

MEMA

Mid-Continent Energy Marketers Association

Capacity and Energy Tariff

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MID-CONTINENT ENERGY MARKETERS ASSOCIATION
CAPACITY AND ENERGY TARIFF
TABLE OF CONTENTS

ARTICLE ONE: PURPOSE, APPLICABILITY AND GOVERNANCE.....	3
ARTICLE TWO: GENERAL DEFINITIONS.....	3
ARTICLE THREE: TRANSACTION TERMS AND CONDITIONS.....	9
ARTICLE FOUR: OBLIGATIONS AND DELIVERIES	11
ARTICLE FIVE: REMEDIES FOR FAILURE TO DELIVER/RECEIVE.....	12
ARTICLE SIX: EVENTS OF DEFAULT; REMEDIES	12
ARTICLE SEVEN: PAYMENT AND NETTING	14
ARTICLE EIGHT: LIMITATIONS.....	16
ARTICLE NINE: CREDIT AND COLLATERAL REQUIREMENTS.....	17
ARTICLE TEN: GOVERNMENTAL CHARGES.....	19
ARTICLE ELEVEN: MISCELLANEOUS.....	19
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....	27
SCHEDULE Q: MAPP GRSP AND OTHER MAPP PRODUCTS.....	35
Product A: Participation Power Interchange Service.....	37
Product K: System Participation Power Interchange Service.....	39
Product L: Interruptible Load Replacement Energy Service.....	40
Product M: General Purpose Energy Service	41
CONFIRMATION LETTER.....	42
SUPPLEMENTARY AGREEMENT.....	44

ARTICLE ONE: PURPOSE, APPLICABILITY AND GOVERNANCE

1.1 Purpose. The purpose of this Tariff is to provide for sales of Product by MEMA Members.

1.2 Applicability. Services under this Tariff are applicable to MEMA Members.

1.3 Disclaimer. This Tariff was prepared by MEMA to facilitate orderly trading in and development of wholesale power markets. Neither MEMA nor any MEMA Member nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Tariff MEMA does 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 TWO: GENERAL DEFINITIONS

2.1 “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.

2.2 “Agreement” means this Tariff, including its exhibits (including but not limited to the Supplementary Agreement attached hereto as Exhibit B), schedules and any written supplements, any collateral, credit support or margin agreement or similar arrangement between the Parties to a Transaction, and all Transactions (including any Confirmations).

2.3 “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.

2.4 “Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a Canadian Banking holiday where the Buyer or Seller has its principal place of business located in Canada. 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.

2.5 “Buyer” means the MEMA Member to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

2.6 “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 shall be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

2.7 “Claiming Party” has the meaning set forth in Section 4.3.

2.8 “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 Tariff.

2.9 “Confirmation” has the meaning set forth in Section 3.3.

2.10 “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.

2.11 “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.

2.12 “Credit Rating” means, with respect to a Party (or its Guarantor, if applicable) (i) the rating then assigned to the unsecured, senior long-term debt obligations (not supported by third party credit enhancements) of such entity, or (ii) in the case that such entity does not have a rating for its senior unsecured long-term debt, the rating then assigned as an issuer rating. In either case the rating shall refer to the rating then assigned by S&P, Moody’s, or any other rating agency agreed to by the Parties as set forth in the Supplementary Agreement attached hereto as Exhibit B.

2.13 “Defaulting Party” has the meaning set forth in Section 6.1.

2.14 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction. “Delivery Point” means the point at which the Product shall be delivered and received, as specified in the Transaction.

2.15 “Downgrade Event” means the downgrade event, if any, as agreed by the Parties in the Credit and Collateral Requirements.

2.16 “Early Termination Date” has the meaning set forth in Section 6.2.

2.17 “Electronic Confirmation” has the meaning set forth in Section 3.4.

2.18 “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.

2.19 “Event of Default” has the meaning set forth in Section 6.1.

2.20 “Federal Power Marketing Agency” means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy.

2.21 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

2.22 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, 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 Schedules P and Q.

2.23 “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.

