shall not exceed twenty degrees Fahrenheit (20°F) at a pressure of 600 psig.
- (c) Total Sulfur - The gas shall not contain more than three-quarters (0.75) grain of total sulfur per one hundred (100) standard cubic feet, which includes hydrogen sulfide, carbonyl sulfide, carbon disulfide, mercaptans, and mono-, di- and poly-sulfides. The gas shall also meet the following individual specifications for hydrogen sulfide, mercaptan sulfur or organic sulfur:
  - (i) Hydrogen Sulfide - The gas shall not contain more than one-quarter (0.25) grain of hydrogen sulfide per one hundred (100) standard cubic feet.
  - (ii) Mercaptan Sulfur - The mercaptan sulfur content shall not exceed more than three-tenths (0.3) grain per one hundred (100) standard cubic feet.
  - (iii) Organic Sulfur - The organic sulfur content shall not exceed five-tenths (0.5) grain per one hundred (100) standard cubic feet, which includes mercaptans, mono-, di- and poly-sulfides, but it does not include hydrogen sulfide, carbonyl sulfide or carbon disulfide.
- (d) Oxygen - The oxygen content shall not exceed two-tenths of one percent (0.2%) by volume and every reasonable effort shall be made to keep the gas delivered free of oxygen.
- (e) Carbon Dioxide - The gas shall not have a carbon dioxide content in excess of three percent (3%) by volume.

Issued by A. W. Clark, Vice President  
Issued on May 23, 1994

Effective on July 1, 1994

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<http://passpointcbb.elpaso.com/EBB-Tariff/cpng/sheet.asp?sid=226>

7/24/2006



## Power Purchase Agreement

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El Paso Natural Gas Company  
FERC Gas Tariff  
Second Revised Volume No 1A

Substitute First Revised Sheet No 235  
Superseding  
Original Sheet No 235

### TRANSPORTATION GENERAL TERMS AND CONDITIONS (continued)

5 QUALITY (Continued)  
5 10 (Continued)

- (f) Diluents - The gas shall not at any time contain in excess of four percent (4%) total diluents (the total combined carbon dioxide, nitrogen, helium, oxygen, and any other diluent compound) by volume.
- (g) Dust, Gums and Solid Matter - The gas shall be commercially free from solid matter, dust, gums, and gum forming constituents, or any other substance which interferes with the intended purpose or merchantability of the gas, or causes interference with the proper and safe operation of the lines, meters, regulators, or other appliances through which it may flow.
- (h) Heating Value - The gas shall have a heating value of not less than 957 Btu per cubic foot. For natural gas delivered at the border between the States of Arizona and California, the gas shall have a heating value of not less than 955 Btu per cubic foot.
- (i) Temperature - The gas shall be delivered at temperatures not in excess of one hundred twenty degrees Fahrenheit (120°F) nor less than fifty degrees Fahrenheit (50°F) except during those times when due to normal operating conditions and/or seasonal ambient temperatures on or near the pipeline system the temperature may drop below such lower limit.
- (j) Deleterious Substances - The gas shall not contain any toxic or hazardous substance, in concentrations which, in the normal use of the gas, may be hazardous to health, injurious to pipeline facilities or be a limit to merchantability.
- (k) If, at any time, gas delivered by El Paso shall fail to substantially conform to the specifications set forth in this Section 5.10 (a) - (j), Shipper or its designee agrees to notify El Paso of such deficiency. Shipper, or its designee, may agree to waive El Paso's compliance with its delivery specifications or, if El Paso fails to promptly remedy any such deficiency within a reasonable time, then Shipper or its designee may, at its option, refuse to accept delivery pending correction of the deficiency by El Paso or continue to accept delivery and make such changes as necessary to cause the gas to conform to such specifications, in which event El Paso shall reimburse Shipper or its designee for all reasonable expenses incurred by Shipper or its designee in effecting such changes.

Issued by Catherine E. Palazzari, Vice President

<http://passportcbb-el-paso.com/BBB-Tariff/cpng/sheet.asp?sid=227>

7/24/2006

## Power Purchase Agreement

Page 2 of 2

Issued on: December 28, 2005      Effective on: January 1, 2006  
Filed to comply with order of the Federal Energy Regulatory Commission. Docket  
No. RP05-422-000, issued July 29, 2005, 12 FERC ¶ 61,150

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<http://passportebb.elpaso.com/EBB-Tariff/epmg/sheet.asp?sid=227>

7/24/2006

10/20/2006 9:19 AM

4

Exhibit D-2 to  
5200 016 001 16 CEM  
PPA.doc

## Power Purchase Agreement

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El Paso Natural Gas Company  
FERC Gas Tariff  
Second Revised Volume No 1A

Substitute Second Revised Sheet No 236  
Superseding  
First Revised Sheet No 236

### TRANSPORTATION GENERAL TERMS AND CONDITIONS (Continued)

#### 5 QUALITY (Continued)

- 5.11 The quality specifications set forth in Section 5.10 above shall not apply to natural gas delivered by El Paso at any delivery point in production areas receiving gas delivered by El Paso on July 31, 1990 that did not meet the quality specifications set forth in Section 5.10 above. Gas so designated shall be of such quality as may exist in the delivering pipeline from time to time at such points and El Paso makes no warranty of merchantability or fitness for any purpose with respect to such gas.
- 5.12 Testing Procedures - The following test procedures shall be utilized by El Paso:
- (a) To determine whether specified sulfur compound limitations are being met as stated under Section 5.1(c), 5.2 (c) and 5.10(c) hereof, El Paso shall use the appropriate American Society for Testing Materials Procedures (as revised) Volume 05 05 Gaseous Fuels, Coal and Coke and/or accepted industry practices such as sulfur analyzers and chromatographs.
  - (b) To determine whether specific points on El Paso's system can operate below the fifty degree Fahrenheit (50°F) tolerance as stated in Sections 5.11(a) and 5.10(a), El Paso shall use the Charpy impact and drop-weight tear tests in accordance with API-5L Supplemental Requirements 5 and 6, respectively. Inasmuch as this test requires the shutdown of the specific segment of the system being tested, El Paso shall conduct such test only at a time when operations on such segments are not affected or the safety of the system is not put in jeopardy.

Issued by: Catharine E Palazzari, Vice President  
Issued on: December 28, 2005 Effective on: January 1, 2006  
Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. RP05-422-000, issued July 29, 2005, 12 FERC ¶ 61,150

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<http://passportebb.elpaso.com/FPB-Tariff/cpnr/sheet.asp?sid=228>

7/24/2006

## Power Purchase Agreement

### EXHIBIT D-3

#### APPLICABLE TARIFF NATURAL GAS QUALITY SPECIFICATIONS

TRANSWESTERN PIPELINE COMPANY, LLC  
FERC Gas Tariff  
Third Revised Volume No 1

Original Sheet No. 99

#### GENERAL TERMS AND CONDITIONS (continued)

#### 2 QUALITY

2.1 The gas stream delivered into Transporter's pipeline system (excluding the La Plata Facilities) by Shipper or Shipper's designee at receipt points shall conform to each of the following quality specifications

A shall be commercially free from objectionable odors, solid matter, dust, gums, and gum forming constituents, or any other substance which interferes with the intended purpose or Merchantability of the gas, or causes interference with the proper and safe operation of the lines, meters, regulators, or other appliances through which it may flow,

B shall contain not more than seven (7) pounds/MMcf of water at the temperature and pressure at which the gas is delivered into Transporter's pipeline system;

C shall contain no hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered into Transporter's pipeline system,

D shall contain not more than 0.2% by volume of oxygen,

E shall contain not more than 2.0% by volume of carbon dioxide,

F shall contain not more than a combined total of 3.0% by volume of carbon dioxide plus nitrogen,

G shall contain not more than one quarter (1/4) grain of hydrogen sulfide per one hundred (100) cubic feet of gas,

H shall contain not more than 0.3 grains of mercaptan sulfur per one hundred (100) cubic feet of gas,

I shall contain not more than 0.75 grains of total sulfur per one hundred (100) cubic feet of gas,

### **Power Purchase Agreement**

J shall not contain any toxic or hazardous substance in concentrations which, in the normal use of the gas, may be hazardous to health, injurious to pipeline facilities, or be a limit to Merchantability or be contrary to applicable government standards,

K shall have a minimum total heating value of not less than nine-hundred-seventy (970) Btu's per cubic foot, and

L shall have a temperature of not less than forty (40) degrees Fahrenheit, and not more than one hundred twenty (120) degrees Fahrenheit

## Power Purchase Agreement

Issued by Robert Kilmer, V P Rates and Certificates

Issued on: October 1, 2004

Effective: November 16, 2004

TRANSWESTERN PIPELINE COMPANY, LLC

Original Sheet No 100

FERC Gas Tariff

Third Revised Volume No 1

### GENERAL TERMS AND CONDITIONS (continued)

2.2 The gas stream delivered, into the La Plata Facilities by Shipper or Shipper's designee at receipt points shall conform to each of the following quality specifications

A shall be commercially free from objectionable odors, solid matter, dust, gums, and gum forming constituents, or any other substance which interferes with the intended purpose or Merchantability of the gas, or causes interference with the proper and safe operation of the lines, meters, regulators, or other appliances through which it may flow;

B shall be free from liquid water and shall not contain more than seven pounds of water in vapor phase per million cubic feet,

C The hydrocarbon dew point of the gas delivered shall not exceed fifteen degrees Fahrenheit at any pressure between 100 psia and 1,000 psia as calculated from the gas composition and shall be free from hydrocarbons in the liquid state. At all times, any and all liquid or liquefiable hydrocarbons, or any other constituent or by-product, recovered from the gas by Transporter, after delivery of gas to Transporter shall be and remain the exclusive property of Transporter,

D shall not contain in excess of two-tenths of one percent by volume of oxygen, and the parties agree to exercise every reasonable effort to keep the gas completely free of oxygen,

E shall contain not more than two percent by volume of carbon dioxide and shall contain not more than three percent by volume of combined non-hydrocarbon gases including, but not limited to, carbon dioxide, nitrogen and oxygen, except as otherwise provided in Section F (see below)

F Accepting Gas Which Fails to Meet Specifications To the extent Transporter can accept gas that does not meet quality specifications without jeopardizing Transporter's ability to meet its obligations to deliver gas to downstream interconnecting pipelines or markets, it will do so on a non-discriminatory basis to all similarly situated Shippers. When such ability is jeopardized by gas not meeting the quality specifications as set forth in Section E, Transporter will implement the following steps in the following order

## Power Purchase Agreement

Issued by Robert Kilmer, V P Rates and Certificates

Issued on October 1, 2004

Effective: November 16, 2004

TRANSWESTERN PIPELINE COMPANY, LLC

Original Sheet No. 101

FERC Gas Tariff

Third Revised Volume No 1

### GENERAL TERMS AND CONDITIONS (continued)

(a) Transporter will identify the receipt point(s) from which gas is flowing that contain more than 2% by volume of carbon dioxide and/or more than 3% by volume of total non-hydrocarbon gases and which are contributing to the gas quality problem

(b) Transporter will then rank these receipt points according to the highest percentage by volume of carbon dioxide and/or non-hydrocarbon gas entering the system (depending on which violation of quality specifications is impacting or may impact Transporter's ability to deliver). Transporter will make reasonable efforts to notify receipt point operators by telephone and via its Electronic Bulletin Board at the earliest time possible as to the action required and the time within which compliance is required, depending on the operational situation existing at the time. Transporter will notify the receipt point operators in the order of the ranking starting with the receipt point with the highest percentage of applicable contaminant until the problem is resolved. The required action may include any alternative that will alleviate the gas quality problem.

(c) Within two business days after resolving a gas quality problem, Transporter will post to its Electronic Bulletin Board a description of the problem, the receipt point, the receipt point operator, the action required, the action taken, and the date and time that the problem was resolved.

G. shall contain not more than one quarter (1/4) grain of hydrogen sulfide per one hundred (100) cubic feet of gas,

H. shall contain not more than 0.3 grains of mercaptan sulfur per one hundred (100) cubic feet of gas,

I. shall contain not more than 0.75 grains of total sulfur per one hundred (100) cubic feet of gas,

J. shall not contain any toxic or hazardous substance in concentrations which, in the normal use of the gas, may be hazardous to health, injurious to pipeline facilities, or be a limit to Merchantability or be contrary to applicable government standards,

K. shall be free from any detectable mercury

## Power Purchase Agreement

Issued by: Robert Kilmer, V.P. Rates and Certificates

Issued on: October 1, 2004

Effective: November 16, 2004

TRANSWESTERN PIPELINE COMPANY, LLC

Original Sheet No. 102

FERC Gas Tariff

Third Revised Volume No. 1

### GENERAL TERMS AND CONDITIONS (continued)

2.23 Transporter may refuse to accept any gas stream from Shipper or Shipper's designee which fails to conform with the gas quality specifications itemized in Paragraphs 2.1 and 2.2 above. Transporter, in its reasonable discretion exercised on a not unduly discriminatory basis, may waive the gas quality specifications for any gas stream delivered into its pipeline system at receipt points, provided that such waiver will not result in a blended gas stream which does not comply with the gas quality specifications listed in Paragraph 2.1 and 2.2 above, or will not prevent delivery of the blended gas stream into a downstream pipeline if the gas quality specifications of said downstream pipeline are less stringent than those listed in Paragraph 2.1 and 2.2 above. Transporter may, but is not obligated to, process or treat the gas stream on its system to assure that the gas stream meets Transporter's gas quality specifications.

Any Shipper on Transporter's system shall have the option of: (i) processing the volumes it owns or (ii) entering into contractual arrangements with third-party plant operators for such processing.

2.34 Except as provided in Paragraph 2.45 below, the gas stream delivered to Shipper or Shipper's designee by Transporter at the delivery points shall conform to each of the gas quality specifications set forth in Paragraphs 2.1 and 2.2 above, or the gas quality specifications enforced by the downstream pipeline into which gas is delivered, whichever is less stringent, subject to the presence of substances in Transporter's pipeline system as of January 1, 1990.

2.45 If the gas stream delivered by Transporter to Shipper or Shipper's designee shall fail at any time to conform to any of the quality specifications set forth above, Shipper will notify Transporter of such deficiency and if Transporter fails to remedy such deficiency promptly, Shipper may, at its option, refuse to accept further delivery pending correction by Transporter.

2.56 If the gas offered for transportation hereunder shall fail at any time to conform to the quality provisions set forth in the Service Agreement between Transporter and Shipper, or if in Transporter



### Power Purchase Agreement

sole judgment such gas may cause harm to its facilities, then Transporter shall notify Shipper of such deficiency and may, at its option, refuse to accept delivery pending correction by Shipper

## Power Purchase Agreement

Issued by Robert Kilmer, V P Rates and Certificates

Issued on October 1, 2004

TRANSWESTERN PIPELINE COMPANY, LLC

FERC Gas Tariff

Third Revised Volume No 1

Effective November 16, 2004

Original Sheet No 103

### GENERAL TERMS AND CONDITIONS (continued)

#### 3 SELLER TO CONFORM TO SPECIFICATIONS

3.1 If the gas offered for delivery by Seller shall fail at any time to conform to any of the quality specifications set forth above, Buyer will notify Seller of such deficiency and if Seller fails to remedy such deficiency promptly, Buyer may, at its option, refuse to accept further delivery pending correction by Seller

3.2 Within the limits of the minimum total heating value specifications herein specified, Seller shall have the right before delivery of the gas to Buyer to remove from the gas delivered hereunder any constituent thereof other than methane and shall have the right to remove such methane as is necessarily removed from gas in the process of removing other constituents

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Issued on October 1, 2004

Effective. November 16, 2004

Power Purchase Agreement

EXHIBIT D-4

TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY SPECIFICATIONS

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GAS FUEL SPECIFICATION  
( for DLN Combustor Application)

Historically, high BTU natural gas has been the primary gaseous fuel burned in gas turbines. Its clean burning characteristic, coupled with ready availability, made it an ideal fuel for such service.

mitsubishi DLN Combustor is designed to suit Natural Gas firing with low NOx emission without water/steam injection. Many kind of natural gas with widely varying chemical content have been successfully used in gas turbines.

However, certain restrictions should be mentioned so that the best application can be made for the user. The most important restrictions are as follows:

Component

In order to maintain a stable combustion, components in natural gas is preferable restricted as follows:

A. Methane

Methane content in the natural gas with subtraction of inert gases is within the range from 85 to 98 mol % preferably.

However, once a gas is defined for a specific application and combustor is tuned, the variations of Methane content in the natural gas with subtraction of inert gases should not exceed +/- 4%.

Methane content affects the location of the combustion flame and the characteristics of combustion may be changed. So it is necessary to adjust the combustion tuning without the range from 85% to 98 mol% with subtraction of inert gases.

B. Inert gases

Inert gas including Nitrogen and Carbon dioxide content in the natural gas is not more than 4 mol % preferably.

Combustion fluctuation tends to occur during the combustion of high content of inert gas. So the combustion ratio of the diffusion type may be increased and tuned in order to combust stably. As the results, NOx emission may be increased.

Beyond the limits specified above, consult Mitsubishi Heavy Industries, LTD.

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#### Heat Content

In order to determine system handling capability, heating value and specific gravity are the characteristics of natural gases which must be considered

They are combined in a convenient term called "GAS INDEX (a GI equivalent to Wobbe Index)"

GI is defined by the ratio of the LHV of the fuel to the square root of specific gravity.

$$\text{GAS INDEX (GI)} = \frac{\text{LHVvol}}{\sqrt{\text{S.G.}}}$$

where  $\text{LHVvol}$  = Actual lower heating value in Btu/Scf (kJ/Nm<sup>3</sup>)

and  $\text{S.G.} = \frac{\text{Density of Gas (Standard Conditions)}}{\text{Density of Air (Standard Conditions)}}$

As an example for standard gas LHVvol = 900 Btu/Scf (95,600 kJ/Nm<sup>3</sup>), S.G. = 0.6 and GI = 1161.9 (45,830)

Most common gases having a GI of 1,200 (47,300) +/- 15% can be handled with standard equipment. However, once a gas is defined for a specific application, the variations from a control point of view should not exceed +/- 2%

GI change rate shall not exceed 4% per minutes

Beyond the limits specified above, the fuel supply system must be reviewed.

#### Pressure

Depending upon unit frame size, minimum ambient temperature, elevation and applied fuels, the approximately required pressure level is 400 to 660 psig (2.8 to 4.6 MPa(g)) at the inlet of GT package. For specific pressure requirements, consult Mitsubishi.

Once the pressure at the terminal point is determined, the following conditions shall be complied in the event of the various gas turbine operation modes specified in Figure 2

- Pressure fluctuation range shall be restricted within +/- 21 psi (0.14 MPa)
- Speed of pressure variation shall not exceed 11 psi (0.08 MPa) per second.
- Peak to peak amplitude of pressure vibration with more than 10Hz frequency shall not exceed 0.14 psi (0.001 MPa) continuously for 2 seconds. This limit may require reciprocating gas compressor with minute pressure vibration

When gas compressor will be installed, centrifugal type or screw type are recommendable

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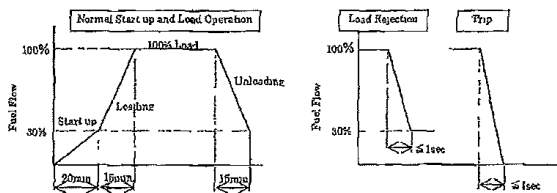


Figure 2 Gas Turbine Operation Modes

**Condensable Liquids in the Gas**

The fuel gas as fed to the nozzles of the combustion system must contain no constituents in the liquid state. This means that the constituent having the highest saturation temperature must have at least 20 degrees F (11 degree C) superheat. Minor traces of heavier liquid hydrocarbons that might be carried over from the source of fuel supply should be excluded from the fuel system. This carryover of liquid can usually be prevented by traps and heaters in the fuel supply line.

Minimum fuel gas supply temperature is recommended higher than 41 degrees F (5 degree C) to prevent icing of fuel gas piping and equipments.

It is the customer's responsibility to insure that no liquid hydrocarbons are present in the gas as it is delivered to the combustion turbine. Liquid carry-over can be detrimental to engine parts life. Liquids can be removed by KNOCK OUT SCRUBBERS followed by SEPARATORS & HEATERS. Where long runs of pipes exist between the gas conditioning equipment and the physical arrangement can allow pockets of liquid to collect, a "LAST CHANCE" SEPARATOR near the combustion turbine is also recommended. Proper liquid level alarm and shutdown protection are also recommended.