2.24 “Governmental Charges” has the meaning set forth in Section 10.2

2.25 “Guarantor” means, with respect to a Party, the guarantor, if any, acceptable to the Party as set forth in the Supplementary Agreement attached hereto as Exhibit B.

2.26 “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.

2.27 “Imaged Document” has the meaning set forth in Section 11.17.

2.28 “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, or a Canadian Bank if the applicant for such Letter of Credit has its principal place of business located in Canada, or such other entity as agreed to by the Parties, including but not limited to CoBank, ACB or National Rural Utilities Cooperative, 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.

2.29 “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.

2.30 “MEMA” means the Mid-Continent Energy Marketers Association, which is a Minnesota nonprofit corporation and independent energy marketing association.

2.31 “MEMA Member” means an entity approved for membership as a voting member (or any successor designation adopted by MEMA) in MEMA pursuant to article three of the MEMA bylaws and in compliance therewith, or any successor rules adopted by MEMA governing admission to membership.

2.32 “Moody’s” means Moody’s Investors Service, Inc. or its successor.

2.33 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Corporation (“NERC”) 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.

2.34 “Non-Defaulting Party” has the meaning set forth in Section 6.2.

2.35 “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.

2.36 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

2.37 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

2.38 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

2.39 “Oral Confirmation” has the meaning set forth in Section 3.3.

2.40 “Party” means the Seller or the Buyer in a Transaction.

2.41 “Parties” means the Seller and the Buyer in a Transaction.

2.42 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Party requesting an assurance of performance.

2.43 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

2.44 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedules P or Q hereto or as otherwise specified by the Parties in the Transaction.

2.45 “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 shall be obligated to purchase and receive the Product.

2.46 “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.

2.47 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases 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.

2.48 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

2.49 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells 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.

2.50 "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.

2.51 "Seller" means the MEMA Member to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

2.52 "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 6.2.

2.53 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

2.54 "Tariff" means this Mid-Continent Energy Marketers Association Capacity and Energy Tariff.

2.55 "Terminated Transaction" has the meaning set forth in Section 6.2.

2.56 “Termination Payment” has the meaning set forth in Section 6.3.

2.57 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Tariff.

2.58 “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.

2.59 “Website” means the Website maintained by MEMA at <http://www.memarketers.org> or successor site.

2.60 “Written Confirmation” has the meaning set forth in Section 3.2.

ARTICLE THREE: TRANSACTION TERMS AND CONDITIONS

3.1 Confirmations. A Transaction shall be entered into upon the agreement of the Parties by one or more of the following methods as evidenced in paragraph 1 of the Supplementary Agreement attached hereto as Exhibit B:

- i) in writing in accordance with Section 3.2;
- ii) orally in accordance with Section 3.3; or
- iii) by electronic means of communication in accordance with Section 3.4
(a “Confirmation”).

The Supplementary Agreement may contain additional terms relating to confirmation of a Transaction as may be agreed to by the Parties. If the Parties do not enter into a Supplementary Agreement or if no method for entering transactions is selected in a Supplementary Agreement between the Parties, then the Transactions shall be entered into orally. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Tariff (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.

3.2 Written Confirmation. When confirming a Transaction in writing, Seller shall forward to Buyer within three (3) Business Days after the Transaction is entered into a written confirmation substantially in the form of Exhibit A or other format as mutually agreed to by the Parties (“Written Confirmation”). When evidencing a Transaction by way of Oral Confirmation or Electronic Confirmation, Seller may also confirm the Transaction by forwarding to Buyer within three (3) Business Days after the Transaction is entered into, a Written Confirmation. If Buyer objects to any term(s) of such Written 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 Written Confirmation within three (3) Business Days after the Transaction is entered into, a Written Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Written 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 Written Confirmation and neither Party objects to the other Party's Written Confirmation within two (2) Business Days of receipt, Seller's Written Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Written Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Written Confirmation was sent prior to Seller's Written Confirmation, in which case Buyer's Written 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 Written Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

3.3 Oral Confirmation. When confirming a Transaction orally, each Party consents to the creation of a tape or electronic recording ("Oral Confirmation") of all telephone conversations between the Parties to a proposed Transaction under this Tariff, and that any such Oral Confirmation shall be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to such proposed Transaction. 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 Oral Confirmation, 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 Written Confirmation or Electronic Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Written Confirmation or Electronic Confirmation, such Written Confirmation or Electronic Confirmation shall control in the event of any conflict with the terms of an Oral Confirmation, or in the event of any conflict with the terms of this Tariff.