**Solid Particle in the Gas**

Solid Particle should be limited to prevent erosion, deposition, plugging of fuel gas nozzle. Solid Particle in the fuel gas as fed to the nozzles of the combustion system shall be limited to 30ppmw maximum up to size of 5microns ( $\mu m$ ) and the size of all solid particle shall not exceed 5microns ( $\mu m$ ).

For this requirement, typically, 99.5wt% of all particles and 100% of all particles larger than 5 microns shall be removed by the filters supplied by the Owner before delivery to the gas turbine.

It is important that total particle content of fuel gas should be summed and satisfy the limits specified. Solid particle are typically composed of sand, rust, tar, iron and silica ( $SiO_2$ ), etc.

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If the content of the total particle into the gas turbine beyond the above limit, consult Mitsubishi Heavy Industries, Ltd

Total Particle (Maximum)	30ppmwt (on fuel wt basis)
Maximum Particle Size	5 microns ( $\mu m$ )

**Nitrogen (FBN) Content**

Nitrogen content (fuel bound nitrogen FBN) causes to increase NOx formation in addition to the standard (thermal) NOx formed by the reaction between oxygen and nitrogen in the flame zone. Therefore, the guaranteed NOx level is increased in case that there is FBN content in fuel gas. FBN content in fuel gas is none preferably.

**Oil Mist and Vapor Content**

Total amount of oil mist and vapor in the fuel gas shall not exceed 0.5 ppmwt to prevent fuel nozzle clogging and unstable firing. This limit usually requires reciprocating gas compressor and screw type gas compressor.

**Sulfur Content**

For peaking applications sulfur in the form of hydrogen sulfide (H<sub>2</sub>S) is limited to 5% (mole percent) max. This is done to limit the detrimental effects of H<sub>2</sub>S to the fuel system. H<sub>2</sub>S levels in excess of 5% (mole) can be tolerated with special fuel system components. In heat recovery applications, the total sulfur in the fuel (from H<sub>2</sub>S plus other sulfur compounds) is recommended to limit 0.5% (mole) due to the low temperature corrosion on HRSG and if the sulfur is contained, MITSUBISHI should be consulted.

**Trace Metals**

Total trace elements in fuel, water and inlet air flow shall not exceed MITSUBISHI fuel specification requirements.

Specifically, the combined total quantity of elements in fuel, water and air must not exceed the following on a fuel weight basis.

<u>Trace Metals</u>	<u>Per Million Parts of Fuel by Weight</u>	<u>Notes</u>
Sodium & Potassium	0.5 ppm	Consult MITSUBISHI for 0.5 ppm
Vanadium	0.5 ppm	
Lead	2.0 ppm	
Calcium	10 ppm	
Other trace metals	2.0 ppm	

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Inlet Air Contaminants

The compressor inlet air can greatly increase the level of impurities entering the hot gas path. To determine the extent of contamination, the air to fuel mass flow ratio is multiplied by the air contaminant level in ppm(wt.) to obtain the contaminant concentration on an assumed liquid fuel equivalent basis. For example 10ppb of Na in the inlet air is equivalent to approximately 0.5ppm sodium in the fuel on a weight basis.

Water-Borne Contaminants

Water employed for emissions control (e.g. water injection) and/or compressor cleaning can also increase the level of impurities entering the hot gas path. Calculation of waterborne contaminants on a liquid fuel equivalent basis is accomplished in the same manner as illustrated for air borne contaminants. In general, water injection quality standards for MITSUBISHI gas turbines are stated as follows. If levels of impurities exceed these limits, MITSUBISHI should be consulted with regard to water purification systems.

1) Reactive Dissolved Solids

Silicon	18 ppm
Chlorides	6 ppm
Iron & Copper	0.1 ppm
Oxygen (as determined by O <sub>2</sub> saturated water)	2 to 9 ppm
pH	7.5 to 8.0

Note) Demineralized water is required.

2) Total Dissolved Solids

Other solids not detected and present on the analysis above are assumed to turn to oxides in the combustion process and results in added emissions in the exhaust stack. The quantity of dissolved solids is considered to be doubled due to oxidation in the combustion process and are exhausted as particulate. The quantity of solids in water and fuel is thus limited by local regulations.

Approximate Total Dissolved Solids	90 ppm
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Fuel, Air and Water Evaluation

Prior to burning gaseous fuels in MITSUBISHI gas turbines, it is recommended that the customers submit gas fuel analysis to MITSUBISHI for review and recommendation. The fuel, air and water analysis should cover all requirements as specified in this specification. Where analytical services are not available to the customer, services can be purchased from MITSUBISHI.

The following will be reported:

- A. Water Analysis - See Appendix I
- B. Fuel Analysis - See Appendix II
- C. Air Analysis - See Appendix III

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APPENDIX I

WATER ANALYSIS

<u>Contaminants</u>	<u>ppt.wt.</u>
Sodium	_____
Potassium	_____
Vanadium	_____
Calcium	_____
Lead	_____
Other Metals (over 2ppm wt.)	_____
<u>Reactive Dissolved Solids</u>	
Silicon	_____
Chlorides	_____
Iron & Copper	_____
Oxygen	_____
(as determined by O <sub>2</sub> saturated water)	
<u>Total Dissolved Solids</u>	
Dissolved Solids	_____

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APPENDIX II

GAS FUEL ANALYSIS

<u>I Chemical Analysis</u>		As per ASTM D-1137 or ASTM D-1945
Component		Mole fraction of mole percent
Hydrogen	H <sub>2</sub>	_____
Helium	He	_____
Nitrogen	N <sub>2</sub>	_____
Carbondioxide	CO <sub>2</sub>	_____
Methane	CH <sub>4</sub>	_____
Ethane	C <sub>2</sub> H <sub>6</sub>	_____
Propane	C <sub>3</sub> H <sub>8</sub>	_____
Butane	C <sub>4</sub> H <sub>10</sub>	_____
Pentane	C <sub>5</sub> H <sub>12</sub>	_____
Carbon Monoxide	CO	_____
Water Vapor	H <sub>2</sub> O (per ASTM D-1142)	_____
Total Sulfur		_____
Other		_____
Molecular Weight		_____
<u>II Heating Value</u>		
Gross Heating Value	kJ/Nm <sup>3</sup>	_____
Lower Heating Value	kJ/Nm <sup>3</sup>	_____
Gross Heating Value	kJ/kg	_____
Lower Heating Value	kJ/kg	_____

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<u>III Contaminants</u>			Mole Fraction
Hydrogen Sulfide	H <sub>2</sub> S		_____
Ammonia	NH <sub>3</sub>		_____
Carbonyl Sulfide	COS		_____
Condensable Liquids			_____
Solids			_____
Amount			_____
Particle Size Range			_____
Alkali			_____
Other			_____
<u>IV Operating Conditions</u>			
Pressure Range	Max.	MPa(g)	_____
	Mn	MPa(g)	_____
Temperature	Max	°C	_____
	Mn	°C	_____
<u>V Physical Properties</u>			
Specific Gravity		@ 15°C	_____
Critical Pressure		MPa(g)	_____
Critical Temperature		°C	_____
Dew Point		°C	_____

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APPENDIX III

COMPRESSOR INLET AIR ANALYSIS

<u>Contaminants</u>	<u>ppm wt</u>
Sodium	_____
Potassium	_____
Vanadium	_____
Calcium	_____
Lead	_____
Other Metals (over 2ppm wt)	_____

## Power Purchase Agreement

### EXHIBIT E

#### SEASONAL CAPACITY TEST REQUIREMENTS FOR SMALL POWER PRODUCERS AND COGENERATORS

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##### General Information for Testing:

For SPS's planning, operating and reporting purposes, the Seasonal Capacity Test (Test) is the testing procedure to determine the seasonal net dependable capacity of the Facility which can be expected during SPS's summer and winter peak load periods after supplying power to all of the Facility's auxiliary equipment. The Seasonal Capacity Test will be determined and reported as the lowest sustained, seasonally adjusted net kWh for any one clock hour of the four clock hour Test period. At SPS's sole determination, the adjustments required to determine and perform the Test may include such applicable adjustments for ambient air temperature, condensing water availability and temperature, fuels, steam heating loads, thermal host energy usage, reservoir levels, elevations and scheduled reservoir releases and water flow conditions. The Facility shall be operated in full compliance with all state and federal environmental regulations during the Test. If the Facility fails to operate during the Test in accordance with any requirements of the Test, SPS will require a retest of the Facility.

The Test shall be performed at least once every three (3) years for the summer (June 1 to September 30) and winter (December 1 to March 31) seasons to demonstrate and verify that the Test is representative of what can be generated during SPS's summer and winter peak load periods. SPS shall conduct the Test on a date mutually agreed upon by SPS and Seller. If the seasonal net dependable capacity determined by the Test is not representative of the actual capacity output of Seller's Facility at the time of SPS's seasonal peak capacity requirements, then SPS will require a subsequent Test at Seller's expense. SPS shall conduct the Test as outlined below and may install Test equipment, obtain necessary Test readings, and specify equipment operation mode to insure Test conditions are met as outlined in this Exhibit. If, at any time, the actual capacity of the Facility does not equal the seasonal net dependable capacity as determined by the most recent Test, SPS may, in its sole discretion, require a subsequent Test at Seller's expense. Such Test will be conducted on a date solely determined by SPS. The expenses for which Seller shall be obligated to reimburse SPS in connection with a subsequent Test required by SPS pursuant to the provisions of this Exhibit may include the fuel, fuel transportation, labor, labor transportation, analysis, reporting, and equipment usage expenses incurred by SPS in connection with such subsequent Test.

During the Test all auxiliary equipment needed for normal operation of the Facility shall be in service and shall be in typical operating condition and in a normal state of maintenance. This includes equipment associated with any process or thermal host connected to the Facility. It shall be Seller's obligation to ensure that all auxiliary equipment needed for normal operation of the Facility is in typical operating condition for the scheduled Test. Extended, peak firing or emergency capability shall be excluded during the Test and all equipment which is not intended to be used on a normal daily basis which could be used to extend capability shall be excluded.

## Power Purchase Agreement

### EXHIBIT E SEASONAL CAPACITY TEST REQUIREMENTS FOR SMALL POWER PRODUCERS AND COGENERATORS

Page 2 of 4

during the Test period. Seller shall be required to provide operational records to be used to substantiate the normal mode of operation

During the Test the Facility's power output shall be maintained at a near constant level. If the Facility is unable to maintain a near constant power output level during the scheduled Test period, SPS may, in its sole discretion, require a subsequent Test at Seller's expense. Unless found to be inaccurate, the Electric Metering Device(s) will be utilized to measure the Facility's net power output during the Test period. During the Test and its preparation, Seller shall give SPS personnel access to the Facility's equipment and instrumentation for observation and recording of process operating parameters and conditions.

For each Test, Seller shall submit for SPS's review a description of the Facility. Such Facility description shall include:

- a. A description of the cogeneration system, whether a topping or bottoming cycle.
- b. Cycle diagram indicating the power generation and any connected process including mass flow rates, pressures, temperatures and enthalpies of the various process flow paths and heat rates
- c. Annual natural gas and oil energy input. Use lower heating value for gas and oil. Separately identify any gas or oil used for supplementary firing.
- d. Annual useful energy output (Net electrical output and net mechanical output, if applicable).
- e. All relevant generation and process correction data and application methodology, including exhaust temperatures and steam or water injection for various ambient temperature conditions, and various thermal heating loads.
- f. Cooling tower performance curves
- g. Annual useful thermal energy output (topping cycles). List annual usage showing daily and hourly maximum and average usages per month for each season for processing and heating/cooling usage
- h. Description of how the useful thermal output is applied
- i. Computations for the operating and efficiency standard
- j. The technical support information included in the Facility's state emission permit(s)

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## Power Purchase Agreement

### EXHIBIT E SEASONAL CAPACITY TEST REQUIREMENTS FOR SMALL POWER PRODUCERS AND COGENERATORS

Page 3 of 4

k. Reservoir storage, elevations and water flow data.

l Any modifications to the Facility that could impact the Facility's capacity output since the last Test

For the initial Test, this information shall be submitted to SPS no later than ninety (90) Days prior to the Commercial Operation Date. For the initial Test, the Facility's generation and process correction values will be calculated based on design or test information, in lieu of historic operational data.

For subsequent Tests, Seller shall provide to SPS historic seasonal operational data from Facility's operation. Such data shall include thermal energy supplied to and utilized by industrial or commercial processing loads, and heating and/or cooling processing loads. Prior to the Test, SPS shall provide Seller with a comprehensive list of the historic seasonal operational data required.

#### Turbo-Generator Units Tests

The Test period for steam turbo-generating units will be not less than one (1) hour unless the generating unit is greater than one hundred (100) megawatts of net capability then the Test period is two (2) hours.

The Test as affected by the turbine exhaust pressure shall be seasonally adjusted to values representative of cooling water conditions at SPS's corresponding seasonal maximum system load period. This adjustment may be based on historic cooling water temperature measurements, Test data and/or design information.

Steam conditions will correspond to the operating standards established by the turbine manufacturer for the Facility. The steam generator will be operated with the regularly available type and quality of fuel.

#### Combustion Turbine and Internal Combustion Unit Tests

The Test period for combustion turbine and internal combustion units will be not less than one (1) continuous.

For the summer season, ambient temperature and relative humidity conditions at the Facility during the Test shall be corrected to 95°F and twenty percent (20%) relative humidity. For the winter season, ambient temperature and relative humidity conditions at the Facility during the Test shall be corrected to 30°F and sixty percent (60%) relative humidity.



## Power Purchase Agreement

### EXHIBIT E

#### SEASONAL CAPACITY TEST REQUIREMENTS FOR SMALL POWER PRODUCERS AND COGENERATORS

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Also, for both summer and winter season Tests, ambient pressure at the Facility during the Test shall be corrected to standard ambient pressure (14.696 psia at mean sea level) adjusted to the Site elevation above mean sea level. The above referenced ambient temperature, relative humidity and pressure corrections are to be applied to the as-tested capacity to determine the expected seasonal net capacity.

The ambient air temperature measurement for the Test will represent surrounding ambient air temperature and not ambient air temperature which is heated or cooled by nearby equipment. For the purpose of the Test, having all compressor intake air conditioning equipment (i.e., evaporative coolers, humidifiers, heaters, etc.) out of service, shall be considered as the normal mode of operations. Air conditioning equipment may be used during the Test only to the extent that Seller can prove, with historical records, that said equipment is normally in service. The performance of intake air conditioning equipment shall be adjusted to historic ambient air conditions. Combustion turbine exhaust temperatures will not exceed normal operating standards established by the turbine manufacturer. Steam or water injection rates for emission control shall not exceed the levels specified in the technical support information in the application for the Facility emission permit(s).

#### Hydro-Electric Unit Tests.

The Test period for hydroelectric units, including pumped-hydro units, will be not less than four (4) continuous hours for the winter and summer seasons.

For the summer season, the Test for hydroelectric plants will be corrected to the historic five year average of data for the months of June, July, August and September. The data will include reservoir elevations and releases and water flow conditions. For the winter season, the Test for hydroelectric plants will be corrected to the historic five-year average of data for the months of December, January, February and March. The data will include reservoir elevations and releases and water flow conditions.

#### Wind Machines.

The Test for wind machines shall be based on Section 12.1.5.3 of the SPP Criteria.

#### Solar Unit Tests:

The Test for solar installations may, at SPS's option, be established from manufacturers' data and seasonal site information for solar availability during SPS's peak load periods.

**EXHIBIT F**  
**NOTICE ADDRESSES**

Page 1 of 1

SPS	Seller
<p><b>Notices:</b>  Paul J Bonava  President and CEO Utilities Group  Xcel Energy  800 Nicollet Mall Street, Suite 3000  Minneapolis, MN 55402</p> <p>Karen T Hyde  Managing Director, Resource Planning and  Acquisition  Xcel Energy Services, Inc  1099 18<sup>th</sup> Street, Suite 3000  Denver, CO 80202  Phone (303) 308-6113  Fax (303) 308-6141</p>	<p><b>Notices:</b>  Christine M Miller  Associate General Counsel  ArcLight Capital Partners, LLC  200 Clarendon Street, 55th Floor  Boston, MA 02117  Tel 617 531 6338  Fax 617 867 4698  cmiller@arclightcapital.com</p>
<p><b>Operating Committee Representative:</b>  Jeffrey C Klein  Manager, Structured Purchases  Southwestern Public Service Company  1099 18<sup>th</sup> Street, Suite 3000  Denver, CO 80202  Phone (303) 308-2732  Fax (303) 308-6141</p> <p><b>Alternate:</b>  Price Hatcher  Structured Purchase Consultant  Xcel Commercial Enterprises  1099 18th St Suite 3000  Denver, CO 80202  Phone (303) 308-6111  Fax (303) 308-6141</p>	<p><b>Operating Committee Representative:</b>  Carter A Ward  Managing Director  ArcLight Capital Partners, LLC  200 Clarendon Street, 55th Floor  Boston, MA 02117  Tel 617 531 6307  Fax 617 867 4698  cward@arclightcapital.com</p> <p><b>Alternate:</b></p>

**Power Purchase Agreement**

**EXHIBIT G  
INSURANCE COVERAGE**

Page 1 of 2

**SPECIFICATION OF INSURANCE COVERAGE**

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

SPS shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by (or on behalf of) Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of SPS shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by SPS shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$1,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
-------------------------------	--

Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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**Power Purchase Agreement**

**EXHIBIT G  
INSURANCE COVERAGE**

Page 2 of 2

Type of Insurance	Minimum Limits of Coverage
Employers Liability	\$1,000,000 each accident for bodily injury by accident, or \$1,000,000 each employee for bodily injury by disease

Builder's Risk	Replacement value of the Facility
----------------	-----------------------------------

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy

Environmental Impairment Liability	\$5,000,000 each occurrence.
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All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller
--	---

All-Risk Property insurance shall include (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake, and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of twelve (12) calendar months
---------------------------------	---

Business Interruption insurance shall cover loss of revenues and/or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms as determined by SPS, subject to a reasonable deductible which shall be the responsibility of Seller. Notwithstanding any other provision of this Agreement, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date

**Power Purchase Agreement**

**EXHIBIT H  
PREDICTED NET HEAT RATE DEGRADATION ADJUSTMENT**

**Form K - Heat Rate Degradation**

For proposals involving a tolling or other fuel indexed-based arrangement, this form requests the predicted percentage degradation in the facility's heat rate performance at ambient reference conditions, as defined in the Model Power Purchase Agreement (ambient temperature of 95 degrees Fahrenheit (F), 20% ambient relative humidity, and standard ambient pressure of 14.696 psia at mean sea level, adjusted to the site elevation above mean sea level.)

On-Line Operating Hours (Indicate hourly ranges, such as 0-1000, 1000-3000, etc.)	Percent Degradation	Predicted Net Heat Rate (Btu/kWh) HHV with supplemental firing
0 - 1,000	0.00%	7,583
1,000 - 8,000	1.50%	7,697
8,000 - 16,000	2.00%	7,735
16,000 - 24,000	2.50%	7,773
HGP MM		
24,000 - 32,000	1.50%	7,697
32,000 - 40,000	2.00%	7,735
40,000 - 48,000	2.50%	7,773
HGP MM		

Note. Proposal should indicate if predicted heat rates are tied to maintenance, and if so, provide relevant details. If flat heat rates are provided, the proposal should indicate that the bidder does not want the guaranteed heat rate to change over the term of the Purchase Power Agreement.

**Additional Notes**

*Pattern will repeat itself in a similar manner and is the same at 100%*

*base or as shown 100% base plus supplemental*

**Power Purchase Agreement**

**EXHIBIT I**

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,  
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

**Lea Power Partners, LLC  
Hobbs Generation Station  
Schedule of Permits**

This list includes all known permits required for a natural gas-fired power generation station located in New Mexico as of this writing.