3.4 Electronic Confirmation. When confirming a Transaction by an electronic means of communication for which a written record can be retrieved and which is mutually agreed upon by the Parties as evidenced in a Supplementary Agreement ("Electronic Confirmation"), the record of Electronic confirmation shall be retained in electronic form in confidence secured from improper access, and may, if properly authenticated, be submitted in evidence in any proceeding or action relating to such proposed Transaction. The Electronic Confirmation and the terms and conditions described therein, if admissible, shall be the controlling evidence of the Parties agreement with respect to a particular Transaction in the event a Written Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Written Confirmation, such Written Confirmation shall control in the event of any conflict with the terms of an Electronic Confirmation, or in the event of such conflict with the terms of this Tariff.

3.5 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Tariff. This Tariff (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Sections 3.2, 3.3 and 3.4) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Tariff and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

3.6 Additional Confirmation Terms. The Parties to a Transaction may mutually agree to terms which modify or supplement the general terms and conditions of this Tariff either through, Written Confirmation or Supplementary Agreement.

ARTICLE FOUR: OBLIGATIONS AND DELIVERIES

4.1 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.

4.2 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.

4.3 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 FIVE: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

5.1 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, 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.

5.2 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, 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 SIX: EVENTS OF DEFAULT; REMEDIES

6.1 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 a Transaction 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 a Transaction (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 Five) 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 with the other Party;
- 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 a Transaction 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. with respect to such Party's Guarantor, if any:

- (i) if any representation or warranty made by a Guarantor in connection with a Transaction 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 a Transaction 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 a Transaction (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.

6.2 Declaration of an Early Termination Date and Calculation of Settlement. 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 each Transaction 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).

6.3 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 Nine, plus any or all other amounts due to the Defaulting Party under this Tariff 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 Tariff, 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.

6.4 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.

6.5 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.

6.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 6.3, 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 6.2, 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).

6.7 Suspension of Performance. Notwithstanding any other provision of this Tariff, 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 6.2 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 SEVEN: PAYMENT AND NETTING

7.1 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 Tariff (other than Termination Payments, payments pursuant to Section 5.1 or 5.2, and Option premium payments pursuant to Section 7.7). As soon as practicable after the end of each month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

7.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Tariff 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 shall 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 shall be deemed delinquent and shall 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.

7.3 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 Tariff 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 7.3 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.

7.4 Netting of Payments. The Parties 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 Tariff, including any related damages calculated pursuant to Article Five, 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. Notwithstanding the previous sentence, netting shall not apply to option premiums which shall be settled in accordance with Section 7.7.

7.5 Payment Obligation Absent Netting. If Parties agree not to do netting of payment pursuant to Section 7.4 or 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 Five, interest, and payments or credits, that Party shall pay such sum in full when due.

7.6 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 Six, all amounts netted pursuant to this Article Seven 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 Tariff.

Issued by: Michael B. Critchley
Executive Director
Issued on: December 29, 2008

Effective: February 27, 2009

7.7 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 7.1.

7.8 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 shall 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 shall 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 EIGHT: LIMITATIONS

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 TARIFF 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 IN THIS TARIFF 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 NINE: CREDIT AND COLLATERAL REQUIREMENTS

9.1 The applicable credit and collateral requirements shall be as agreed to by the Parties to a Transaction as evidenced in the Supplementary Agreement attached hereto as Exhibit B. The Parties may elect to choose one of the following options as listed below. If the Parties do not enter into a Supplementary Agreement or if no option is selected in the Supplementary Agreement between the Parties, Option 1 shall apply exclusively.