<b>Permit</b>	<b>Agency</b>	<b>Notes</b>
Approval to construct a power plant	NMPRC	Prior to commencing construction of any generation facility > 300 MW
Water appropriation application	NMSE-WRD	Prior to withdrawal of ground water
PSD construction air permit	NMED-AQB	Prior to construction of a new source of air emissions exceeding 100 tpy
Title V air emissions operations permit	NMED-AQB	Must be submitted 180 days prior to commencement of operations
Phase II Title V acid rain permit	NMED-AQB	Prior to operations
State ground water discharge permit	NMED-GWBQ	Prior to construction of ZLD system
NPDES	EPA Region 6	Not required since Zero Liquid Discharge

**Power Purchase Agreement**

Permit	Agency	Notes
Underwater injection control permit	NMED-GWQB	Not applicable since ZLD system is evaporation
NPDES general permit for storm water discharge from construction sites	EPA Region 6 NMED-SWQB	Prior to construction
NPDES storm water permit associated with industrial activity	EPA Region 6 NMED-SWQB	Prior to construction
Section 404 dredge and fill / Section 10	USACE NMED-SWQB	Impact of construction on wetlands – (none expected at prime site)
Endangered/threatened species review	USFWS NMGF	Required for any USACE permit
Section 401 water quality certification	SWQB	Not expected to be required since no dredge and fill
Hazardous waste generator registration	US EPA NMED-SWB	Conditionally exempt small quantity generator if less than 220 lbs per month
Solid waste disposal permit	NMED-SWB	Not required for a gas project
Review and approval under National Historic Protection Act	SHPO	Required for any federal permit, i.e. Title V
Stack height and markings approval	FAA	Construction of power plant stack and construction cranes
Fuel Use Act self certification	DOE	Construction of a fossil fired power facility

**Power Purchase Agreement**

<b>Permit</b>	<b>Agency</b>	<b>Notes</b>
Federal Land Policy Act	BLM	Not applicable – not on federal lands
Exempt Wholesale Generator determination	FERC	Non-utility generator exemption from Federal Power Act
County zoning approvals	Lea County	None required







*Document # 185796*

**AMENDMENT NO. 1  
TO POWER PURCHASE AGREEMENT**

This Amendment No. 1 to Power Purchase Agreement (this "Amendment" is entered into as of ~~4<sup>th</sup>~~ day of April, 2007, by and between Lea Power Partners, LLC, A Delaware limited liability company ("Seller") with a principal place of business at Colorado Energy Management, LLC, 2575 Park Lane, Suite 200, Lafayette, CO 80026, and Southwestern Public Service Company ("SPS"), a New Mexico corporation with managing offices in Denver, Colorado. Seller and SPS are hereinafter referred to individually as a "Party" and collectively as the "Parties".

**WITNESSETH**

**WHEREAS**, Seller and SPS are parties to that certain Power Purchase Agreement, dated as of October 20, 2006 (the "PPA"); and

**WHEREAS**, the Parties desire to amend the PPA to revise the language in the PPA to address Payment for Facility Starts.

**NOW THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, SPS and Seller hereby agree as follows:

- 1 Capitalized terms used but not defined herein shall have the meanings set forth in the PPA
- 2 Section 8.6 of the PPA is replaced in its entirety with the following:

**8.6 Payment for Facility Starts** Commencing on the Commercial Operation Date, (A) SPS shall pay Seller a Monthly Facility Start Payment or (B) if the Monthly Facility Start Payment is a negative number, Seller shall credit SPS a Monthly Facility Start Payment. The Monthly Facility Start Payment shall be based on the following formula:

Monthly Facility Start Payment = (N1 - N2) x TSP, where

N1 = Number of Successful Facility Starts during the billing month,

N2 = Number of Unsuccessful Facility Starts during the billing month, and,

TSP = Start Price, which shall be the amounts, in dollars per Facility start set out in Table 8.6.

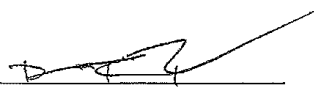
Table 8 6

Period	Contract Year	\$ Per Facility Start	
		<=200 Starts Per Contract Year	>200 Starts Per Contract Year
1	6/1/2008 - 4/30/2009	\$ 4,000	\$ 15,000
2	5/1/2009 - 4/30/2010	4,000	15,000
3	5/1/2010 - 4/30/2011	4,080	15,300
4	5/1/2011 - 4/30/2012	4,160	15,600
5	5/1/2012 - 4/30/2013	4,240	15,900
6	5/1/2013 - 4/30/2014	4,330	16,230
7	5/1/2014 - 4/30/2015	4,400	16,500
8	5/1/2015 - 4/30/2016	4,500	16,875
9	5/1/2016 - 4/30/2017	4,590	17,200
10	5/1/2017 - 4/30/2018	4,680	17,530
11	5/1/2018 - 4/30/2019	4,780	17,900
12	5/1/2019 - 4/30/2020	4,870	18,240
13	5/1/2020 - 4/30/2021	4,970	18,600
14	5/1/2021 - 4/30/2022	5,070	19,000
15	5/1/2022 - 4/30/2023	5,170	19,400
16	5/1/2023 - 4/30/2024	5,280	19,800
17	5/1/2024 - 4/30/2025	5,380	20,175
18	5/1/2025 - 4/30/2026	5,490	20,600
19	5/1/2026 - 4/30/2027	5,600	21,000
20	5/1/2027 - 4/30/2028	5,710	21,400
21	5/1/2028 - 4/30/2029	5,830	21,850
22	5/1/2029 - 4/30/2030	5,940	22,260
23	5/1/2030 - 4/30/2031	6,060	22,700
24	5/1/2031 - 4/30/2032	6,180	23,150
25	5/1/2032 - 4/30/2033	6,300	23,600

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the day and year first above written

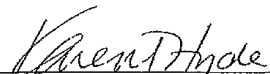
**Seller:**

Lea Power Partners, LLC

  
\_\_\_\_\_  
Daniel R. Revers  
President

**SPS:**

Southwestern Public Service Company

  
\_\_\_\_\_  
Karen T. Hyde, Managing Director,  
Resource Planning and Acquisition  
Xcel Energy Services Inc *as agent for*  
*Southwestern Public Service Company*

Document #  
185796

**AMENDMENT NO. 2  
TO POWER PURCHASE AGREEMENT**

This Amendment No 2 to Power Purchase Agreement By And Between Lea Power Partners, LLC And Southwestern Public Service Company is entered into as of this 1<sup>st</sup> day of May, 2007, by and between Lea Power Partners, LLC, A Delaware limited liability company ("Seller") with a principal place of business at c/o ArcLight Capital Partners, LLC, 200 Clarendon Street, 55<sup>th</sup> Floor, Boston, MA 02117, and Southwestern Public Service Company ("SPS"), a New Mexico corporation with managing offices in Denver, Colorado. Seller and SPS are hereinafter referred to individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, Seller and SPS are Parties to that certain Power Purchase Agreement, dated as of October 20, 2006, the "PPA"), and

**WHEREAS**, the Parties entered into Amendment No 1 dated April 4, 2007 to correct Section 8.6, Payment for Facility Starts, and

**WHEREAS**, when the Parties entered into the PPA, the PPA inadvertently included incorrect or missing PPA pages and/or exhibits. The Parties desire to revise or add certain PPA pages and/or exhibits to the PPA including Exhibit C, Facility Description and Site Maps, Exhibit D-4, Turbine Manufacturer's Natural Gas Fuel Quality Specifications and Exhibit F, Notice Addresses.

**NOW THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, SPS and Seller hereby agree as follows.

1 Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.

2. At execution, the PPA contained Exhibit C that had been included in Seller's proposal. This version, which was incorrectly included in the PPA, stated that the Generation Technology consisted of two GE Frame 7FA natural gas only combustion turbines with inlet chillers and a GE11 reheat steam turbine. However, during the negotiation process prior to execution, the Generation Technology was changed by Seller in a revised Exhibit C to read "2 – MH 501F combustion turbine with chillers" and "1-GE D11 –reheat steam turbine." In addition, the natural gas and electric points of interconnection were subsequently added to the Plot Plan drawing that followed the description of the plant (Page 2 of Exhibit C). The original Exhibit C is hereby replaced in its entirety with the attached revised Exhibit C that incorporates these specific changes.

3. At execution of the PPA, the PPA did not contain Exhibit D-4, Turbine Manufacturer's Natural Gas Fuel Quality Specifications, as Seller had not received it from Mitsubishi Heavy Industries, LTD. Exhibit D-4 is hereby added to the PPA.

4. At execution of the PPA, Exhibit F, Notice Addresses, did not contain Seller's contact and notice information. The original Exhibit F is hereby replaced in its entirety with the attached Exhibit F which incorporates Seller's contact and notice information.

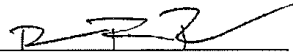
5. Except as changed hereby, all other terms and conditions remain unchanged and the PPA remains in full force and effect.

*[Remainder of page left blank]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the day and year first above written.

**Seller:**


Lea Power Partners, LLC



Daniel R Revers  
President

**SPS:**

Southwestern Public Service Company



Karen T. Hyde, Managing Director,  
Resource Planning and Acquisition  
Xcel Energy Services Inc as Agent for  
Southwestern Public Service Company



EXHIBIT C  
FACILITY DESCRIPTION AND SITE MAPS

EXHIBIT C PAGE 4

1. Project / Facility Name: Hobbs Generating Station

2. Generation Technology:  
Describe the number and type of proposed generator units:  
2 - MHI 501P combustion turbine with chillers  
1 - GE D11+ reheat steam turbine  
Configuration of generation equipment, i.e. CTs, HRSGs, steam turbines, etc  
2x2x1 with the ability to run 1x1 if needed  
W AIR COOLED CONDENSER, ZERO LIQUID DISCHARGE, INLET CHILLERS AND CHILLED  
WATER STORAGE, GAS FUEL ONLY  
HRSG'S are Direct Fired to approx 300MMBTU/HR and equipped with SCR and CO  
catalysts manufactured by AALBORG IND  
Generation equipment model numbers, vendors, manufacturers, etc  
LATER

3. Expected Annual Forced Outage Rate (%): 2%  
(This rate should include only forced outages and unplanned maintenance, not planned maintenance)

4. Expected Average Annual Maintenance Requirements (days/year): 24

5. Is proposed plant AGC controllable? Yes  No

5.a Low AGC Point (lowest output that can be achieved while the unit is on AGC)  
Summer 274 Winter 362

5. b High AGC Point (highest output that can be achieved while the unit is on AGC)  
Summer 628 Winter 604

6. Minimum on-line time 0  
(minimum time between the generator breaker closing and re-opening)

7. Minimum downtime 0  
(minimum time the generator needs to be off-line prior to restarting)

8. Start time - (unit has been off-line for six hours) 90 Minutes  
(the time it takes for the unit to start, close breaker and reach minimum load)

9. Start time - (unit has been off-line for eight hours) 120 Minutes  
(the time it takes for the unit to start, close breaker and reach minimum load)

10. Start time - unit has been off-line for 12 hours) 180 Minutes  
(the time it takes for the unit to start, close breaker and reach minimum load)

11. Start time - unit has been off-line for 3 days) 180 Minutes

12. Lowest operating point Summer 120 MW Winter 135 MW 1X1 CONFIGURATION  
(lowest point where the unit can maintain stability)

13. High operating limit Summer 628 MW Winter 604 MW  
(highest MW output the unit can maintain stability)

14. AGC Ramp Rate 20 MW/Minute W/O BURNERS..8MWS/MIN W BURNERS  
(rate at which the unit responds to frequency changes while on control (MW/minute))

15. Normal Ramp Rate 25 MW/Minute W/O BURNERS..10MWS/MIN W BURNERS  
(rate at which the unit can increase output while on manual control (MW/minute))

16. Emergency Ramp Rate SAME  
(rate at which the unit can increase output only for emergency situations MW/minute)

17. Ten-minute Start Capability Yes  No

If yes, achievable unit loading 10 minutes after synchronizing to system \_\_\_\_\_

**EXHIBIT C  
 FACILITY DESCRIPTION AND SITE MAPS**

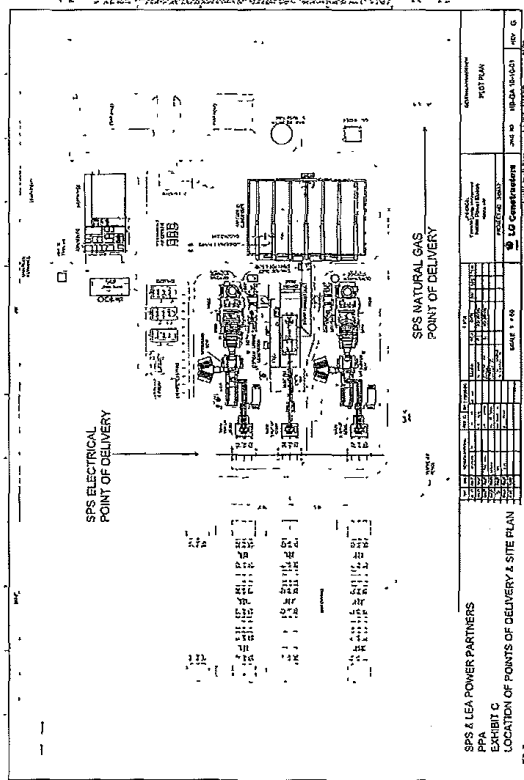


EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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GAS FUEL SPECIFICATION  
( for DLN Combustor Application)

Historically, high BTU natural gas has been the primary gaseous fuel burned in gas turbines. Its clean burning characteristic, coupled with ready availability, made it an ideal fuel for such service.

MITSUBISHI DLN Combustor is designed to suit Natural Gas firing with low NOx emission without water/steam injection. Many kind of natural gas with widely varying chemical content have been successfully used in gas turbines.

However, certain restrictions should be mentioned so that the best application can be made for the user. The most important restrictions are as follows:

Component

In order to maintain a stable combustion, components in natural gas is preferable restricted as follows:

A. Methane

Methane content in the natural gas with subtraction of inert gases is within the range from 85 to 98 mol. % preferably.

However, once a gas is defined for a specific application and combustor is tuned, the variations of Methane content in the natural gas with subtraction of inert gases should not exceed +/- 4%.

Methane content affects the location of the combustion flame and the characteristics of combustion may be changed. So it is necessary to adjust the combustion tuning without the range from 85% to 98 mol% with subtraction of inert gases.

B. Inert gases

Inert gas including Nitrogen and Carbon dioxide content in the natural gas is not more than 4 mol % preferably.

Combustion fluctuation tends to occur during the combustion of high content of inert gas. So the combustion ratio of the diffusion type may be increased and tuned in order to combust stably. As the results, NOx emission may be increased.

Beyond the limits specified above, consult Mitsubishi Heavy Industries, LTD.

EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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Heat Content

In order to determine system handling capability, heating value and specific gravity are the characteristics of natural gases which must be considered.

They are combined in a convenient term called "GAS INDEX (i.e. GI equivalent to Wobbe Index)"

GI is defined by the ratio of the LHV of the fuel to the square root of specific gravity

$$\text{GAS INDEX (GI)} = \frac{\text{LHV}_{\text{vol}}}{\sqrt{\text{S.G.}}}$$

where :  $\text{LHV}_{\text{vol}}$  = Actual lower heating value in Btu/Scf (kJ/Nm<sup>3</sup>)

and  $\text{S.G.} = \frac{\text{Density of Gas (Standard Conditions)}}{\text{Density of Air (Standard Conditions)}}$

As an example for standard gas  $\text{LHV}_{\text{vol}} = 900 \text{ Btu/Scf} (35,500 \text{ kJ/Nm}^3)$ ,  $\text{S.G.} = 0.6$  and  $\text{GI} = 1161.8 (45,830)$

Most common gases having a GI of 1,200(47,300) +/- 15% can be handled with standard equipment. However, once a gas is defined for a specific application, the variations from a control point of view should not exceed +/- 2%

GI change rate shall not exceed 4% per minutes

Beyond the limits specified above, the fuel supply system must be reviewed

Pressure

Depending upon unit frame size, minimum ambient temperature, elevation and applied fuels, the approximately required pressure level is 400 to 660 psig(2.8 to 4.6MPa(g)) at the inlet of GT package. For specific pressure requirements, consult Mitsubishi.

Once the pressure at the terminal point is determined, the following conditions shall be complied in the event of the various gas turbine operation modes specified in Figure 2

- Pressure fluctuation range shall be restricted within +/-21 psi(0.14MPa)
- Speed of pressure variation shall not exceed 11 psi(0.08MPa) per second
- Peak to peak amplitude of pressure vibration with more than 10Hz frequency shall not exceed 0.14 psi(0.001MPa) continuously for 2 seconds. This limit may require reciprocating gas compressor with minute pressure vibration

When gas compressor will be installed, centrifugal type or screw type are recommendable

EXHIBIT D-4  
 TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
 SPECIFICATIONS

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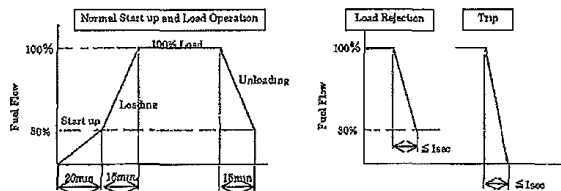


Figure 2 Gas Turbine Operation Modes

Condensable Liquids in the Gas

The fuel gas as fed to the nozzles of the combustion system must contain no constituents in the liquid state. This means that the constituent having the highest saturation temperature must have at least 20 degrees F(11 degree C) superheat. Minor traces of heavier liquid hydrocarbons that might be carried over from the source of fuel supply should be excluded from the fuel system. This carryover of liquid can usually be prevented by traps and heaters in the fuel supply line.

Minimum fuel gas supply temperature is recommended higher than 41 degrees F(5 degree C) to prevent icing of fuel gas piping and equipments.

It is the customer's responsibility to insure that no liquid hydrocarbons are present in the gas as it is delivered to the combustion turbine. Liquid carry-over can be detrimental to engine parts life. Liquids can be removed by KNOCK OUT SCRUBBERS followed by SEPARATORS & HEATERS. Where long runs of pipes exist between the gas conditioning equipment and the physical arrangement can allow pockets of liquid to collect, a "LAST CHANCE" SEPARATOR near the combustion turbine is also recommended. Proper liquid level alarm and shutdown protection are also recommended.

Solid Particle in the Gas

Solid Particle should be limited to prevent erosion, deposition, plugging of fuel gas nozzle. Solid Particle in the fuel gas as fed to the nozzles of the combustion system shall be limited to 30ppmw maximum up to size of 5microns( $\mu m$ ) and the size of all solid particle shall not exceed 5microns( $\mu m$ ).

For this requirement, typically, 99.5wt% of all particles and 100% of all particles larger than 5 microns shall be removed by the filters supplied by the Owner before delivery to the gas turbine.

It is important that total particle content of fuel gas should be summed and satisfy the limits specified. Solid particle are typically composed of sand, rust, tar, iron and silica( $SiO_2$ ), etc.

EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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If the content of the total particulate into the gas turbine beyond the above limit, consult Mitsubishi Heavy Industries, Ltd

Total Particulate (Maximum)	30ppmw (on fuel wt basis)
Maximum Particle Size	5 microns ( $\mu m$ )

Nitrogen (FBN) Content

Nitrogen content (fuel bound nitrogen FBN) causes to increase NOx formation in addition to the standard (thermal) NOx formed by the reaction between oxygen and nitrogen in the flame zone. Therefore, the guaranteed NOx level is increased in case that there is FBN content in fuel gas. FBN content in fuel gas is none preferably.

Oil Mist and Vapor Content

Total amount of oil mist and vapor in the fuel gas shall not exceed 0.5 ppmwt to prevent fuel nozzle clogging and unstable firing. This limit usually requires reciprocating gas compressor and screw type gas compressor.

Sulfur Content

For peaking applications sulfur in the form of hydrogen sulfide (H<sub>2</sub>S) is limited to 5% (mole percent) max. This is done to limit the detrimental effects of H<sub>2</sub>S to the fuel system. H<sub>2</sub>S levels in excess of 5% (mole) can be tolerated with special fuel system components. In heat recovery applications, the total sulfur in the fuel (from H<sub>2</sub>S plus other sulfur compounds) is recommended to limit 0.5% (mole) due to the low temperature corrosion on HRSG and if the sulfur is contained, MITSUBISHI should be consulted.

Trace Metals

Total trace elements in fuel, water and inlet air flow shall not exceed MITSUBISHI fuel specification requirements. Specifically, the combined total quantity of elements in fuel, water and air must not exceed the following on a fuel weight basis.

<u>Trace Metals</u>	<u>Per Million Parts of Fuel by Weight</u>	<u>Notes</u>
Sodium & Potassium	0.5 ppm	Consult MITSUBISHI for 0.5 ppm
Vanadium	0.5 ppm	
Lead	2.0 ppm	
Calcium	10 ppm	
Other trace metals	2.0 ppm	

EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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Inlet Air Contaminants

The compressor inlet air can greatly increase the level of impurities entering the hot gas path. To determine the extent of contamination, the air to fuel mass flow ratio is multiplied by the air contaminant level in ppm(wt) to obtain the contaminant concentration on an assumed liquid fuel equivalent basis. For example, 10ppb of Na in the inlet air is equivalent to approximately 0.6ppm sodium in the fuel on a weight basis.