9.2 Credit Assurances.

Option 1 - Standard Credit Assurance

If a Party has reasonable grounds to believe that the other Party's creditworthiness or performance under a Transaction has become unsatisfactory, such requesting Party will provide the other Party with written notice requesting Performance Assurance in an amount determined by the requesting Party in a commercially reasonable manner. Upon receipt of such notice the Party shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to the requesting Party. In the event that a Party receives a request for a Performance Assurance but fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to the requesting Party within three (3) Business Days of receipt of notice, then an Event of Default under Article Six will be deemed to have occurred and the Party requesting such Performance Assurance will be entitled to the remedies set forth in Article Six of this Tariff.

Option 2 - Enhanced Credit Assurance

Should a Party's creditworthiness or performance become unsatisfactory to the other Party in such other Party's reasonably exercised discretion with regard to any Transaction (including any Confirmation) pursuant to this Tariff, the dissatisfied Party (the "First Party") may require the other Party (the "Second Party") to provide Performance Assurance in an amount determined by the First Party in a commercially reasonable manner. Events which may trigger the First Party questioning the Second Party's creditworthiness or performance include, but are not limited to, the following:

- (1) The First Party has knowledge that the Second Party (or its Guarantor, if applicable) is failing to perform or defaulting under other material contracts.
- (2) The Second Party has exceeded any credit or trading limit set out in any Confirmation or other agreement between the Parties.
- (3) The Second Party's (or its Guarantor's, if applicable) Credit Rating falls below BBB- from S&P or Baa3 from Moody's (based on the lower of the S&P or Moody's Credit Rating).

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

If the Second Party fails to provide Performance Assurance, or a guaranty or other credit assurance acceptable to the First Party within three (3) Business Days of receipt of notice, then an Event of Default under Article Six of the Tariff shall be deemed to have occurred and the First Party will be entitled to the remedies set forth in Article Six of this Tariff. Nothing contained in the Article Nine shall affect any credit agreement or arrangement, if any, between the Parties.

Option 3 - Downgrade Event

If at any time there shall occur a Downgrade Event with respect to either Party, then the non-affected Party (the "First Party") may require the affected Party (the "Second Party") to provide Performance Assurance in an amount determined by the First Party in a commercially reasonable manner. In the event the Second Party shall fail to provide such Performance Assurance or guaranty or other credit assurance acceptable to the First Party within three (3) Business Days of receipt of notice, than an Event of Default shall be deemed to have occurred and the First Party will be entitled to exercise any of the remedies set forth in Article Six of the Tariff.

The Parties shall specify within a Supplementary Agreement the meaning of a Downgrade Event with respect to each Party.

Option 4 - Mutually Agreed to Credit Assurance

As mutually agreed in writing by both Parties and referenced in the Supplementary Agreement.

9.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, unless prohibited by applicable law, 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 TEN: GOVERNMENTAL CHARGES

10.1 Cooperation. Each Party to a Transaction shall use reasonable efforts to implement the provisions of and to administer this Tariff in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 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 Seven 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 ELEVEN: MISCELLANEOUS

11.1 Term of Tariff. This Tariff shall be effective as of the effective date accepted by the FERC. This Tariff shall remain in effect until terminated by MEMA or successor organization upon sixty (60) days prior written notice; provided, however, no such termination notice shall be effective as to any ongoing Transaction hereunder until the Parties have fulfilled all Tariff obligations with respect to Transactions agreed to prior to the date of termination and until regulatory approval, if required, is granted to terminate this Tariff.

11.2 Representations and Warranties. On 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 Tariff and each Transaction (including any Confirmation accepted in accordance with Article Three);

- (iii) the execution, delivery and performance of this Tariff and each Transaction (including any Confirmation accepted in accordance with Article Three) 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 Tariff, each Transaction (including any Confirmation), and each other document executed and delivered in accordance with this Tariff (including but not limited to the Supplementary 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 Tariff and each Transaction (including any Confirmation);
- (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 Tariff and each Transaction (including any Confirmation);
- (viii) it is acting for its own account, has made its own independent decision to enter into each Transaction (including any Confirmation) and as to whether this Tariff and each such Transaction (including any Confirmation) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of another 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 Tariff and each Transaction (including any Confirmation);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;
- (x) it has entered into each Transaction (including any Confirmation) 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) 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.