Water-Borne Contaminants

Water employed for emissions control (i.e. water injection) and/or compressor cleaning can also increase the level of impurities entering the hot gas path. Calculation of waterborne contaminants on a liquid fuel equivalent basis is accomplished in the same manner as illustrated for air-borne contaminants. In general, water injection quality standards for MITSUBISHI gas turbines are stated as follows. If levels of impurities exceed these limits, MITSUBISHI should be consulted with regard to water purification systems.

1) Reactive Dissolved Solids

Silicon	18 ppm
Chlorides	6 ppm
Iron & Copper	0.1 ppm
Oxygen	2 to 9 ppm
(as determined by O <sub>2</sub> saturated water)	
pH	7.5 to 8.0

Note) Demineralized water is required.

2) Total Dissolved Solids

Other solids not detected and present on the analysis above are assumed to turn to oxides in the combustion process and results in added emissions in the exhaust stack. The quantity of dissolved solids is considered to be doubled due to oxidation in the combustion process and are exhausted as particulate. The quantity of solids in water and fuel is thus limited by local regulations.

Approximate Total	
Dissolved Solids	80 ppm

EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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Fuel, Air and Water Evaluation

Prior to burning gaseous fuels in MITSUBISHI gas turbines, it is recommended that the customers submit gas fuel analysis to MITSUBISHI for review and recommendation. The fuel, air and water analysis should cover all requirements as specified in this specification. Where analytical services are not available to the customer, services can be purchased from MITSUBISHI.

The following will be reported .

- A Water Analysis - See Appendix I
- B Fuel Analysis - See Appendix II
- C Air Analysis - See Appendix III

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MITSUBISHI HEAVY INDUSTRIES, LTD.



EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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APPENDIX I

WATER ANALYSIS

<u>Contaminants</u>	<u>ppb wt.</u>
Sodium	_____
Potassium	_____
Vanadium	_____
Calcium	_____
Lead	_____
Other Metals (over 2ppm wt)	_____
<u>Reactive Dissolved Solids</u>	
Silicon	_____
Chlorides	_____
Iron & Copper	_____
Oxygen	_____
(as determined by O <sub>2</sub> saturated water)	
<u>Total Dissolved Solids</u>	
Dissolved Solids	_____

-7-  
MITSUBISHI HEAVY INDUSTRIES, LTD.

EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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APPENDIX II

GAS FUEL ANALYSIS

<u>I Chemical Analysis</u>		As per ASTM D-1187 or ASTM D-1945
Component		Mole fraction of mole percent
Hydrogen	H <sub>2</sub>	_____
Helium	He	_____
Nitrogen	N <sub>2</sub>	_____
Carbondioxide	CO <sub>2</sub>	_____
Methane	CH <sub>4</sub>	_____
Ethane	C <sub>2</sub> H <sub>6</sub>	_____
Propane	C <sub>3</sub> H <sub>8</sub>	_____
Butane	C <sub>4</sub> H <sub>10</sub>	_____
Pentane	C <sub>5</sub> H <sub>12</sub>	_____
Carbon Monoxide	CO	_____
Water Vapor	H <sub>2</sub> O (per ASTM D-1142)	_____
Total Sulfur		_____
Other		_____
Molecular Weight		_____
<u>II Heating Value</u>		
Gross Heating Value	kJ/Nm <sup>3</sup>	_____
Lower Heating Value	kJ/Nm <sup>3</sup>	_____
Gross Heating Value	kJ/kg	_____
Lower Heating Value	kJ/kg	_____

EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

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<u>III Contaminants</u>		Mole Fraction	
Hydrogen Sulfide	H <sub>2</sub> S		_____
Ammonia	NH <sub>3</sub>		_____
Carbonyl Sulfide	COS		_____
Condensable Liquids			_____
Solids			_____
Amount			_____
Particle Size Range			_____
Alkali			_____
Other			_____
<u>IV Operating Conditions</u>			
Pressure Range	Max	MPa(g)	_____
	Mn	MPa(g)	_____
Temperature	Max	°C	_____
	Mn	°C	_____
<u>V Physical Properties</u>			
Specific Gravity		@ 15°C	_____
Critical Pressure		MPa(g)	_____
Critical Temperature		°C	_____
Dew Point		°C	_____

EXHIBIT D-4  
TURBINE MANUFACTURER'S NATURAL GAS FUEL QUALITY  
SPECIFICATIONS

E00011705.doc



APPENDIX III

COMPRESSOR INLET AIR ANALYSIS

<u>Contaminants</u>	<u>ppm wt.</u>
Sodium	_____
Potassium	_____
Vanadium	_____
Calcium	_____
Lead	_____
Other Metals (over 2ppm wt)	_____

**EXHIBIT F**  
**NOTICE ADDRESSES**

Page 1 of 1

SPS	Seller
<p><b>Notices:</b>  Paul J Bonavia  President and CEO Utilities Group  Xcel Energy  800 Nicollet Mall Street, Suite 3000  Minneapolis, MN 55402</p> <p>Karen T Hyde  Managing Director, Resource Planning and  Acquisition  Xcel Energy Services, Inc  1099 18<sup>th</sup> Street, Suite 3000  Denver, CO 80202  Phone (303) 308-6113  Fax (303) 308-6141</p>	<p><b>Notices:</b>  Christine M Miller  Associate General Counsel  ArcLight Capital Partners, LLC  200 Clarendon St , 55<sup>th</sup> flr  Boston, MA 02117  Tel 617 531 6338  Fax 617 867 4698  cmiller@arclightcapital.com</p>
<p><b>Operating Committee Representative:</b>  Jeffrey C Klein  Manager, Structured Purchases  Southwestern Public Service Company  1099 18<sup>th</sup> Street, Suite 3000  Denver, CO 80202  Phone (303) 308-2732  Fax (303) 308-6141</p> <p><b>Alternate:</b>  Price Hatcher  Structured Purchase Consultant  Xcel Commercial Enterprises  1099 18th St Suite 3000  Denver, CO 80202  Phone (303) 308-6111  Fax (303) 308-6141</p>	<p><b>Operating Committee Representative:</b>  Carter A Ward  Managing Director  ArcLight Capital Partners, LLC  200 Clarendon St , 55<sup>th</sup> flr  Boston, MA 02117  Tel 617 531 6307  Fax 617 867 4698  cward@arclightcapital.com</p>

**AMENDMENT NO. 3  
TO POWER PURCHASE AGREEMENT**

This Amendment No. 3 to Power Purchase Agreement (this "Amendment 3") is entered into as of this 23rd day of September, 2008, by and between Lea Power Partners, LLC, a Delaware limited liability company ("Seller") with a principal place of business at c/o ArcLight Capital Partners, LLC, 200 Clarendon Street, 55th Floor, Boston, MA 02116, and Southwestern Public Service Company ("SPS"), a New Mexico corporation with managing offices in Denver, Colorado. Seller and SPS are hereinafter referred to individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, Seller and SPS are Parties to that certain Power Purchase Agreement, dated as of October 20, 2006, and amended pursuant to Amendment No. 1, dated as of April 4, 2007 and Amendment No. 2, dated as of May 30, 2008 (as it may be further amended, the "PPA"); and

**WHEREAS**, the Parties desire to revise Section 8.6 of the PPA; and

**WHEREAS**, simultaneous with entering into this Amendment 3, Seller and SPS are entering into that certain Settlement Agreement, dated as of the date hereof (the "Settlement Agreement").

**NOW THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, SPS and Seller hereby agree as follows:

1. Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.

2. Section 1.4 (NNN) of the PPA is hereby amended by deleting the entire definition and replacing it with:

"(NNN)"Successful Turbine Start" means, in response to a request from SPS to start a Facility combustion turbine generating unit, Seller's start and operation of such turbine generating unit that achieves the minimum loading level specified in Exhibit C for specified conditions for start up of the Facility after the time SPS requested the turbine start to begin and upon achieving the aforementioned minimum loading level, generates continuously for a period of not less than one (1) hour while synchronized to Interconnection Provider's System at or above such minimum loading level without experiencing any abnormal operating conditions. If Seller initiates a turbine start requested by SPS, but fails to meet the above specified requirements for a Successful Turbine Start solely as a result of (i) the cancellation of the turbine start by SPS within the applicable time period, (ii) a request from SPS, within one (1) hour from turbine start, to shut down the turbine, or (iii) an SPS or SPS system performance failure, then the initiated turbine start shall nevertheless qualify as a Successful Turbine Start. Seller shall not be credited a Successful Turbine Start following a turbine trip where SPS directs the Seller to restart the unit, pursuant to Section 7.4, even if the restart would otherwise meet the qualifications for a Successful Turbine Start."

3. Section 1.4 (QQQ) of the PPA is hereby amended by deleting the entire definition.

4. Section 8.6 of the PPA is hereby deleted in its entirety and the following Section 8.6 is added in lieu thereof:

8.6 Payment for Turbine Starts. Commencing on the Commercial Operation Date, SPS shall pay Seller a Monthly Turbine Start Payment. The Monthly Turbine Start Payment shall be based on the following formula:

Monthly Turbine Start Payment = N x TSP, where:

N = Number of Successful Turbine Starts with respect to each combustion turbine during the billing month; and

TSP = Turbine Start Price, which shall be the amounts, in dollars per turbine start set out in Table 8.6.

The columns in Table 8.6 are hereby changed to read as follows:

(First column) \$ Per Turbine Start <=200 Starts Per Contract Year

(Second column) \$ Per Turbine Start >200 Starts Per Contract Year

5. Except as changed hereby, all other terms and conditions remain unchanged and the PPA remains in full force and effect.

6. Representations Regarding this Amendment. By its execution hereof, each Party represents and warrants that it is authorized to enter into this Amendment, that this Amendment does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, and that this Amendment represents its valid and binding obligation, enforceable against it in accordance with its terms.

7. No Other Amendments. Except as specifically provided in this Amendment, no other amendments, revisions or changes are made or have been made to the PPA. All other terms and conditions of the PPA remain in full force and effect and the Parties hereby ratify and confirm their rights and obligations under the PPA, as amended hereby.

8. Conforming References. Upon the effectiveness of this Amendment, each reference in the PPA to "this Agreement", "thereunder", "hereto", "herein", or words of like import, shall mean and be a reference to the PPA as amended hereby.

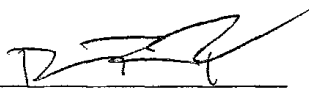
9. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to each of them.

10. Applicable Law. Subject to applicable federal law, this Amendment shall be governed by the laws of the State of New Mexico.

11. Effectiveness of Amendment. The amendments to the PPA contemplated by this Amendment shall become effective upon the execution of this Amendment by the Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Amendment to be executed as of the day and year first above written.

**Seller:**  
Lea Power Partners, LLC



Daniel R. Revers  
President

**SPS:**  
Southwestern Public Service Company

  
Karen T. Hyde, Vice President, Resource  
Planning and Acquisition

Xcel Energy Services Inc. as Agent for  
Southwestern Public Service Company





**AMENDMENT No. 4  
TO POWER PURCHASE AGREEMENT**

This Amendment No. 4 to Power Purchase Agreement (this "Amendment 4") is entered into as of this \_\_\_ day of August, 2010, by and between Lea Power Partners, LLC, a Delaware limited liability company ("Seller") with a principal place of business at c/o ArcLight Capital Partners, LLC, 200 Clarendon Street, 55<sup>th</sup> Floor, Boston, MA 02117, and Southwestern Public Service Company, a New Mexico corporation ("SPS") with managing offices in Denver, Colorado. Seller and SPS are hereinafter referred to individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, Seller and SPS are Parties to that certain Power Purchase Agreement, dated as of October 20, 2006, and amended pursuant to Amendment No. 1 dated as of April 4, 2007, Amendment No. 2 dated as of May 30, 2007, and Amendment No. 3 dated as of September 23, 2008 (the "PPA"); and

**WHEREAS**, the Parties desire to amend the PPA further with respect to payments for dispatchability and also to better measure and represent the Facility's AGC ramp rate capabilities in light of SPP market protocols that have changed since the PPA was entered into.

**NOW THEREFORE**, in consideration of the foregoing, and good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound hereby, SPS and Seller hereby agree as follows:

1. Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.
2. Payment for Dispatchability. Section 8.2 of the PPA is hereby amended by deleting the definition of RAF and the associated table in their entirety and replacing them with the following:

RAF = Ramp Rate Availability Factor, where RAF is determined by the following table subsequent to verification testing by SPS as set forth in Exhibit A:

Tested AGC Ramp Rate Performance	RAF
The combined average ramp rate determined pursuant to Exhibit A is greater than or equal to 20 MW/min.	1.00
The combined average ramp rate determined pursuant to Exhibit A is less than 20 MW/min. and is greater than or equal to 15 MW/min.	0.75
The combined average ramp rate determined pursuant to Exhibit A is less than 15 MW/min. and is greater than or equal to 10 MW/min.	0.50
The combined average ramp rate determined pursuant to Exhibit A is less than 10 MW/min.	0.00


3. Turbine Start Price. Section 8.6 of the PPA is hereby amended by deleting the definition of TSP in its entirety and replacing it with:

TSP = Turbine Start Price, which shall be the amounts in dollars per turbine start set out in Table 8.6, provided however, that the Turbine Start Price shall be \$0 for up to twelve (12) Successful Turbine Starts that occur following the Effective Date in calendar year 2010, and the first twenty-five (25) Successful Turbine Starts each calendar year thereafter, beginning in calendar year 2011.
  
4. Exhibit A. Exhibit A to the PPA is hereby amended by deleting Exhibit A in its entirety and replacing it the Exhibit A attached hereto.
  
5. Chilled Water Storage Enhancement. Seller shall make commercially reasonable efforts to have the CWS Enhancement (as defined below) available for use by SPS when dispatching the Facility at all times when ambient temperatures are greater than 50 degrees Fahrenheit. CWS Enhancement shall mean the hardware and software modifications necessary to enable the Facility to switch-on-the-fly, without a significant reduction in Facility net output, between operation with gas turbine inlet air cooled by mechanical chillers and operation with gas turbine inlet air cooled by use of the chilled water storage tanks. For avoidance of doubt, all electric energy required to operate the mechanical chillers for the purpose of creating the chilled water inventory for the chilled water system storage tank shall be provided as an internal load of the Facility.
  
6. Representations Regarding This Amendment 4. By its execution hereof, each Party represents and warrants that it is authorized to enter into this Amendment 4, that to its knowledge (after due inquiry) this Amendment 4 does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, and that this Amendment 4 represents a valid and binding obligation, enforceable against it in accordance with its terms.

7. No Other Amendments. Except as specifically provided in this Amendment 4 and changed hereby, no other amendments, revisions or changes are made or have been made to the PPA. All other terms and conditions of the PPA remain in full force and affect and the Parties hereby ratify and confirm their right and obligations under the PPA, as amended hereby.
8. Conforming References. Upon the effectiveness of this Amendment 4, each reference in the PPA the "this Agreement", "thereunder", "hereto", "herein", or words of like import, shall mean and be a reference to the PPA as amended hereby.
9. Counterparts. This Amendment 4 may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered on ad the same agreement, and shall become binding when one or more of the counterparts have been signed by each of the Parties and delivered to each of them.
10. Applicable Law. Subject to applicable federal law, this Amendment 4 shall be governed by the laws of the State of New Mexico.
11. Effective Date. Effective Date shall mean that date upon which this Amendment 4 shall become effective, which shall be on the Day when (A) Seller has obtained or waived consent to this Amendment 4 from Facility Lender and (B) SPS has obtained or waived approval of this Amendment 4 by the New Mexico Public Regulation Commission, each on the basis and on the terms required by the Settlement Agreement between the Parties that has been entered into simultaneously with this Amendment 4 and on the terms of this Amendment 4 without condition or modification (unless such condition or modification has been accepted by each Party in its sole discretion). Each Party shall provide the other Party with written notice not later than five (5) Business Days following the date it obtains or waives the approval for which it is responsible. If the Effective Date has not occurred by a date that is eight (8) months from the date hereof, this Amendment 4 shall be null and void.


IN WITNESS WHEREOF, the Parties have caused this Amendment 4 to be executed as of the day and year first above written.

**SELLER:**  
Lea Power Partners, LLC



Daniel R. Revers  
President

**BUYER:**  
Southwestern Public Service Company



Tim Kawakami  
Director, Purchased Power  
Xcel Energy Services Inc. as Agent for  
Southwestern Public Service Company

**EXHIBIT A**  
**REQUIREMENTS AND COMPLIANCE**  
**STANDARDS FOR DISPATCHABILITY**

Page 1 of 3

1. Dispatchability Requirements. In order for Seller to qualify for the Dispatchability Payment set forth under Section 8.2, the Facility generating units must be dispatchable generating units. Dispatchable generating units shall be capable of providing:

- A. Automatic Generation Control (AGC) from the Energy Markets Control Center (EMCC);
- B. A nominal regulating range of fifteen megawatts (15 MW) per unit or twenty five percent (25%) of AGC Ramp Max, whichever is greater, in automatic load regulation capacity;
- C. Continuous response to EMCC pulsing at a minimum rate of the following per segment between breakpoints:

Segment	Segment Start as a % of AGC Ramp Max	Segment End as a % of AGC Ramp Max	AGC Ramp Up Rate MW/Min.	AGC Ramp Down Rate MW/Min.
1	75%	85%	20.0	-2.0
2	85%	88%	20.0	-20.0
3	88%	95%	2.0	-20.0
4	95%	100%	1.0	-20.0

- D. A low load point for the regulating range of the Facility which is equal to or less than the minimum loading level for operation with AGC that complies with the emissions limits of the Facility air permit at the specific ambient conditions present at the time of the ramp testing.

2. Operations Log. Seller shall maintain an hourly operation log that identifies real-time unit operating information including: current level of unit capacity availability, planned and unplanned maintenance outages or deratings, circuit breaker operation and any other significant events related to the operation of the generating unit. Any changes in the generating status or availability of the generating unit shall be reported immediately to the EMCC operator by telephone.

3. Telemetry/Generation Load Control Requirements.

A. SPS shall design, purchase, own, install and test, in accordance with the procedures set forth in this Exhibit, the telemetry equipment, generation load control equipment and the circuits from the Facility to the EMCC. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a signal to the governor of Seller's equipment. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by SPS.

B. The telemetry and generation load equipment is to provide the following: instantaneous net MW and MVAR levels, control status (available for automatic generation control), load regulation range limits, remote pulsing circuit, and any other parameters deemed necessary by SPS. Seller shall install at the Facility MW and MVAR indicating equipment which reflects the identical MW and MVAR values as those telemetered to the EMCC.

EXHIBIT A  
REQUIREMENTS AND COMPLIANCE  
STANDARDS FOR DISPATCHABILITY

Page 2 of 3

4. Initial Verification of Compliance. Initial verification of Automatic Generation Control compliance (requirements 1.A through 1.D above) has been accomplished.

5. Periodic Verification of Compliance. SPS shall have the right, at any time and without prior notice to Seller, to verify the Automatic Generation Control compliance (requirements 1.A through 1.D above). Testing will be a coordinated effort between SPS and Seller with Seller providing technical support for Seller's equipment and with SPS supplying the test regulation signal and determination of Seller's compliance of these requirements. SPS shall timely notify Seller of test results for any noncompliance.

6. Automatic Generation Control Availability. SPS will monitor Seller's ability to be automatically dispatched. It is the expectation of the Parties that the Facility will be available for automatic generation dispatch during one hundred percent (100%) of the Facility's on-line hours (excluding periods of failure of SPS's telemetry, during which Seller will manually be dispatched by SPS).