11.3 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 shall 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.

11.4 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 11.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Ten.

11.5 Assignment. No Party shall assign a Transaction or any of its rights under a Transaction without the prior written consent of the other Party, which consent may not unreasonably be withheld; 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 a Transaction or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign a Transaction 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 a Transaction 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.

11.6 Governing Law. THIS TARIFF AND THE RIGHTS AND DUTIES OF PARTIES TO A TRANSACTION, TO THE EXTENT PERMITTED BY LAW, SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITH THE EXCEPTION OF UNITED STATES FEDERAL LAW OR CANADIAN LAWS WITH RESPECT TO THE SALE OF ELECTRICAL CAPACITY OR ENERGY IN CANADA. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS TARIFF.

11.7 Notices. All notices, requests, statements or payments shall be made as specified in the Supplementary Agreement or if the Parties do not enter into a Supplementary Agreement then as specified in a Transaction (including any Confirmation).. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, 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 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. Notwithstanding the foregoing, a Party is entitled to rely on the other Party's invoice regarding payment instructions.

11.8 General. This Tariff (including the exhibits, schedules, the Supplementary Agreement and any written supplements hereto), any designated collateral, credit support or

margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation) 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 a Transaction and shall be incorporated therein by reference. Each Party to a Transaction agrees if it seeks to amend any applicable wholesale power sales tariff during the term of a Transaction, such amendment shall not in any way affect such Transaction under this Tariff without the prior written consent of the other Party. Each Party to a Transaction further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Tariff. 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") shall not otherwise affect the remaining lawful obligations that arise under this Tariff; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform their Transaction 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 the applicable Transaction for twelve (12) months.

11.9 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 Tariff. 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 shall 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 shall 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.

11.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

11.11 Confidentiality. The Parties agree that neither Party shall disclose the terms or conditions of the Transaction(s) to a third party (other than the Party's or its Affiliate'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, regional reliability council, 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.

11.12 Resolution of Disputes. Prior to the initiation of arbitration, any controversy, dispute or claim between the Parties involving or arising under this Tariff first shall be referred for resolution to a senior representative of each Party. A Party claiming that a dispute has arisen must give written notice within a reasonable period of time to the other Party describing the dispute and designating the Party's senior representative. Upon receipt of a notice describing the dispute, the other Party shall promptly designate its senior representative to the notifying Party. The senior 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, the Parties shall submit the dispute to arbitration in accordance with the arbitration procedure set forth in Section 11.13.

11.13 Arbitration. Any controversy, dispute or claim involving or arising under this Tariff which cannot be resolved pursuant to Section 11.12 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 thirty (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 ten (10) days after receiving notice of the other Party's arbitrator, or if the two arbitrators selected fail to select a third arbitrator within ten (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, and each Party shall be responsible for its own expenses and those of its counsel or other representative. The commercial arbitration rules of the AAA shall apply to the extent not inconsistent with the rules specified above. Unless otherwise agreed to by the Parties, all arbitrations shall be held in St. Paul, Minnesota.

11.14 Laws of the United States. This Tariff shall not make any laws or regulations governing employment or production of goods and services enacted by the Congress of the United States or by any other legislative or governmental body in the United States or any state thereof applicable to any power or other service provided or used in Canada. This Tariff shall not confer or extend the authority or jurisdiction of FERC or any regulatory agency over matters pertaining to the generation, sale, purchase or transmission of electric energy in Canada.

11.15 Compliance with Applicable Laws. This Tariff shall be binding on all Parties to the maximum extent permitted by United States federal and state law or regulation, and Canadian federal and/or provincial government law or regulation, but notwithstanding any other provision of this Tariff, no Party shall be required to take any action or do any other thing with respect to rates, charges, terms or conditions of service, the resolution of disputes under this Tariff, or any other matter, that (a) it is not permitted by law to undertake or that is prohibited in whole or in part by any law or regulation applicable to such a Party, or (b) would require such a

Party to violate a provision of such law or regulation in order to comply with this Tariff. Each Party shall seek such approvals, grant such waivers, and take such other actions as may be necessary to comply with this Tariff, to the maximum extent permitted by United States federal or state law or regulation, or Canadian federal or provincial law or regulation.