7. Verification Testing of Ramp Rate Availability Factor. SPS shall have the right to routinely conduct, from the EMCC, verification testing of the Facility Ramp Rate Availability Factor (RAF), as described in Section 8.2, without prior notice to Seller. After any such ramp test performed by SPS, Seller will have the right to request a ramp retest following a review of the results provided to Seller by SPS. If Seller makes such a ramp retest request within seven (7) Business Days of receiving such test results, no change shall be made to the RAF until following the results of the ramp retest and RAF will be set retroactively to the date of the prior ramp test based on the ramp retest results. Any request for a ramp retest made by Seller will be based on a good faith determination by Seller that the results of a ramp retest may result in a higher RAF due to: a) any Facility improvements or repairs made by Seller following the ramp test or b) a good faith determination by Seller that the results of the initial ramp test performed by SPS may be incorrect. For example if the results of a ramp test performed by SPS result in a RAF of 0.75, Seller will only request a ramp retest if Seller determines in good faith that a ramp retest may reasonably result in a RAF of 1.0. Seller will pay SPS \$10,000 for any ramp retest. Any ramp retest will be scheduled at a mutually agreeable date and time and be subject to SPS scheduling and load constraints. Seller will not request a ramp retest more than three (3) times in any calendar year. RAF verification testing shall be conducted for the segments specified in Section 1.C. (the "specified ramp range"), taking into consideration non-standard ambient conditions which exist at the time of the test. ACG Ramp Max times the relevant percentages set forth in Section 1(C) will determine the segment break points as expressed in MWs for the test, subject to Facility operation in compliance with air permit emissions limits. The timed portion of the test used to determine the increasing ramp rate for calculating RAF shall begin when the output level of the Facility is at the start of segment 1 and shall end when such output is at the end of segment 2. The change in Facility output in MWs over this period divided by this measured time shall be used to calculate the AGC ramp up rate in MWs per minute (MW/Min.). The timed portion of the test used to determine the decreasing ramp rate for calculating RAF shall begin when the output level of the Facility is at AGC Ramp Max and shall end when such output is at the start of segment 2. The change in Facility output in MWs over this period divided by this measured time shall be used to calculate the AGC ramp down rate in MW/Min. One minute increments of time will be used to measure ramp performance. Linear interpolation will be applied to the output data to determine the ramp value and time at the start of segment 1 and the end of segment 2 for ramp up values and the start of segment 4 and the end of segment 2 for the ramp down values. The combined average ramp rate for determining RAF shall be the average of the absolute value of the AGC ramp up and AGC ramp down rates as determined above. As an example and for avoidance of doubt, if the Facility ramps up at an average rate of 21 MW/min for the ramp up over segments 1 and 2 (75%-88%) and ramps down at an

**EXHIBIT A**  
**REQUIREMENTS AND COMPLIANCE**  
**STANDARDS FOR DISPATCHABILITY**

Page 3 of 3

average absolute value rate of 18 MW/min over segments 4 through 2 (100%-85%), the combined average ramp rate would be of 19.5 MW/Min.

Definitions:

AGC Ramp Max –The maximum output of the Facility for 2x1 combined cycle operation, Unfired, Unchilled, and taking into consideration the ambient temperature, humidity and barometric pressure conditions which exist at the time of the ramp test.

Unfired – No heat recovery steam generator duct firing assistance with load demand.

Unchilled – No combustion turbine generator inlet chilling supplied from chiller compressors or the chilled water storage tank.

**AMENDMENT NO. 5  
TO POWER PURCHASE AGREEMENT**

This Amendment No. 5 to Power Purchase Agreement (this "Amendment 5") is entered into as of this 10th day of June, 2014, by and between Lea Power Partners, LLC, a Delaware limited liability company ("Seller") with a principal place of business at c/o First Reserve, One Lafayette Place, Greenwich, CT 06830, and Southwestern Public Service Company ("SPS"), a New Mexico corporation with managing offices in Denver, Colorado. Seller and SPS are hereinafter referred to individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, Seller and SPS are Parties to that certain Power Purchase Agreement, dated as of October 20, 2006, and amended pursuant to Amendment No. 1, dated as of April 4, 2007, Amendment No. 2, dated as of May 20, 2008, Amendment No. 3, dated as of September 23, 2008 and Amendment No. 4 dated as of August, 2010 (as it may be further amended, the "PPA"); and

**WHEREAS**, the Parties desire to revise Section 11.1(B) and Section 11.1(C)(1) of the PPA to permit there to be more than one Issuer of security in the form of an irrevocable standby letter of credit; and

**NOW THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, SPS and Seller hereby agree as follows:

1. Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.
2. Section 11.1(B) of the PPA is hereby amended by inserting at the end of the second sentence of such Section the phrase ", subject to the provisions set forth in Section 11.1(C)(1) in the event that there are two or more Issuers of security in the form of an irrevocable standby letter of credit".
3. Section 11.1(C)(1) of the PPA is hereby amended by deleting the Section in its entirety and replacing it with the following:

(1) An irrevocable standby letter of credit in form and substance acceptable to SPS. Such security may be from an Issuer or -- if from more than one Issuer -- "Issuers." The Issuer or Issuers must each have a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to A- or better as determined by both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources acceptable to SPS). In addition, if the unsecured credit rating of any Issuer is exactly equivalent to A- the Issuer must not be on credit watch or have a negative outlook by a rating agency. Security provided in this form shall be consistent with this PPA and include a provision for at least thirty (30) Days advance notice to SPS of any expiration or earlier termination of the security so as to allow SPS sufficient time to exercise its rights under said security if Seller fails to extend



or replace the security. The form of such security must meet SPS's requirements to ensure that claims or draw-downs can be made unilaterally by SPS in accordance with the terms of this PPA. If there are two or more Issuers of such security, any draws will be split among the instruments in proportion to their face amounts. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the Term of this PPA) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein, SPS shall have the right to draw immediately upon the security and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with Section 11.1(C)(2), until and unless Seller provides a substitute form of such security meeting the requirements of this Article 11. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Brochure No 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including Articles 13(b) and 17 of the UCP, in which case the terms of the Letter of Credit as follow shall govern:

"With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business."

4. Except as changed hereby, all other terms and conditions remain unchanged and the PPA remains in full force and effect.

5. Representations Regarding this Amendment. By its execution hereof, each Party represents and warrants that it is authorized to enter into this Amendment 5, that this Amendment 5 does not conflict with any contract, lease, instrument, or other obligation to which it is a party or by which it is bound, and that this Amendment 5 represents its valid and binding obligation, enforceable against it in accordance with its terms.

6. No Other Amendments. Except as specifically provided in this Amendment 5, no other amendments, revisions or changes are made or have been made to the PPA. All other terms and conditions of the PPA remain in full force and effect and the Parties hereby ratify and confirm their rights and obligations under the PPA, as amended hereby.

7. Conforming References. Upon the effectiveness of this Amendment 5, each reference in the PPA to "this Agreement", "thereunder", "hereto", "herein", or words of like import, shall mean and be a reference to the PPA as amended hereby.

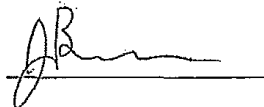
8. Counterparts. This Amendment 5 may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to each of them.

9. Applicable Law. Subject to applicable federal law, this Amendment 5 shall be governed by the laws of the State of New Mexico.

10. Effectiveness of Amendment. The amendments to the PPA contemplated by this Amendment 5 shall become effective upon the execution of this Amendment 5 by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Amendment 5 to be executed as of the day and year first above written.

Seller:  
Lea Power Partners, LLC



SPS:  
Southwestern Public Service Company

Xcel Energy Services Inc. as Agent for  
Southwestern Public Service Company

7. Conforming References. Upon the effectiveness of this Amendment 5, each reference in the PPA to "this Agreement", "thereunder", "hereto", "herein", or words of like import, shall mean and be a reference to the PPA as amended hereby.

8. Counterparts. This Amendment 5 may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to each of them.

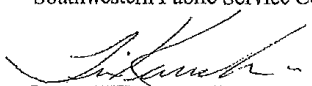
9. Applicable Law. Subject to applicable federal law, this Amendment 5 shall be governed by the laws of the State of New Mexico.

10. Effectiveness of Amendment. The amendments to the PPA contemplated by this Amendment 5 shall become effective upon the execution of this Amendment 5 by the Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Amendment 5 to be executed as of the day and year first above written.

**Seller:**  
Lea Power Partners, LLC

\_\_\_\_\_  
**SPS:**  
Southwestern Public Service Company

  
\_\_\_\_\_  
Tim Kawakami  
Director, Purchased Power  
Xcel Energy Services Inc. as Agent for  
Southwestern Public Service Company

# Master Power Purchase & Sale Agreement

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Version 2.1 (modified 4/25/00)  
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## MASTER POWER PURCHASE AND SALES AGREEMENT

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## MASTER POWER PURCHASE AND SALE AGREEMENT

### COVER SHEET

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

Name ("\_\_\_\_\_ " or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: Contract Administration

Attn: Contract Administration

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

**Invoices:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Scheduling:**

**Scheduling:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Payments:**

**Payments:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Wire Transfer:**

**Wire Transfer:**

BNK: \_\_\_\_\_

BNK: \_\_\_\_\_

ABA: \_\_\_\_\_

ABA: \_\_\_\_\_

ACCT: \_\_\_\_\_

ACCT: \_\_\_\_\_

**Credit and Collections:**

**Credit and Collections:**

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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

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

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

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

Party A Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

Party B Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

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**Article Two**

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

---

**Article Four**

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

---

**Article Five**

Events of Default; Remedies       Cross Default for Party A:

Party A: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

Other Entity: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

Cross Default for Party B:

Party B: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

Other Entity: \_\_\_\_\_      Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

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

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

Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable



If applicable, complete the following:

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

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

**8.2 Party B Credit Protection:**

(a) Financial Information:

- Option A
- Option B Specify: \_\_\_\_\_
- Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

---

**Article 10**

Confidentiality

- Confidentiality Applicable      If not checked, inapplicable.

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**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

## **GENERAL TERMS AND CONDITIONS**

### **ARTICLE ONE: GENERAL DEFINITIONS**

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.



1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

## ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

#### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

#### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
  - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### 5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

### ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or *adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered.* In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing *and shall state the basis for the dispute or adjustment.* Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment *from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.* Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered *within twelve (12) months after the close of the month during which performance of a Transaction occurred,* the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, *including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four),* interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

## ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR



OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### **ARTICLE NINE: GOVERNMENTAL CHARGES**

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

#### **ARTICLE TEN: MISCELLANEOUS**

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be



made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## SCHEDULE M

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

- A. The Parties agree to add the following definitions in Article One.

“Act” means \_\_\_\_\_.<sup>1</sup>

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

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<sup>1</sup> Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 -  
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE  
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS  
OF THE STATE OF \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> Insert relevant state for Governmental Entity or Public Power System.

## **SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS**

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into \_\_\_\_\_ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.



B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**EXHIBIT A**

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on \_\_\_\_\_, \_\_\_\_\_  
between \_\_\_\_\_ (“Party A”) and \_\_\_\_\_ (“Party B”) \_\_\_\_\_  
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Product:

- Into \_\_\_\_\_, Seller’s Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- System Firm  
(Specify System: \_\_\_\_\_)
- Unit Firm  
(Specify Unit(s): \_\_\_\_\_)
- Other \_\_\_\_\_
- Transmission Contingency (If not marked, no transmission contingency)
  - FT-Contract Path Contingency       Seller       Buyer
  - FT-Delivery Point Contingency       Seller       Buyer
  - Transmission Contingent       Seller       Buyer
  - Other transmission contingency  
(Specify: \_\_\_\_\_)

Contract Quantity: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Energy Price: \_\_\_\_\_

Other Charges: \_\_\_\_\_

## MASTER POWER PURCHASE AND SALE AGREEMENT

### COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: May 7, 2010 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Party A **CALPINE ENERGY SERVICES, L.P.**  
("Calpine")

Party B: **SOUTHWESTERN PUBLIC SERVICE COMPANY**, a New Mexico corporation

All Notices:

All Notices: SPS c/o Xcel Energy Services Inc.

Street 717 Texas Avenue, Suite 1000

Street: 550 15<sup>th</sup> Street, Suite 1200

City/State: Houston, TX Zip: 77002

City/State: Denver, CO Zip: 80202

Attn: Contract Administration  
Phone: (713) 830-8845

Attn: Manager, Contract Administration  
Phone: (303) 571-6999

Facsimile: (713) 830-8751  
Duns: 16-966-8212

Facsimile: (303) 571-6450

Duns: 00-736-9713

Federal Tax ID Number: 75-0575400

Federal Tax ID Number: 77-0526913

with a copy to:

Manager, Structured Purchases

**Invoices:**

Attn: Power Accounting  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749

**Invoices:**

Attn: Energy Settlements and Accounting  
Phone: (303) 571-6777  
Facsimile: (303) 571-6302

**Scheduling:**

Attn: Scheduling  
  
Phone: (713) 830-8350  
Facsimile: (713) 830-8749

**Scheduling:**

Attn: Real Time Trading Desk  
Phone: (303) 571-6470  
Facsimile: (303) 571-7305

**Confirmations:**

Attn: Confirmations Department  
Phone: (713) 830-8723  
Facsimile: (713) 830-8868

**Confirmations:**

Attn: Confirmation Analyst  
Phone: (303) 571-2802  
Facsimile: (303) 571-6240

**Payments:**

Attn: Power Accounting  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749

**Payments:**

Attn: Commercial Accounting Manager SPS  
Phone: (303) 571-6484  
Facsimile: (303) 571-6302

**Wire Transfer:**

BNK: Union Bank, N.A.  
ABA: 122000496  
ACCT: 187-0031951

**Wire Transfer:**

BNK: Wells Fargo Bank NA  
ABA # 091000019 ACH, # 121000248Wire  
ACCT: # 2391424617

**Credit and Collections:**

Attn: Corporate Credit Manager  
Phone: (713) 830-2078  
Facsimile: (713) 570-4764

**Credit and Collections:**

Attn: Director, Credit & Contract Administration  
Phone: (303) 571-2706  
Facsimile: (303) 571-6450

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

Attn: Risk Management Counsel  
Phone: (713) 830-8872  
Facsimile: (713) 830-8751

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

Attn: Assistant General Counsel, Xcel Energy  
1225 17<sup>th</sup> Street, Suite 900  
Denver CO 80202  
Phone: (303) 294-2842  
Facsimile: (303) 294-2591

with copy to:

Attn: Chief Legal Officer  
Phone: (713) 570-4710  
Facsimile: (713) 353-9131

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

Party A Tariff: Tariff: Rate Schedule #1 Dated: Sept. 21, 2000 Docket Number: ER-00-3562-000

Party B Tariff: FERC Electric Tariff, Second Revised Vol No. 3 Dated: October 23, 2000  
Docket Number:  
ER01-205

**Article Two**

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

**Article Four**

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

**Article Five**

Events of Default; Remedies

- Cross Default for Party A:
  - Party A: Calpine Energy Services, L.P. Cross Default Amount \$100,000,000.00
  - Other Entity: Calpine Corporation Cross Default Amount \$100,000,000.00
- Cross Default for Party B:
  - Party B: Southwestern Public Service Company Cross Default Amount \$100,000,000.00
  - Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_
- Option C (No Setoff)

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**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: \_\_\_\_\_
- Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

If applicable, the provisions of Section 8.1 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto as Exhibit C.

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: None

Guarantee Amount: \$ Not Applicable, or an amount mutually agreed to by the parties from time to time in accordance with Party B's Collateral Threshold as defined above.

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: \_\_\_\_\_
- Option C Specify: \_\_\_\_\_



(b) Credit Assurances:

- Not Applicable  
 Applicable

(c) Collateral Threshold:

- Not Applicable  
 Applicable

If applicable, complete the following:

If applicable, the provisions of Section 8.2 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto as Exhibit C.

(d) Downgrade Event:

- Not Applicable  
 Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: Acceptable credit support to be provided by Party A.

Guarantee Amount: \$ \_\_\_\_\_, or an amount mutually agreed to by the parties from time to time in accordance with Party A's Collateral Threshold as defined above.

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**Article 10**

Confidentiality

- Confidentiality Applicable       If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System  
 Party B is a Governmental Entity or Public Power System  
 Add Section 3.4 If not checked, inapplicable  
 Add Section 8.4 If not checked, inapplicable

Other Changes: Applicable

Specify, if any: The Master Agreement is hereby amended as follows:

**Part 1. GENERAL TERMS AND CONDITIONS.**

(a) Article One shall be amended as follows:

- (i) Section 1.12 shall be amended by replacing "issues" with "issuer" in the fourth line.

(ii) Section 1.27 is amended by deleting the phrase "or a foreign bank with a U.S. branch" and replacing it with the phrase "or a U.S. branch of a foreign bank".

(iii) Section 1.27 is further amended by adding at the end of the first sentence "; provided that a Party may only transfer the Letter of Credit to any person or entity succeeding to all or substantially all of the assets of such Party."

(iv) Section 1.45 is amended by replacing the current definition of "Performance Assurance" with the following: "(a) as to Seller, (i) evidence of ownership or control of a sufficient amount of generating capacity to provide assurance reasonably acceptable to other Party that Seller will be able to perform its obligations under this Agreement to deliver product, or if such assurance is not available, (ii) collateral in the form of either cash, Letter(s) of Credit, or other security or assurance reasonably acceptable to Buyer that Seller will be able to perform its obligations under this Agreement to deliver the product, and (b) as to Buyer, collateral in the form of either cash, Letter(s) of Credit, or other security or assurance reasonably acceptable to Seller that Buyer will be able to perform its obligations under this Agreement to pay for the product delivered to be provided if required in accordance with Section 8.1(b). Seller agrees that as of the Effective Date, no collateral is required to be provided by Buyer."

(v) Section 1.50 is amended by changing "Section 2.4" to "Section 2.5".

(vi) Section 1.51 shall be amended by (i) adding the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the following: "absent a purchase"; and

(vii) Section 1.53 shall be amended by (i) deleting the phrase "at the Delivery Point" from the second line; and (ii) deleting the phrase "at Seller's option" from the fifth line and replacing it with the following: "absent a sale".

(viii) The following shall be added as a new Definition:

"Merger Event" means, with respect to a Party or its Guarantor, that such Party or its Guarantor consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity; and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or of such Party's Guarantor under its guaranty; or (ii) the benefits of any credit support provided pursuant to Article 8, or any guaranty provided by such Party's Guarantor, fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder, or (iii) the resulting entity's creditworthiness is materially weaker than that of such Party or its Guarantor immediately prior to such action; provided, however, the creditworthiness of the resulting entity shall not be deemed to be "materially weaker" so long as the credit rating (unenhanced by third party support and not on credit watch or negative outlook) of said Party or its Guarantor does not fall below the credit rating (unenhanced by third party support and not on credit watch or negative outlook) from Moody's for such Party or its Guarantor as of the date of this Agreement."

(b) Article Two shall be amended as follows:

(i) Section 2.4 "Additional Confirmation Terms" is amended by adding the words "and confirmed in writing" following the word "orally" in line seven.

(c) Article Three shall be amended as follows:

(i) Section 3.3 "Force Majeure" is amended to insert "(provided that the Claiming Party shall not be required commercially unreasonable measures to remedy a Force Majeure event)" immediately after the word "remedy" in the seventh line.

(d) Article Five shall be amended as follows:

(i) Section 5.1 (g) is amended by (i) adding "after the Effective Date of this Agreement" after the words "occurrence and continuation" and (ii) deleting the phrase ", or becoming capable at such time of being declared," after the word "becoming" and before the word "immediately" in the eighth and ninth lines.

(ii) Section 5.1(h)(ii) shall be amended by deleting the following phrase from the third and fourth line thereof: "and such failure shall not be remedied within three (3) Business Days after written notice".

(iii) A new section 5.1(h)(vi) is added as follows: "a Merger Event occurs with respect to a Guarantor."

(iv) Section 5.2 is amended by deleting the last sentence and replace it with the following: "The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction or group of Terminated Transactions as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions or group of Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. As a last resort, the Non-Defaulting Party (or its agent) may determine its Gains and Losses by information available to it internally, provided that such information is furnished to the Defaulting Party along with the calculation of the Settlement Amount. "

(v) Section 5.3 shall be amended by adding the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article Eight," after the first use of the phrase "due to the Non-Defaulting Party" in the sixth line;

(vi) Section 5.4 shall be amended by adding the following clause at the end of Section 5.4:

"Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed."

(vi) In Section 5.7, delete "(a)" and the phrase "or (b) a Potential Event of Default" in the second line.

(e) **Article Seven** shall be amended as follows:

(i) Section 7.1, shall be amended by (i) deleting in the fifteenth line the words, "UNLESS EXPRESSLY HEREIN PROVIDED", (ii) adding in the nineteenth line the words "PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3" immediately after the words "ANY INDEMNITY PROVISION OR OTHERWISE", and (iii) adding at the end of the last sentence the words "AND ARE NOT PENALTIES".

(f) (i) Section 8.1(a) is amended by adding the phrase ", provided however, for the purposes of this (i) and (ii), if Party B's financial statements are publicly available electronically, then Party B shall be deemed to have met this requirement" after the phrase "a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter".

(ii) Section 8.2(a) is amended by adding the phrase ", provided however, for the purposes of this (i) and (ii), if Party A's financial statements are publicly available electronically, then Party A shall be deemed to have met this requirement" after the phrase "a copy of Party A's quarterly report containing unaudited consolidated financial statements for such fiscal quarter".

(g) **Article Nine** shall be amended as follows:

(i) Section 9.1 shall be deleted in its entirety; and

(ii) Section 9.2 shall be amended by deleting the Section number.

(h) **Article Ten** shall be amended as follows:

(i) Section 10.2 (ix) is amended to read in its entirety as follows: "(ix) (1) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (2) it is an "eligible contract participant" as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (12); and (3) it is an "eligible commercial entity" as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (11)."

(ii) Section 10.4 is amended to add the phrase "unless a Claim is due to the gross negligence, willful misconduct or bad faith of such Party seeking indemnity" at the end of the first sentence of Section 10.4.

(iii) Section 10.5 is amended by deleting the words "may be withheld in the exercise of its sole discretion" and substituting the following phrase therefor "shall not be unreasonably withheld or delayed".

(iv) Section 10.5 is further amended in clause (ii) thereof by replacing the words "affiliate" and "affiliate's" with, respectively, "Affiliate" and "Affiliate's" and, in clause (iii) thereof, immediately after the words "substantially all of the assets" by inserting the words "of such Party and".

(v) Section 10.6 is deleted in its entirety and replaced with the following new Section:

**"10.6 Governing Law; Jurisdiction; Waiver of Jury Trial.** This Agreement shall be construed in accordance with, and this Agreement and all matters arising out of or relating in any way whatsoever to this Agreement (whether in contract, tort or otherwise) shall be governed by, the law of the State of New York.

With respect to any suit, action or proceedings relating to or arising out of this Agreement or any of the transactions contemplated hereby (*Proceedings*), each Party irrevocably:

- (i) submits to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in the Borough of Manhattan and of the United States District Court for the Southern District of New York, and any appellate court therefrom; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such Party.

Each Party hereby agrees that a final, non-appealable judgment in any such Proceedings shall be conclusive and may be enforced in other jurisdictions otherwise having jurisdiction over it by suit on such final judgment or in any other manner provided by law.

**ANY PROCEEDINGS ARISING OUT OF RELATING TO THIS AGREEMENT SHALL BE RESOLVED BY A JUDGE TRIAL WITHOUT A JURY AND THE RIGHT TO A JURY TRIAL IS WAIVED, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.** Each party hereto hereby (a) certifies that no representative, agent or attorney of another person has represented, expressly or otherwise, that such other person would not, in the event of a Proceeding, seek to enforce the foregoing waiver and (b) acknowledges that it has been induced to execute and deliver, or change its position in reliance upon the benefits of, this Agreement by, among other things, the mutual waivers and certifications in this Section."

- (vi) Section 10.10 is amended by deleting the section in its entirety and replacing it with the following new Section: "Bankruptcy. The Parties acknowledge and agree that (i) any Transaction with a maturity date more than two days after the date the Transaction is entered into constitutes a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code"); (ii) certain Transactions may constitute "swap agreements" within the meaning of the Bankruptcy Code; (iii) all payments made or to be made by one Party to the other Party pursuant to this Agreement are "settlement payments" within the meaning of the Bankruptcy Code; and (iv) all transfers of Performance Assurance by one Party to the other Party under this Agreement are "margin payments" within the meaning of the Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort."
- (vii) Section 10.11 Confidentiality is amended to read in its entirety as follows:  
"If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, the contents of the Transactions and all other documents relating to this Agreement, if any, and any proprietary, non-public information made available by a Party and/or any guarantor of a Party ("Disclosing Party") to the other Party ("Non-Disclosing Party") with respect to this Agreement or any Transaction, if any, are confidential and shall not be disclosed to any third party, except for such information (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, request from a regulatory body applicable to a Party or any of its Affiliates, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the Disclosing Party, if any, in making such disclosure, or (iv) as may be furnished to the Non-Disclosing Party's Affiliates (in the case of Party A) or the Non-Disclosing Party's non-regulated Affiliates (in the case of Party B), and to each of such person's auditors, attorneys, advisors, agents or lenders which are required to keep the information that is disclosed in confidence. Notwithstanding the foregoing, a Party may

disclose any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation."

(viii) The following Section shall be added as a new Section 10.12:

"Index Transactions. If the Parties enter into a Transaction in which any or all of the pricing component is based on a pricing index, the following shall apply:

(a) Market Disruption. If a Market Disruption Event has occurred and is continuing for one or more Trading Days during the Determination Period, the Floating Price for such Trading Day shall be determined pursuant to the index specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the parties have not so agreed on or before the twelfth (12<sup>th</sup>) Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing, if the Parties have determined a Floating Price pursuant to this Section and at a later date the responsible exchange, publication or market announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price and either Party may notify the other Party of the correction and the amount payable as a result of that correction in accordance with Section 10.13(b) hereof.

(b) Corrections to Published Prices. For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

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

(d) Definitions for Index Transactions. The following definitions shall apply:

"Determination Period" means each calendar month during the term of the relevant Transaction; provided that if the term of a Transaction is less than one calendar month the Determination Period shall be the term of a Transaction.

"Floating Price" means the price specified in a Transaction as being based upon a specified index.

"Market Disruption Event" means, with respect to an index, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent

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

"Trading Day" means a day in respect of which the relevant price source published or was to publish the relevant price.";

- (ix) The following Section shall be added as a new Section 10.13:  
"Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence."
- (x) The following Section shall be added as a new Section 10.14:  
"FERC Standard of Review; Mobile-Sierra Waiver.
- (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm'n., 558 U.S. (2010) (commonly known as the "Mobile-Sierra" doctrine).
- (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (Issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, ("NPPS") shall prevail and neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the

foregoing subsection (a), neither Party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in the foregoing section (a).

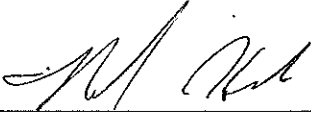
(xi) The following Section shall be added as a new Section 10.15:

"FERC Order No. 2004. This provision shall be applicable only to Party B. Party B conducts its operations in a manner intended to comply with FERC Order No. 2004, requiring the separation of its transmission and merchant functions. Moreover, Party B's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provisions of open-access transmission service. Accordingly, Party A acknowledges that the Party B's responsibilities and obligations under the Master Agreement and any Transaction are those of Party B's merchant function, not of its transmission function, and that neither this Master Agreement nor any Transaction Agreement imposes any responsibilities or obligations on Party B's transmission function. To the extent Party B obligates itself to arrange transmission on its system in connection with a Transaction, it is understood that Party B will do so in a manner consistent with the open-access transmission tariff that is applicable to its system, and it will only communicate with its transmission function in a manner consistent with FERC Order No. 2004 (as it may be modified or superseded by subsequent FERC orders).

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

CALPINE ENERGY SERVICES, L.P.

SOUTHWESTERN PUBLIC SERVICE  
COMPANY, a New Mexico corporation

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Name: Thad Hill

Name: Riley Hill

Title: President

Title: President and CEO

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.



*Execution Copy*



**Calpine Energy Services, L.P.**  
717 Texas Avenue, Suite 1000  
Houston, Texas 77002  
(713) 830-8333  
Fax: (713) 830-8868

**CONFIRMATION LETTER**  
(EEI)

**"CONFIDENTIALITY NOTICE: The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents."**

Date: May 7, 2010  
To: Southwestern Public Service Company  
Attention: Confirmation Department  
Fax No.:  
From: Calpine Energy Services, L.P.  
Re: Calpine Deal Number:  
Calpine Agreement Number:

The purpose of this Confirmation is to confirm the terms and conditions of the transaction (the "Transaction") agreed upon by Buyer and Seller as of the Trade Date specified below. This Confirmation is being provided pursuant to, in accordance with and is subject to the provisions of to that certain EEI Master Power Purchase and Sale Agreement, version 2.1 (4/25/00) by and between Southwestern Public Service Company ("SPS") and Calpine Energy Services, L.P. ("CES") dated as of May 7, 2010 (the "Agreement"). Notwithstanding any contrary provisions in the Agreement, any conflict between this Confirmation and the Agreement shall be resolved in favor of this Confirmation. Buyer and Seller shall be referred to individually herein as a "Party" and collectively herein as the "Parties." Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

**We confirm the following terms of our Transaction:**

**Buyer:** SPS  
**Seller:** CES  
**Trade Date:** May 7, 2010  
**Product:** Capacity and a day ahead Energy Call Option on Energy. Buyer shall have the right to call for either 150 MW or the full 200 MW contract Quantity of Energy to be delivered during any day of the Delivery Period within a Schedule, effected by Buyer consistent

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with the scheduling provisions hereof. In no event shall Buyer be entitled to schedule volumes other than that stated in the preceding sentence.

**Quantity of Energy:**

200 MW ("Contract Capacity") of Capacity and Unit Firm Energy (as defined below, "Energy") from the Turbine at the Facility.

For purposes of this Transaction and Confirmation, the definition of "Unit Firm" in Schedule P of the Agreement is hereby changed to read as follows:

"Unit Firm" means, with respect to this Transaction, that the Energy that is the subject of the Transaction is intended to be supplied from the Turbine (as defined in the Confirmation), and in the event the Turbine is unavailable or de-rated as a result of an unscheduled outage or "Forced Outage" (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) and (i) Seller elects not to deliver Replacement Energy or Alternate Energy, or (ii) Seller elects to deliver Alternate Energy but Buyer elects not to accept or receive Alternate Energy, Buyer's obligation to pay the Capacity Payment shall be reduced by the Capacity Availability Adjustment Amount, but no other damages shall apply in such instances, including without limitation the damages set out in Article Four of the Agreement.

Further, except as provided above, Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) by an event or circumstance that affects the Turbine so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and that is not within the reasonable control of, or the result of the negligence of, Seller or (ii) by Buyer's failure to perform. In any of such events described in the foregoing sentence, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

An unscheduled outage or Forced Outage may not be based, in whole or in part, on (i) Seller's increased costs of operating the Facility, or (ii) Seller's ability or desire to enter into transactions with third parties. Seller may provide Replacement Energy or Alternate Energy to restore Buyer's Schedule in the event of an unscheduled outage, Forced Outage or derate of the Turbine as set forth below.

**Contract Price:**

For purposes of the reference to "Contract Price" in Article Three and the definition of Force Majeure in the Agreement, "Contract Price" means the sum of (i) the Capacity Payment (calculated using the pertinent monthly Capacity Price consistent with the "Capacity Availability Adjustment" below), plus (ii) the Variable

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O&M Charge, multiplied by the Quantity of Energy delivered each month, plus (iii) any Scheduling Charges per month, plus (iv) the Cost of Gas for the applicable calendar month.

Seller shall show the individual components of the Contract Price (subsections (i) through (iv) above in this section) on each monthly invoice submitted to Buyer for payment.

**Capacity Payment:**

The "Capacity Payment" for each month as used herein equals the Capacity Price multiplied by the Contract Capacity, reduced by the Capacity Availability Adjustment. The applicable Capacity Prices for each month and each year of the Delivery Period of this Confirmation are as set forth in the Table below. The Summer Months are defined as the months of June, July, August, and September during the Delivery Period. The Non-Summer Months are defined as the months of January, February, March, April, May, October, November, and December during each year of the Delivery Period.

Calendar Year	Capacity Price - Summer Months	Capacity Price - Non-Summer Months
2012	[REDACTED]	[REDACTED]
2013	[REDACTED]	[REDACTED]
2014	[REDACTED]	[REDACTED]
2015	[REDACTED]	[REDACTED]
2016	[REDACTED]	[REDACTED]
2017	[REDACTED]	[REDACTED]
2018	[REDACTED]	[REDACTED]

**Variable O&M Charge:** [REDACTED] per MWh multiplied by the Inflation Factor.

**Scheduling Charge:** Buyer shall pay a "Scheduling Charge" for each Schedule submitted by Buyer and dispatched by Seller, calculated using the following formula:

[REDACTED]

The Scheduling Charge calculated above shall not exceed the amount equal to [REDACTED] (Inflation Factor) for any 24 hour period, except in the circumstance that two separate Schedules were submitted for such 24 hour period.

For the avoidance of doubt, Scheduling Charges also apply if Seller provides Replacement Energy or Alternate Energy. An additional Scheduling Charge will not be assessed in relation to a Turbine restart during a single continuous period scheduled by

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Buyer following an unscheduled outage or Forced Outage not caused by Force Majeure.

**Provision of Gas:** Seller shall provide Gas corresponding to Energy Buyer schedules in accordance with the "Option Exercise, Scheduling" section herein.

"Gas" means natural gas of a quality that meets or exceeds the manufacturer's specifications for the Turbine.

**Contract Heat Rate:** The Contract Heat Rate is as set forth in the table below:

Contract Heat Rate (MMBtu/MWh)		
Contract	Scheduled Quantity	
Year	150 MWh/hr	200 MWh/hr
2012-2018	■	■

**Quantity of Gas:** a) Seller shall provide the applicable Quantity of Gas corresponding to the respective Quantity of Energy Scheduled pursuant hereto, as set forth in the table below:

Quantity of Gas -- Energy		
Quantity of Energy Scheduled (MWh)	Contract Heat Rate (MMBtu/MWh)	Quantity of Gas (MMBtu/hr)
150	■	■
200	■	■

In the event of any unexcused failure of Seller to deliver Energy hereunder, Buyer's corresponding payment obligation for Gas shall be proportionately reduced.

b) In addition, Seller shall provide the applicable Quantity of Gas required for start up gas as shown in the table below:

Quantity of Gas – Start Up (MMBtu/Schedule)	
Hot Start	800
Warm Start	1,200
Cold Start	2,400

c) The total Quantity of Gas to be provided by Seller on a given day will be calculated as follows:

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The product of the number of hours scheduled and corresponding Quantity of Gas per the "Quantity of Gas -- Energy" table above plus the Quantity of Gas required for start up for each Schedule as shown in the "Quantity of Gas -- Start Up" table above (if applicable).

For example, if Buyer schedules 200 MW for eight hours and incurs a Warm Start, the Quantity of Gas to be provided by Seller would be calculated as:  $(8 \times 1,470) + 1,200 = 12,960$  MMBtu for that day.

**Cost of Gas:** The "Cost of Gas" shall be the aggregate of the Daily Gas Costs for each Gas Day during the calendar month plus any Intra-Day Scheduling Costs for the applicable calendar month. The "Daily Gas Cost" will be calculated by multiplying the Quantity of Gas for each Gas Day during the calendar month by the "Daily Midpoint," as reported in the "Daily Price Survey" for "Panhandle, TX-Okla." as published by Platts in Gas Daily for the flow date, plus [REDACTED] per MMBtu (which constitutes a reasonable value of what is expected to be, as of the Trade Date, the actual cost of gas delivered to the Facility) plus the applicable City of Coweta Utilities Tax as it exists currently under Municipal Code Section 7-401 or as may exist in the future pertinent to the Delivery Period hereof.

**Delivery Period:** January 1, 2012 through December 31, 2018, Hour Ending ("HE") 0100 through HE 2400 CPT, Monday through Sunday including NERC holidays.

**Delivery Point:** The Delivery Point will be the Busbar for the Turbine connected to the SPP transmission grid.

Buyer shall be responsible for all applicable transmission service charges and transmission losses at and after the Delivery Point for transmission service as to Energy or Replacement Energy delivered and at and after the alternate delivery point for any Alternate Energy delivered. Seller shall be responsible for all applicable transmission service charges and transmission losses before the Delivery Point for transmission service as to Energy or Replacement Energy delivered and before the alternate delivery point for any Alternate Energy delivered.

**Replacement Energy;  
Alternate Energy:** In the event that a Transmission Provider curtails firm transmission service procured by Buyer consistent with the "Contingencies" Section hereof, such that Buyer is unable to accept all or a portion of the scheduled Energy at the Delivery Point or at a Buyer approved alternate delivery point, Buyer shall be excused from accepting delivery of and paying for the curtailed Energy and from paying for the corresponding pro-rata amount of Gas provided by Seller to the Turbine.

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In the event the Turbine is unavailable or de-rated as a result of an unscheduled outage or Forced Outage, Seller may, in its sole reasonable discretion, provide replacement Energy from an alternate turbine at the Facility ("Replacement Energy"). If Seller reasonably determines it is unable to deliver Energy to Buyer from the Facility for such purpose in whole or in part, Seller may deliver replacement Energy from an alternate source to an alternate delivery point that is on the border of or within the SPS electrical service area transmission system ("Alternate Energy"), provided that Buyer will, in its sole reasonable discretion, have the right to accept or reject Seller's delivery of such Alternate Energy, in relation to any specific Schedule. To the extent Seller provides Replacement Energy or Buyer accepts Alternate Energy, the amounts of Replacement Energy and Alternate Energy delivered by Seller to Buyer shall constitute Energy delivered under this Confirmation and shall be deemed delivered from the Turbine for purposes of calculating the Contract Price and Capacity Availability Adjustment Amount (defined below). Notwithstanding the previous sentence, in connection with Seller's delivery to Buyer of Alternate Energy, Cost of Gas charged to Buyer will be adjusted by agreement of the Parties to reflect Seller's gas costs pertinent to such alternate source.

**Option Exercise;  
Scheduling:**

All Scheduling shall be subject to and limited by any applicable Rules promulgated by North American Electric Reliability Council ("NERC") or its successor, the SPP or its successor, and good utility practice (the "Scheduling Rules"). With respect to any changes in the Scheduling Rules, Buyer will manage and accept the risk of electric transmission scheduling requirements necessary to accommodate delivery. Buyer shall have the right, but not the obligation, to exercise its Energy Call Option by delivering notice of its option exercise to Seller no later than 8:00 a.m. CPT on the Business Day prior to the day on which the Energy is to be delivered. Buyer shall have the right, but not the obligation, to schedule Energy ("Requested Energy") for any day as follows:

(1) Buyer shall schedule deliveries in consecutive one-hour increments for a minimum of eight consecutive hours (no maximum number of consecutive hours).

(2) Buyer may make intra-day changes to a previously submitted day-ahead schedule ("Intra-Day Scheduling Change"), provided that Buyer provides Seller advance notice of at least four hours prior to the first hour affected by the Intra-Day Scheduling Change, and if the Turbine requires a Cold Start, then Buyer shall provide advance notice of at least six hours prior to the start of the first hour affected by the Intra-Day Scheduling Change. If Buyer elects to make an Intra-Day Scheduling Change, Seller shall have the right to charge Buyer for quoted costs (consistent with the process described below) to accommodate such a change ("Intra-

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Day Scheduling Cost"); provided, however, that Intra-Day Scheduling Costs shall consist only of costs associated with the change in Gas requirements as a result of the Intra-Day Scheduling Change. No later than one hour after receiving notice from Buyer of an Intra-Day Scheduling Change, Seller shall provide Buyer with a quote of the Intra-Day Scheduling Cost associated with implementation of the Intra-Day Scheduling Change. Upon receiving notice of the Intra-Day Scheduling Cost, Buyer shall immediately notify Seller of its decision either to accept or withdraw the Intra-Day Scheduling Change request.

(3) Buyer may schedule deliveries at any start time; provided, however, that Buyer shall not be entitled to a second intra-day Schedule, or a start for a subsequent day's Schedule, until the expiration of eight hours from the previous Shutdown.

**Capacity Availability Adjustment:**

To the extent Seller fails to deliver Energy from the Turbine because the Turbine is unavailable or de-rated as a result of an unscheduled outage or Forced Outage and (i) Seller elects not to deliver Replacement Energy or Alternate Energy or (ii) Seller elects to deliver Alternate Energy but Buyer elects not to accept or receive Alternate Energy, Buyer's obligation to pay the Capacity Payment shall be reduced by the Capacity Availability Adjustment Amount, but no other damages shall apply in such instances, including without limitation the damages set out in Article Four of the Agreement.