11.16 Effect of Canadian Laws. The sale, purchase and transmission of electricity in Canada and the rates, charges, terms and conditions of service therefore are subject in all respects to Canadian Laws. This includes but is not limited to:

- (i) The final authority of the Government of Canada in all matters relating to the export of electric power; and
- (ii) The final authority of the government of a Canadian province in all matters relating to the installation or construction of facilities.

11.17 Imaged Documents. Any original executed document relating to this Agreement may be scanned and stored on computer tapes and disks (the "Imaged Document"). The Imaged Document 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 Imaged Document 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.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF A PARTY IS A FEDERAL POWER MARKETING AGENCY)

A. If either Party is a Federal Power Marketing Agency, the Parties agree that the following provisions apply to this Tariff and any Transaction conducted under this Tariff:

1. Participation by the United States. The participation by the United States through a Federal Power Marketing Agency in this Tariff is subject in all respects to acts of Congress and to regulations of the Secretary of Energy established thereunder, and to rate schedules promulgated by the Secretary of Energy or delegate. This reservation includes, but is not limited to, the statutory limitations upon the authority of the Secretary of Energy to submit disputes arising under this Tariff to arbitration. In the event of a conflict between this Schedule M and any other provision in this Tariff, this Schedule M shall have precedence with respect to the application of this Tariff to the United States.
2. Contingent Upon Appropriations. Where activities provided for in this Tariff extend beyond the current fiscal year of a Federal Power Marketing Agency, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the obligations of the United States under this Tariff. In case such appropriation is not made, a Party to a Transaction with a Federal Power Marketing Agency hereby releases the United States from its contractual obligations under this Tariff and from all liability due to the failure of Congress to make such appropriation.
3. Officials Not To Benefit. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Tariff or to any benefit that may have arisen from this Tariff, but this restriction shall not be construed to extend to this Tariff if made with a corporation or company for its general benefit.
4. Covenant Against Contingent Fees. A Party to a Transaction with a Federal Power Marketing Agency warrants that no person or selling agency has been employed or retained to solicit or secure participation by a Federal Power Marketing Agency in this Tariff upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Party for the purpose of securing business. For breach or violation of this warranty, the Party that is a Federal Power Marketing Agency shall have the right to annul its participation in this Tariff without liability or, in its

discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

5. Contractor Agreement. For the purpose of this Schedule M the term "Tariff" shall mean this Tariff and the term "Contractor" shall mean a Party having a Transaction with a Federal Power Marketing Agency. During the performance of a Transaction under this Tariff, the Contractor agrees to the following provisions. In addition, the Contractor shall include the following provisions in every subcontract or purchase order involving the Federal Power Marketing Agency unless exempted by rules, regulations or order of the Secretary of Labor.
6. Equal Opportunity Employment Practices. Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Tariff.
7. Contract Work Hours and Safety Standards. The Tariff, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 329 (1986) (the "Act"), is subject to the provisions of the Act, 40 U.S.C. §§ 327-333 (1986), and to regulations promulgated by the Secretary of Labor pursuant to the Act.
8. Use of Convict Labor. The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the Tariff except as provided by 18 U.S.C. § 4082(c)(2) (1986) and Executive Order 11755, 39 Fed. Reg. 779 (1973).

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.

“Environmental Attributes” means an aspect, claim, characteristic or benefit associated with the generation of a quantity of Energy by an electricity generation facility that is capable of being measured, verified or calculated, including any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of such quantity of Energy by an electricity generation facility and its displacement of conventional, non-renewable electricity generation together with the right(s) to report ownership of such attributes to any agency, authority, or third party. Environmental Attributes shall not include (i) any Energy, Capacity, reliability or other power attributes from the electricity generation facility; (ii) production tax credits associated with the construction or operation of the electricity generation facility and other financial incentives in the form of credits, reductions or allowances associated with the electricity generation facility that are applicable to a state, provincial or federal income taxation obligation; (iii) fuel-related subsidies, “tipping fees”, or other local subsidies received by the electricity generation facility for the destruction of particular preexisting pollutants or the promotion of local environmental benefits; or (iv) emission reduction credits encumbered or used by the electricity generation facility for compliance with local, state, provincial or federal operating and/or air quality permits.