Seller guarantees the monthly Capacity Availability at 96% during Summer Months and 93% during Non-Summer Months. If the Capacity Availability falls below 96% (calculated on a four month rolling average of the Summer Months during the Delivery Period) during a Summer Month or 93% during a Non-Summer Month (calculated on a four month rolling average of the Non-Summer Months during the Delivery Period), Seller will credit Buyer 1.5% of the capacity payment for each 1% that the Capacity Availability falls below the guaranteed amount (the "Capacity Availability Adjustment Amount"). Notwithstanding the foregoing, the Capacity Availability prior to the fourth Summer Month and prior to the fourth Non-Summer Month during the initial year of the Delivery Period shall be determined as to each individual month for the first three Summer Months and the first three Non-Summer Months, rather than on such rolling average basis. In determining the Capacity Availability, (i) Force Majeure outages and Planned Maintenance (within the permitted limits stated in the "Planned Maintenance" section below) shall not reduce the calculated Monthly Availability and (ii) Replacement Energy and Alternate Energy delivered hereunder shall be treated as equivalent to the delivery of Energy from the Turbine. The Capacity Availability Adjustment Amount can never exceed Capacity Price for such month multiplied by the contract Quantity. Seller will credit Buyer any Capacity Availability Adjustment Amount in the invoice for the

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month following the conclusion of each calendar month during the Delivery Period.

The Hourly Availability will be calculated each hour Energy is scheduled using the following equation:

$$\text{Hourly Availability (HA)} = 1 - ((\text{Scheduled MW} - \text{Delivered MW}) / \text{Scheduled MW})$$

If no Energy is scheduled, the Hourly Availability is equal to 1

The Capacity Availability for each month will be calculated using the following equation:

$$\text{Capacity Availability (CA) for any given month} = \text{total HA in the month} / \text{total hours in the month}$$

The Capacity Payment for each month will be computed using the following equation:

CP = UCP + CAA, where:

CP = the Capacity Payment expressed in Dollars for such month,

UCP = the unadjusted Capacity Payment = 200,000 kW x (CR), expressed in Dollars for such month,

CR = Capacity Price expressed in US Dollars per KW-month, for the applicable month during the Delivery Period, and

CAA = the Capacity Availability Adjustment Amount expressed in Dollars and calculated as:

For Summer Months:

- (a) if CARA for such Month is  $\geq 0.96$ , then CAA = 0
- (b) if CARA for such Month is  $< 0.96$ , then

$$\text{CAA} = (0.015) \times (\text{CARA} - 0.96) \times (100) \times (200,000 \text{ kW}) \times (\text{CR}),$$

and

For Non-Summer Months:

- (a) if CARA for such Month is  $\geq 0.93$ , then CAA = 0
- (b) if CARA for such Month is  $< 0.93$ , then

$$\text{CAA} = (0.015) \times (\text{CARA} - 0.93) \times (100) \times (200,000 \text{ kW}) \times (\text{CR}),$$

Where:

CARA = is the four-month rolling average of CA calculated using the values for the 3 previous Summer Months or Non-Summer



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Months, as the case may be plus the value of the current month. For the first three Summer Months and the first three Non-Summer Months, CARA shall equal the value of CA for each month. For example:

For the month of June 2012, the CARA shall equal the monthly value of CA for June 2012;

For the month of September 2012, the CARA shall be the average of the monthly values for CA for June, July, August and September 2012;

For the month of June 2013, the CARA shall be the average of the monthly values for CA for July, August and September 2012 and the monthly value for CA for June 2013;

For the month of February 2012, the CARA shall equal the value of CA for February 2012; and

For the month of April 2012, the CARA shall equal the average of the monthly values for CA for January, February, March and April 2012.

Seller shall provide to Buyer calculations and supporting documentation of the HA on a daily basis, and the CA and CAA on a monthly basis.

**Planned Maintenance:**

"Planned Maintenance" means a planned outage scheduled in advance for the Turbine only during the Non-Summer Months. Any requests by Seller to schedule Planned Maintenance during any other month shall be subject to the prior written approval of Buyer. On or before August 1 of each year, beginning on August 1, 2011, Seller will provide a binding schedule of Planned Maintenance for the following year (subject to modification with due notice as set forth below) and a non-binding schedule of Planned Maintenance for the balance of the Delivery Period.

Seller shall be permitted a maximum of 480 hours of Planned Maintenance for each calendar year for the Turbine without reduction of CA for purposes of the Capacity Availability Adjustment; provided, however, that Seller shall be permitted 740 hours of Planned Maintenance during one calendar year during the Delivery Period (but not during the first two calendar years of the Delivery Period), not reducing CA for purposes of calculating the Capacity Availability Adjustment.

Seller shall provide Buyer with reasonable advance notice of any change in any Planned Maintenance schedule consistent with the following:

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<b>Planned Maintenance Expected Duration</b>	<b>Advance Notice Required</b>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days
(3) Major overhauls (over 5 Days)	at least 90 Days

**Contingencies:**

The commencement of the Parties' performance obligations as to Product delivery and receipt under this Confirmation is contingent upon Buyer having reserved sufficient firm transmission service from the SPP to receive the full 200 MW from Seller for the entire Delivery Period ("Transmission Contingency"). Specifically, Buyer has a transmission service request (OASIS #73437686) under study by the SPP for Buyer to designate 200 MW from the Facility as a Network Resource ("Transmission Request"). Buyer shall provide notice, in writing, of SPP's acceptance or rejection of Buyer's Transmission Request on or before July 1, 2011, and failure to provide such notice will be deemed to be a waiver by Buyer of the Transmission Contingency. If SPP rejects Buyer's Transmission Request, upon Seller's receipt of notice thereof from Buyer on or before July 1, 2011 of such rejection, this Confirmation shall be immediately terminated, and each Party shall be relieved of all obligations pursuant to this Confirmation without any further financial or other obligation to the other Party as a result of such termination or otherwise; provided, however, that each Party shall be responsible for its own costs and expenses incurred prior to such termination.

The commencement of the Parties' performance obligations as to Product delivery and receipt under this Confirmation is also contingent upon the approval by the New Mexico Public Regulation Commission ("NMPRC"). No later than forty-five (45) calendar days after execution of this Confirmation, Buyer shall request approval of this Transaction and Confirmation from the NMPRC. Buyer shall use commercially reasonable efforts to obtain NMPRC Approval, and Seller shall cooperate reasonably with Buyer's efforts to seek NMPRC Approval. Buyer shall promptly provide written notice to Seller upon grant of NMPRC approval, and this contingency will have no further effect.

In the event that Buyer timely applies for NMPRC approval pursuant to the above paragraph but is unable, despite Buyer's commercially reasonable efforts, to obtain NMPRC approval without conditions unsatisfactory to Buyer, Buyer shall have the right to terminate this Confirmation, by written notice to Seller at any time within six months following the date of this Confirmation. Upon Seller's receipt of such notice, this Confirmation shall be immediately terminated, and each Party shall be relieved of all obligations pursuant to this Confirmation without any further financial or other obligation to the other Party as a result of such termination or otherwise; provided, however, that each Party shall

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be responsible for its own costs and expenses incurred prior to such termination.

**Credit:**

Effective from December 1, 2011 and through the Delivery Period, Seller is obligated to provide and maintain Required Credit Support. If Seller fails to provide or maintain the Required Credit Support during the period from such date through the end of the Delivery Period, Buyer shall have the right to terminate this Confirmation upon providing at least ninety (90) days' written notice of same to Seller unless during the initial twenty (20) days of such ninety (90) day period Seller provides the Required Credit Support.

**Taxes:**

Except for Emissions Costs, Seller shall be solely responsible for (i) any and all present and future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, including taxes and impositions that vary based upon the amount of power produced, the amount and/or nature of fuel consumed, and/or the amount and/or nature of wastes produced by the Facility, and (ii) all ad valorem taxes relating to the Facility; provided that responsibility for the local City of Coweta Utilities Tax will be as stated in the "Cost of Gas" section hereof.

The Parties shall cooperate to minimize tax exposure; however, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.

**Emissions Cost and Allowances:**

(a) Notwithstanding anything to the contrary herein, Buyer shall reimburse Seller for all Emissions Costs that are incurred by Seller on or after January 1, 2012 (the "Commencement Date") and that are applicable during the Delivery Period, resulting from the imposition of any Law existing on the Trade Date by a Governmental Authority with jurisdiction over Seller and/or the Facility, and/or any new environmental or other Law, or the modification or new interpretations of existing Law(s) which become effective subsequent to the Trade Date.

(b) As applicable, Seller shall include any Emissions Costs payable by Buyer in its monthly invoice to Buyer, as provided in Article 6 of the Agreement.

(c) At Buyer's request, Seller shall provide Buyer a copy of any reporting, estimates or other compliance documentation submitted

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to any Governmental Authority pertaining to any Law resulting in Emissions Costs for the Turbine (or Facility, as applicable).

(d) With respect to any Emissions Costs incurred by Seller on or after the Commencement Date as a result of any new environmental or other Law, or the modification or new interpretations of existing Law affecting emissions of carbon dioxide ("CO<sub>2</sub>") and becoming effective subsequent to the Trade Date (any such new or existing Law hereinafter, "Environmental Change in Law"), Seller shall provide Buyer with written notice thereof as promptly as practicable after Seller obtains knowledge thereof, but in no event less than three (3) months after the date on which the Environmental Change in Law becomes effective (an "Environmental Change in Law Notice").

(e) If Buyer receives an Environmental Change in Law Notice, Buyer and Seller shall negotiate in good faith and shall use commercially reasonable efforts to develop and agree upon a written amendment to this Transaction in a timely manner to govern the procurement, disposition, transfer, use, and market price determinations (including applicable indices) of, and accounting and billing for, Emission Costs for the applicable compliance period (as modified from time to time, "Emissions Plan") and to cooperate with and be responsive to each other and each other's reasonable requests in the development of the Emissions Plan. For the avoidance of doubt, the Parties agree that the essential business purpose of this Emissions Costs and Allowances section is for Buyer to bear all Emissions Costs related to the production or sale of Delivered Energy during the period commencing on the Commencement Date and ending at the expiration of the Delivery Period.

(f) Seller will as soon as practicable notify Buyer, in writing, if it anticipates that Seller will be required to obtain, hold or surrender emissions credits, allocations, allowances or offsets relating to any CO<sub>2</sub> emissions from the Facility attributable to Delivered Energy. In the event that Seller receives any credits, allocations, allowances, offsets, legally acceptable tradable instrument, or similar item of value ("Credit") related to the operation of the Turbine and/or emissions of CO<sub>2</sub> from the Turbine, a pro rata share of such Credits that are attributable to the Turbine shall be applied to mitigate or offset the emissions and/or the Emissions Costs, as applicable, incurred by Seller as a result of operation of the Turbine for the sale of Delivered Energy hereunder, in advance of Seller seeking reimbursement from Buyer hereunder. For purposes of the preceding sentence, the pro rata share shall be calculated based on the same methods, formulae and/or calculations used by the Governmental Authority to determine the Emissions Costs for any given compliance period (e.g., (i) if Emissions Costs are imposed on Seller based on the Capacity of the Facility, then the pro rata share of Credits shall be equal to Buyer's percentage of Contract Capacity from the Facility, or (ii) if

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Emissions Costs are imposed on Seller based on the volumetric production or sale of Energy from the Facility during a given compliance period, then the pro rata share of Credits shall be equal to the amount of Delivered Energy during such period, divided by the total amount of Energy produced or sold from the Facility during that same period). If Seller receives some type of corporate wide allocation of Credit which allocation is not directly, but at least indirectly, related to the Turbine, its emissions and/or operation for the sale of Delivered Energy, Buyer and Seller shall work together in good faith to establish a reasonable allocation for the Turbine.

(g) As an alternative to reimbursing Seller for any Emissions Costs pursuant to paragraph (a) of this section, Buyer may, at its election, provide to Seller CO2 emissions allowances to cover Buyer's share of Emissions Costs from the Turbine (or Facility in the case of Replacement Energy) as may be applicable and/or required by Law, net of Buyer's pro-rata share of Credits allocated or granted to the Turbine (or Facility in the case of Replacement Energy) by a Governmental Authority.

(h) If Buyer elects to provide Seller with emissions allowances to cover Buyer's share of any Emissions Costs per the preceding paragraph (g), Buyer shall have until thirty (30) days prior to any compliance deadline (taking into account seasonal, annual or other compliance period deadlines) to fund the applicable allowance accounts for the Facility with, or otherwise provide to Seller, any CO2 emissions allowances required by Law as a result of emissions of CO2 attributable to Delivered Energy from the Turbine or Facility during such compliance period. In the event that, prior to the date that is thirty (30) days before any such compliance deadline, Buyer fails to provide such required emissions allowances (if any), Seller shall supply such required emissions allowances on behalf of Buyer and shall charge all reasonable costs and expenses associated therewith (including brokers' and attorneys' fees, as applicable) to Buyer in the next monthly invoice. Any remaining allowances in excess of actual compliance requirements shall be netted against the following period's compliance requirement (to the extent authorized by Law) or returned to Buyer, at Buyer's sole discretion.

(i) Without affecting or otherwise diminishing in any way Buyer's reimbursement obligation pursuant to paragraphs (a) and (j) of this section and/or Buyer's obligation to provide emissions allowances pursuant to paragraphs (g) and (h) of this section, nothing herein shall relieve Seller of its obligation to comply, at its sole cost, with any permit condition or emission limit or standard (including an emission limit or standard related to CO2) imposed specifically on the Facility.

(j) Should Seller supply Alternate Energy to Buyer from an identified alternate source, Seller shall be entitled to recover, and

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Buyer shall be obliged to pay an amount equal to any Emissions Costs assessed by such alternate source upon the sale of Alternate Energy to Buyer, which amount is intended to recover the alternate source's costs to comply with any Environmental Change in Law ("Alternate Energy Emissions Costs"); provided that (i) in no event shall Buyer's obligations with respect to Alternate Energy Emissions Costs be greater than if such Alternate Energy had been delivered from the Turbine. In no event will Buyer be responsible for providing or reimbursing Seller for Emissions Costs with respect to Alternate Energy acquired from the market and not an identified alternate source.

**Change in  
Regional Territory:**

In the event of a change in the operation or organizational structure of the regional territory which includes the Facility or Buyer's service area (including implementation of an ISO, RTO, or realignment of the transmission system) and such change is reasonably anticipated to affect materially and adversely either Party's ability to perform its obligations hereunder, the representatives of each Party shall convene within 15 days of written notification from either Party and shall provide recommendations for the Parties' appropriate action. Both Parties thereafter shall negotiate in good faith an amendment to this Agreement or take other appropriate actions, the effect of which will be to preserve or restore the respective Parties, as closely as possible, to the same business and economic positions that existed prior to such change.

**FERC Order No. 717;  
Compliance with  
Applicable Law:**

Buyer conducts its operations (i) in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers requiring the separation of its transmission function and its marketing function. Seller represents that it has entered into an interconnection agreement with the applicable interconnection provider and will maintain such agreement throughout the term hereof. To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Facility and its interconnection agreement directly from the interconnection provider and to the extent necessary Seller shall provide written notice to the interconnection provider confirming such authorization.

Each Party shall at all times comply with all pertinent Laws and applicable licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions

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(including those relating to human health, safety, the natural environment or otherwise), except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Confirmation, and shall pay its respective charges and fees in connection therewith.

**Miscellaneous:**

Seller shall not make unilateral application to the Federal Energy Regulatory Commission for a change in rates, terms and conditions herein under Section 205 of the Federal Power Act, and Buyer shall not seek any relief under Section 206 of the Federal Power Act concerning the rates, terms and conditions herein.

Except as expressly provided by this Confirmation, Buyer and Seller further agree that the standard of review for changes to this Confirmation proposed by any person, including a non-party or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm'n 558 U.S. (2010) (commonly known as the "Mobile-Sierra" doctrine).

The Parties agree that telephone conversations may be recorded; that such recordings are evidence of communications and instructions between the Parties; and that they are admissible evidence in the event of a dispute.

**Notices:**

To Buyer:

Southwestern Public Service Company, c/o Xcel Energy  
Services Inc.,

550 15th Street, Suite 1000, Denver CO 80202.

Attn: Manager, Structured Purchases

To Seller:

As set forth in the Agreement

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**Definitions:**

"Capacity" means the megawatt output level that the Turbine is capable of continuously producing and making available at the Delivery Point during each hour of the Delivery Period.

"Catastrophic Equipment Failure" means either a sudden unexpected failure of a major piece of equipment, mechanical or equipment breakdown which (i) substantially reduces or eliminates the capability of the Turbine to produce Energy, (ii) is beyond the reasonable control of Seller and could not have been prevented by the exercise of reasonable due diligence by Seller, and (iii) is caused by Force Majeure, the negligence of a third party engaged in maintenance or repair activities with respect to the Turbine, or any other cause beyond the reasonable control of the Party relying on such cause to excuse its performance.

"Cold Start" shall be a Schedule that begins more than 48 hours after the conclusion of the previous Schedule.

"Contract Heat Rate" means the ratio of fuel consumed to electricity produced relating to the pricing of Fuel Conversion Services, shall have the values stated in the "Contract Heat Rate" Section of this Confirmation.

"CPT" means Central Prevailing Time.

"Delivered Energy" means, pursuant to a Request for Energy, the amount of (i) metered Requested Energy expressed in MWh produced at the Facility and delivered at the Delivery Point, (ii) Requested Energy scheduled and delivered as Replacement Energy, and (iii) Alternate Energy provided by Seller from an identified alternate source.

"Emissions Cost(s)" means (i) the cost of allowances, charges, credits, offsets, taxes, fees, other costs or other legally acceptable tradable instruments related to CO2 emissions attributable to the combustion of fuel to produce Delivered Energy during the Delivery Period and (ii) the amount of any taxes assessed based on the quantity of CO2 emissions attributable to the combustion of fuel to produce Delivered Energy during the Delivery Period, in each case that are incurred by or imposed upon Seller on and after the Commencement Date. In no event shall Emissions Costs include any Facility, Turbine, or alternate source, capital expenditures, repairs, enhancements, additions, labor and materials or other similar expenditures.

"Energy" means electric energy having characteristics commonly known as three phase alternating current, with a nominal frequency of 60 Hertz, a nominal voltage equivalent to that of the transmission system into which it is being delivered at the Delivery Point or, if applicable, an alternate delivery point, and measured in KWh or MWh.

"Energy Call Option" means Buyer's right, but not obligation, to notify Seller to deliver Energy for a period specified by Buyer.

"Facility" means the Oneta Energy Center located in Broken Arrow, Oklahoma.

"Fired Hours" means the greater of (i) 24 or (ii) number of continuous hours in a Schedule.

"Force Majeure" for purposes of this Confirmation only, means one or more events or circumstances resulting in an interruption or failure of service or deficiency in the quality or quantity of service, or any other failure to perform if such failure: (i) is not caused by the affected Party's fault or negligence; (ii) is beyond the Party's reasonable control and; (iii) and which, by



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exercise of reasonable diligence the Party is unable to prevent or overcome, such events or circumstances including but not limited to, storm, flood, tornado, lightning, earthquake, explosion, transmission failures, disruptions and/or curtailment by transmission providers, interruption and/or curtailment of firm gas transportation, civil disturbance, sabotage, war or other armed conflict, insurrection, terrorism, act of God, action of a court, or compliance with any court order, or Law having the effect of Law promulgated by a Governmental Authority having jurisdiction or Catastrophic Equipment Failure. Notwithstanding the foregoing, economic hardship of either Party shall not constitute a Force Majeure under this Confirmation. Any obligation to pay an amount otherwise owed may not be excused by Force Majeure.

"Gas Day" shall mean the 24 hour period beginning at 9:00 am (CPT) each day during the Delivery Period. The first Gas Day of each calendar month will begin at 9:00 am (CPT) on the first calendar day of each month and the last Gas Day of each month will end at 9:00 am (CPT) on the first calendar day of the subsequent month.

"GDP-IPD" shall mean Gross Domestic Product Implicit Price Deflator as first published by the United States Department of Commerce from time to time.

"Governmental Authority" means any federal, state, local, tribal or municipal governmental body, and governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power or any court or governmental, quasi-governmental, regulatory, administrative or tribal dispute resolution tribunal or other body having jurisdiction over a subject matter of the Agreement or this Confirmation.

"Hot Start" shall be a Schedule that begins less than or equal to eight hours after the conclusion of the previous Schedule.

"Inflation Factor" shall mean a factor escalating on January 1 of each calendar year, beginning January 1, 2013, based on the change in the value of the first published GDP-IPD during the fourth calendar quarter of the previous year and the fourth calendar quarter of the year previous to that year. For example, escalation of the Scheduling Charge and Variable O&M for 2013 will be based on the percentage change difference between the first published GDP-IPD in the fourth calendar quarter of 2011 and the first published GDP-IPD in the fourth calendar quarter of 2012.