“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 Five.

“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 Five, 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 2.22 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 Five, 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 2.22 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 Five. 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 of this Schedule, 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 Five.
 - 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 Five.
- 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 Five.

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 Five.

- 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 2.22.
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 of this Schedule.
- 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.

“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.

“Renewable Energy Credit” or “REC” has the meaning specified in the Transaction.

“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 Five.

“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 Five, 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 2.22 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 Five.

Issued by: Michael B. Critchley
Executive Director
Issued on: December 29, 2008

Effective: February 27, 2009

SCHEDULE Q: MAPP GRSP AND OTHER MAPP PRODUCTS

GENERAL TERMS AND CONDITIONS

1. General

- 1.1 The Products described herein are intended to facilitate the exchange of capacity and energy in the Mid-Continent Area Power Pool ("MAPP"). The Products employ market based rates for interchange of capacity and energy.
- 1.2 Governance. Capitalized terms used, but not defined, in Schedule Q of this Tariff shall have the meaning ascribed to them in the MAPP Restated Agreement. In the event of a conflict between the terms of this Tariff and the terms of the MAPP Restated Agreement, the terms of this Tariff shall control.

2. Accreditation

- 2.1 Accreditation of capacity transactions shall be determined and assigned under applicable procedures of the MAPP Generation Reserve Sharing Pool ("GRSP").

3. Transmission Loading Relief

- 3.1 Delivery of energy shall be subject to the applicable transmission provider's loading relief procedures.

4. Definitions

- 4.1 Public Utility: A public utility as defined in Section 201(e) of the Federal Power Act, as amended.¹
- 4.2 MAPP means Mid-Continent Area Power Pool, which is an association of electric utilities and other electric industry participants organized for the purpose of pooling generation and transmission.
- 4.3 GRSP means the MAPP Generation Reserve Sharing Pool or its successor, as defined in the MAPP Restated Agreement.

5. Uncontrollable Forces

- 5.1 Force Majeure (Section 2.22), as defined and used in this Tariff, does not apply to any of the Products in this Schedule Q.

¹ Note that the Energy Policy Act 2005 exempted a variety of entities, including electric cooperatives that sell less than 4 million MWh of energy per year from FERC jurisdiction over the determination of their ability to sell at negotiated rates.

- 5.2 All Products in this Schedule Q are subject to “uncontrollable forces” or “force majeure”. A Party shall not be considered to be in default in respect to any obligation under a Product in this Schedule Q if prevented from fulfilling such obligation by reason of “uncontrollable forces” or “force majeure”, except that the obligation to pay money in a timely manner is absolute and shall not be subject to “uncontrollable forces” or “force majeure”. Any Party unable to fulfill any obligation by reason of “uncontrollable forces” or “force majeure” will exercise due diligence to remove such disability with reasonable dispatch, but such obligation shall not require the settlement of a labor dispute except in the sole discretion of the Party experiencing such labor dispute. For the purposes of this Section 5.2 “uncontrollable forces” and/or “force majeure” shall have the meaning ascribed to such terms in the Transmission Provider’s tariff.

Product A: Participation Power Interchange Service

1. Service to be Provided

1.1 This Product provides for the sale of Participation Power by a Seller to a Buyer from a specific generating unit or units. Participation Power shall mean power and energy sold from a specific generating unit or units on a continuously available basis except when such unit or units are temporarily out of service for maintenance, during which time the delivery of energy from other sources shall be at the Seller's option.

2. Conditions of Service

- 2.1 This Product shall be available for a period of one or more consecutive days.
- 2.2 Participation Power shall be supplied through transmission facilities that have adequate capacity for transmitting such power and energy, in accordance with any applicable reliability standards and procedures.