"Investment Grade Rating" means a senior unsecured bond rating (unenhanced by third party support) assigned by S&P of BBB- or higher and by Moody's of Baa3 or higher; provided that if any senior unsecured bond rating (unenhanced by third party support) is exactly equivalent to BBB-/Baa3, the rated entity shall not be on credit watch or negative outlook by such rating agency.

"Law" means any applicable statute, law, ordinance, Rule, regulation, ruling, order, writ, injunction, judgment, decree, directive, policy, procedure, or other legal or regulatory determination or interpretation by a Governmental Authority of competent jurisdiction.

"Letter of Credit" means one or more irrevocable, transferable standby letters of credit for the Delivery Period issued by a U.S. commercial bank or financial institution (or a foreign bank with a U.S. branch) with such bank having 1) a credit rating of at least A- from S&P or A3 from Moody's and 2) assets of at least \$1,000,000,000 (in US dollars) in the form attached hereto as Exhibit A. Costs of a Letter of Credit shall be borne by the applicant therefor.

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"Request for Energy" means the request by Buyer for the delivery of Requested Energy, including changes thereto, in accordance with the applicable provisions of the Scheduling section hereof.

"Required Credit Support" means that the Seller is required to provide to Buyer one of the following for the term of this Transaction, including any extensions thereof, at its option: (i) verifiable written evidence that it has achieved a senior unsecured bond rating (unenhanced by third party support) that is an Investment Grade Rating; (ii) a corporate Guarantee in the form attached hereto as Exhibit B, in the amount of \$12,000,000 from an entity that has a credit rating that is an Investment Grade Rating and is reasonably acceptable to Buyer; provided that any entity that has an Investment Grade Rating that is an Affiliate of Seller shall be deemed accepted by Buyer; (iii) a Letter of Credit in the amount of \$12,000,000; or (iv) a cash deposit to a separate escrow-only entity acceptable to Buyer in a form acceptable to Buyer in the amount of \$12,000,000. Interest accruing on cash deposited in escrow (at the interest rate pertinent to such escrow account) shall be transferred to Seller monthly within three Business Days following the close of each calendar month. Seller shall replenish the Required Credit Support amount to \$12,000,000 within fifteen (15) Business Days after any draw on the Security Fund by Buyer.

"Rule" means any requirement, tariff, rule, order, regulation, and procedure authorized or established by the applicable Governmental Authority that may affect the Parties' obligations in this Confirmation, as may be amended from time to time.

"Schedule" shall commence with the first hour in which the Product is scheduled for delivery and shall end with the last hour in which scheduled Energy is greater than zero. Buyer's receipt of Energy continuously over two or more successive days shall be considered a single Schedule for purposes of calculating the Scheduling Charge hereunder.

"Shutdown" means the end of a Schedule.

"SPP" means the Southwest Power Pool or a successor Transmission Provider thereto.

"Transmission Provider" means any electric utility, transmission operator, independent coordinator of transmission, or other entity that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce from whom transmission services, ancillary and other services are necessary for Buyer's receipt of Product hereunder at the Delivery Point.

"Turbine" means unit no. 1.1 of the Facility.


"Warm Start" shall be a Schedule that begins more than eight hours, but no greater than 48 hours after the conclusion of the previous Schedule.

**Execution Copy**

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation and returning it to us.

**Calpine Energy Services, L.P.**

**Southwestern Public Service Company  
a New Mexico corporation**

By: 

Name: Thad Hill

Title: President

Date: 5-7-10

By: 

Name: Riley Hill

Title: President and CEO

Date: 5/13/10

km

Execution Copy

EXHIBIT A

FORM OF LETTER OF CREDIT

\*\*\*\*\*DRAFT ONLY\*\*\*\*\*

IRREVOCABLE LETTER OF CREDIT NUMBER \_\_\_\_\_

LETTER OF CREDIT AMOUNT	ISSUE DATE	EXPIRY DATE

**BENEFICIARY:**  
SOUTHWESTERN PUBLIC SERVICE COMPANY,  
C/O XCEL ENERGY SERVICES INC.,  
550 15<sup>TH</sup> STREET, SUITE 1000  
DENVER, CO 80202

**APPLICANT:**  
CALPINE CORPORATION  
717 TEXAS AVENUE, SUITE 1000  
HOUSTON, TX 77002

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF CALPINE CORPORATION (THE "APPLICANT"), 717 TEXAS AVENUE, SUITE 1000, HOUSTON, TX 77002, AND ON BEHALF OF CALPINE ENERGY SERVICES, L.P. (THE "ACCOUNT PARTY") WE, \_\_\_\_\_ (THE "ISSUER"), HEREBY ESTABLISH, EFFECTIVE IMMEDIATELY, IN YOUR FAVOR, SOUTHWESTERN PUBLIC SERVICE COMPANY, C/O XCEL ENERGY SERVICES INC., (THE "BENEFICIARY") OUR IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ IN THE AGGREGATE AMOUNT OF TWELVE MILLION UNITED STATES DOLLARS (U.S. \$12,000,000) (AS SUCH AMOUNT MAY BE REDUCED FROM TIME TO TIME BY PARTIAL DRAWS HEREUNDER, THE "STATED AMOUNT").

WE ARE INFORMED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS BEING ISSUED PURSUANT TO, AND IN ACCORDANCE WITH THAT CERTAIN EDISON ELECTRIC INSTITUTE MASTER POWER PURCHASE AND SALE AGREEMENT AND RELATED CONFIRMATION LETTER, EACH DATED \_\_\_\_\_, 2010, BETWEEN THE BENEFICIARY AND THE ACCOUNT PARTY (COLLECTIVELY, THE "AGREEMENT").

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT THE OFFICE OF \_\_\_\_\_ [ADDRESS OF ISSUER OR SERVICER] \_\_\_\_\_, AND EXPIRES WITH OUR CLOSE OF BUSINESS ON \_\_\_\_\_ (THE "EXPIRATION DATE").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT AND THE EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENTS FOR PERIODS OF ONE (1) YEAR FROM THE PRESENT EXPIRATION DATE, AND THEREAFTER FOR ONE (1) YEAR FROM EACH FUTURE EXPIRATION DATE, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO THE THEN APPLICABLE EXPIRATION DATE WE NOTIFY YOU IN WRITING BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED BEYOND THE THEN APPLICABLE EXPIRATION DATE.

**Execution Copy**

\*\*\*\*\*DRAFT ONLY\*\*\*\*\*  
IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ PAGE NO. 2

FUNDS IN PAYMENT OF A DRAWING UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO THE BENEFICIARY BY PAYMENT AGAINST PRESENTATION AT THE OFFICE OF ISSUER AS STIPULATED HEREIN ABOVE, OF THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED SIGHT DRAFT(S) IN THE FORM OF EXHIBIT 1 ATTACHED HERETO, THE BENEFICIARY'S SIGNED AND APPROPRIATELY COMPLETED DRAWING CERTIFICATE(S) IN THE FORM OF EXHIBIT 2 ATTACHED HERETO AND COPIES OF THE ORIGINAL LETTER OF CREDIT AND AMENDMENTS (IF ANY).

IF A DRAWING IS PRESENTED AT THE ADDRESS NOTED ABOVE OR DELIVERED TO US BY OVERNIGHT COURIER AT OR PRIOR TO 11:00 A.M. \_\_[BANK LOCAL TIME ZONE]\_\_ TIME ON A BUSINESS DAY, PAYMENT OF THE AMOUNT SPECIFIED IN SUCH DRAFT SHALL BE MADE ON THE THIRD SUCCEEDING BUSINESS DAY. IF SUCH DRAFT IS PRESENTED AT OUR COUNTERS OR DELIVERED TO US BY OVERNIGHT COURIER AFTER 11:00 A.M. \_\_[BANK LOCAL TIME ZONE]\_\_ TIME ON A BUSINESS DAY, PAYMENT OF THE AMOUNT SPECIFIED IN SUCH DRAFT SHALL BE MADE ON THE FOURTH SUCCEEDING BUSINESS DAY.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED HEREUNDER. ANY DRAWING HONORED HEREUNDER BY THE ISSUER SHALL REDUCE THE STATED AMOUNT AVAILABLE FOR DRAWINGS BY THE AMOUNT OF ANY DRAWING HONORED BY THE ISSUER.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE; PROVIDED THAT THE BENEFICIARY MAY TRANSFER THIS LETTER OF CREDIT TO ANY PERSON THAT ASSUMES THE BENEFICIARY'S RIGHT, TITLE OR INTEREST IN, TO OR UNDER THE AGREEMENT.

ALL BANKING CHARGES ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

AS USED HEREIN, "BUSINESS DAY" MEANS ANY DAY OTHER THAN SATURDAY, SUNDAY OR A LEGAL HOLIDAY IN \_\_[CITY AND STATE WHERE THE ISSUER IS LOCATED]\_\_.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES, INTERNATIONAL CHAMBER OF COMMERCE (ICC) PUBLICATION NO. 590 ("ISP98"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF ISP98, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. AS TO MATTERS NOT ADDRESSED BY THIS LETTER OF CREDIT OR ISP98, AND TO THE EXTENT NOT INCONSISTENT WITH THIS LETTER OF CREDIT OR ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF NEW YORK).

**Execution Copy**

\*\*\*\*\*DRAFT ONLY\*\*\*\*\*

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ PAGE NO. 3

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REASON OF OUR REFERENCE TO ANY AGREEMENTS OR INSTRUMENTS REFERRED TO OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO. ANY SUCH AGREEMENTS OR INSTRUMENTS SHALL NOT BE DEEMED INCORPORATED HEREIN BY REFERENCE.

SHOULD THE ORIGINAL LETTER OF CREDIT BE LOST OR DESTROYED, A DUPLICATE ORIGINAL MAY BE ISSUED TO THE BENEFICIARY UPON OUR RECEIPT OF AN ACCEPTABLE LETTER OF INDEMNITY AND OUR FEE OF USD [DUPLICATE FEE AMOUNT]\_\_\_\_\_.

SINCERELY,

\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

*Execution Copy*

\*\*\*\*\*DRAFT ONLY\*\*\*\*\*

EXHIBIT 1

[BENEFICIARY LETTERHEAD]

SIGHT DRAFT

[DATE]

[ISSUING BANK NAME AND ADDRESS]

RE: IRREVOCABLE LETTER OF CREDIT NUMBER \_\_\_\_\_

FOR THE VALUE RECEIVED, PAY TO THE ORDER OF SOUTHWESTERN PUBLIC SERVICE COMPANY, C/O XCEL ENERGY SERVICES INC., BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS TO THE FOLLOWING ACCOUNT:

[NAME OF ACCOUNT]  
[ACCOUNT NUMBER]  
[NAME AND ADDRESS OF BANK AT WHICH ACCOUNT IS MAINTAINED]  
[ABA NUMBER]  
[REFERENCE]

THE FOLLOWING AMOUNT:

[INSERT NUMBER OF DOLLARS IN WRITING] UNITED STATES DOLLARS  
(US\$ [INSERT NUMBER OF DOLLARS IN FIGURES])

DRAWN UPON YOUR LETTER OF CREDIT NO. \_\_\_\_\_ DATED  
\_\_\_\_, 20\_\_.

SOUTHWESTERN PUBLIC SERVICE COMPANY, C/O XCEL ENERGY SERVICES  
INC.,

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Execution Copy**

\*\*\*\*\*DRAFT ONLY\*\*\*\*\*

**EXHIBIT 2**

**DRAWING CERTIFICATE**

[DATE]

[ISSUING BANK NAME AND ADDRESS]

RE: IRREVOCABLE LETTER OF CREDIT NUMBER \_\_\_\_\_

LADIES AND GENTLEMEN:

THE UNDERSIGNED, A DULY AUTHORIZED REPRESENTATIVE OF \_\_\_[BENEFICIARY]\_\_\_ AS BENEFICIARY OF THE CAPTIONED LETTER OF CREDIT (THE "LETTER OF CREDIT") HEREBY STATES TO \_\_\_\_\_ (THE "ISSUER") WITH RESPECT TO THE LETTER OF CREDIT (THE TERMS DEFINED THEREIN AND NOT OTHERWISE DEFINED HEREIN BEING USED HEREIN AS THEREIN DEFINED) THAT:

- (1) THE AMOUNT SPECIFIED ON THE SIGHT DRAFT OF EVEN DATE HEREWITH IS DUE AND PAYABLE BY CALPINE ENERGY SERVICES, L.P. UNDER THE AGREEMENT.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS EXECUTED THIS DRAWING CERTIFICATE AS OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

SOUTHWESTERN PUBLIC SERVICE COMPANY, C/O XCEL ENERGY SERVICES INC.,

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



*Execution Copy*

**EXHIBIT B**

**FORM OF GUARANTEE**

Guarantee

This GUARANTEE dated as of March \_\_, 2010 (the "Effective Date"), is made by Calpine Corporation, a Delaware corporation ("Calpine"), for the benefit of Southwestern Public Service Company, a New Mexico corporation ("Beneficiary").

WHEREAS, Beneficiary and Calpine Energy Services, L.P., a Delaware limited partnership ("CES") and a subsidiary of Calpine, have entered into that certain Edison Electric Institute Master Power Purchase and Sale Agreement and related Confirmation Letter, each dated \_\_\_\_\_, 2010 (collectively the "Agreement");

NOW, THEREFORE, for value received, and as an inducement to Beneficiary to enter into the Agreement with CES, Calpine agrees as follows:

1. Guarantee. Calpine irrevocably and unconditionally guarantees (as primary obligor and not merely as surety) to the prompt and complete payment when due, by acceleration or otherwise, of all amounts (whether present or future, actual or contingent) payable by CES under the Agreement and any amendments thereto whether or not such amounts become due before or after the Effective Date (each an "Obligation") commencing on the Effective Date and terminating on the date ("Termination Date") that is the earlier of (i) December 31, 2018 (ii) the fifteenth (15<sup>th</sup>) Business Day after prior written notice of termination of this Guarantee has been received by Beneficiary, or (iii) the date when all Obligations have been paid. The aggregate liability of Calpine under this Guarantee at any time shall not exceed U.S. \$12,000,000 (TWELVE MILLION AND NO/100 UNITED STATES DOLLARS) (the "Guarantee Cap Amount"), exclusive of any costs and expenses incurred by Beneficiary to collect or enforce any of the obligations under this Guarantee. This is a guarantee of payment and not of collection. If CES fails to pay any Obligation for any reason, Calpine will pay or cause to be paid such Obligation directly for Beneficiary benefit promptly upon Beneficiary's demand therefor and without Beneficiary having to make prior demand on CES. All payments hereunder shall be made without reduction, whether by offset, payment in escrow, or otherwise, except to the extent of any defenses to payment or performance which CES may have under the Agreement, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of CES, the power or authority of CES to enter into the Agreement, and to perform thereunder, and the lack of validity or enforceability of the Agreement or any other documents executed in connection with the Agreement. Exclusive of the Guarantee Cap Amount, Calpine is liable for, and hereby indemnifies Beneficiary for Beneficiary's reasonable costs and expenses, including but not limited to reasonable attorneys' fees, reasonable costs and disbursements, incurred in any effort to collect or enforce any of the obligations under this Guarantee, whether or not any lawsuit is filed. Notwithstanding anything to the contrary herein, this Guarantee shall continue to be effective or reinstated, as the case may be, if at any time payment of the Obligations, or any part thereof, is rescinded or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of CES or otherwise, all as though the payment of such Obligations had not been made.

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2. Calpine's Obligation. Subject to Sections 1 and 3, Calpine's obligations under this Guarantee are absolute and unconditional, shall remain in force until the Termination Date (and shall continue to remain in force following the Termination Date with respect to any Obligations of CES arising with respect to any Agreement entered into on or prior to the Termination Date) and shall not be released or discharged for any reason whatsoever prior thereto, including without limitation:

- (i) the extension of time for payment or performance of any Obligation or the amendment, extension or renewal of the Agreement or any Obligation, except that any such extension, amendment or renewal shall not enlarge Calpine's obligations under this Guarantee and Calpine shall have the benefit of any such extension, amendment or renewal to the same extent as CES (e.g., if CES's time for payment of an Obligation has been extended, Calpine shall have no obligation under this Guarantee to make payment of such Obligation until such time as CES is required under the extension to make payment);
- (ii) any delay or failure by Beneficiary to enforce or exercise any right or remedy under the Agreement or this Guarantee (except the statute of limitations applicable by law to this Guarantee, if any), or waiver by Beneficiary of any such right or remedy, all of which rights and remedies shall be cumulative and not mutually exclusive;
- (iii) any transfer, assignment or mortgaging by Beneficiary of any interest in the Agreement or this Guarantee;
- (iv) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceeding affecting CES, or the disaffirmance of the Agreement in any such proceeding;
- (v) any merger, consolidation or other reorganization to which CES, Calpine or any related entity is a party, or any direct or indirect sale or disposition of Calpine's or CES's assets or Calpine's direct or indirect ownership interest in CES; or
- (vi) the existence, validity, enforceability, perfection, release, or extent of any collateral for such Obligations. Beneficiary shall not be obligated to file any claim relating to the Obligations owing to it in the event that CES becomes subject to a bankruptcy, reorganization, or a similar proceeding, and the failure of Beneficiary to so file shall not affect Calpine's obligations hereunder.

3. Assignment. Calpine may not assign this Guarantee or its obligations hereunder without the prior written consent of Beneficiary, which consent of Beneficiary shall not be unreasonably withheld or delayed. Any reasonable uncertainty on the part of Beneficiary concerning the ability on the part of any potential assignee of Calpine to carry out Calpine's obligations hereunder shall be considered a reasonable basis for withholding consent, unless and until the potential assignee can reasonably satisfy Beneficiary that the potential assignee is capable of performing the obligations of Calpine hereunder.

4. Waivers by Calpine. Calpine waives (i) notice of the acceptance of this Guarantee, demand or presentment for payment to CES or the making of any protest, notice of the amount of the Obligations outstanding at any time, notice of failure to perform on the part of CES, notice of any amendment, modification or waiver of or under the Agreement, and all other notices or

**Execution Copy**

demands not specified hereunder, and (ii) any requirement that Beneficiary exhaust any right or take any action against CES, any collateral security or any other guarantor or surety, whether or not Beneficiary shall have resorted to any such collateral security, or shall have proceeded against any other obligor principally or secondarily obligated with respect to any of the Obligations. Calpine agrees that Beneficiary may, at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of Calpine, make any agreement with CES or with any other party to or person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or any agreement between Beneficiary and CES or any such other party or person, without in any way impairing or affecting this Guarantee.

5. Representations and Warranties. Calpine hereby represents and warrants that it has all necessary and appropriate powers and authority to execute and perform under this Guarantee and that such Guarantee constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights in general principles of equity).

6. Subrogation. Calpine will not exercise any rights that it may acquire by way of subrogation until all Obligations (within the Guarantee Cap Amount) to Beneficiary shall have been paid in full. If any amount shall be paid to Calpine in violation of the preceding sentence, such amount shall be held for the benefit of Beneficiary and shall forthwith be paid to Beneficiary to be credited and applied to the Obligations, whether matured or un-matured. Subject to the foregoing, upon payment of all the Obligations, Calpine shall be subrogated to the rights of Beneficiary against CES, and Beneficiary agrees to take at Calpine's expense such steps as Calpine may reasonably request to implement such subrogation.

7. Miscellaneous. No provision of this Guarantee may be amended or waived except by a written instrument executed by Calpine and Beneficiary. This Guarantee shall not be deemed to benefit any person except CES, Calpine and Beneficiary. In case any one or more of the provisions contained in this Guarantee should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

8. Governing Law. **THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. CALPINE HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE.**

9. Notices. Notices under this Guarantee shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of same in accordance with this Section 9.

To Beneficiary: Southwestern Public Service Company  
550 15th Street, Suite 900  
Denver, CO 80202  
Attn: Director, Credit & Contract Administration

**Execution Copy**

With copy to: Southwestern Public Service Company,  
c/o Xcel Energy Services Inc.,  
550 15th Street, Suite 1000, Denver CO 80202.  
Attn: Manager, Structured Purchases

To Calpine: Calpine Corporation  
717 Texas Avenue, Suite 1000  
Houston, TX 77002  
Attn: Risk Management Counsel

With copy to: Calpine Energy Services, L.P.  
717 Texas Avenue, Suite 1000  
Houston, TX 77002  
Attn: Director of Corporate Credit

IN WITNESS WHEREOF, Calpine has executed this Guarantee as of the date first above written.

CALPINE CORPORATION  
(a Delaware Corporation )

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