3. Schedules of Rates

- 3.1 The rates and term for Participation Power shall be negotiated by the Parties arranging the Transaction when the Seller (i) is a Public Utility that has been granted market-based rate authority by the Federal Energy Regulatory Commission ("FERC"), or (ii) is not a Public Utility.
- 3.2 In the event the service cannot be supplied on the effective date of an agreement to sell Participation Power because of a delayed in-service date of the associated generating facility or facilities, the capacity payment to be paid by the Buyer shall not be effective until the date such facility or facilities are placed in commercial operation.

Product J: Firm Power Interchange Service

1. Service to be Provided

1.1 This Product provides for the sale of Firm Power by a Seller to a Buyer.

2. Conditions of Service

2.1 Firm Power shall be supplied through transmission facilities which have adequate capacity for transmitting such power and energy, in accordance with any applicable GRSP reliability standards and procedures.

2.2 This Product shall be available for a period of one or more consecutive days.

2.3 Energy available under this Product may be supplied in one of the following forms:

- i. Energy is available at all times during the period covered by the commitment; or
- ii. If energy is being supplied as peaking energy, or for other purposes which anticipate a capacity-factor limitation, the Seller and the Buyer may mutually agree on minimum or maximum limits on the energy to be delivered during the period covered by the Transaction; provided, however, service under this paragraph 2.3(ii) shall not be interruptible for reasons other than reliability of service to native load.

3. Schedule of Rates

3.1 The rates and term for Firm Power shall be negotiated by the Parties arranging the Transaction when the Seller (i) is a Public Utility that has been granted market-based rate authority by the FERC, or (ii) is not a Public Utility.

Product K: System Participation Power Interchange Service

1. Service to be Provided

1.1 This Product provides for the sale of System Participation Power by a Seller to a Buyer for a specified period for the purpose of obtaining a supply of power that can be depended upon with the same degree of assurance as that expected from the Buyer's own generating capacity, but which does not include reserve capacity.

2. Conditions of Service

- 2.1 This Product shall be available for periods of one or more consecutive days.
- 2.2 System Participation Power is intended to be available at all times during the period covered by the Transaction; provided, however, that if conditions arise during the period covered by the Transaction that would otherwise require curtailment of service to its native load customers, the Seller has the right to notify and require the Buyer to reduce its take of such energy to any amount specified and for any portion of the term of the Transaction; provided, however, this paragraph 2.2 shall not be used to allow interruptions for reasons other than reliability of service to native load. The Buyer shall promptly comply with such requirements of the Seller.
- 2.3 System Participation Power shall be supplied through transmission facilities that have adequate capacity for transmitting such power and energy, in accordance with any applicable GRSP reliability standards and procedures.

3. Schedule of Rates

3.1 The rates and term for System Participation Power shall be negotiated by the Parties arranging the Transaction when the Seller (i) is a Public Utility that has been granted market-based rate authority by the FERC, or (ii) is not a Public Utility.

Product L: Interruptible Load Replacement Energy Service

1. Service to be Provided

1.1 This Product provides for the supply of Interruptible Load Replacement Energy by a Seller to a Buyer when it is economical and practical to do so under the conditions set forth hereinafter.

2. Conditions of Service

2.1 Interruptible Load Replacement Energy may be used by a Buyer to serve interruptible load when that load would otherwise be interrupted.

2.1.1 In order to be eligible for Interruptible Load Replacement Energy Service, the Buyer must report in advance monthly quantities of Certified Interruptible Demand, as specified by the GRSP.

2.1.2 The rate of delivery of energy supplied under this Product in any hour shall not exceed the Buyer's total Certified Interruptible Demand ("CID").

2.1.3 Deliveries of energy may be received under this Product only when a Buyer's maximum System Demand would otherwise be greater than such Buyer's forecast System Demand for the current season, and shall not exceed the lesser of either that required to reduce the expected System Demand to the forecast System Demand or the Buyer's Certified Interruptible Demand being served by a purchase under this Product L.

2.1.4 Interruptible Load Replacement Energy Service shall be supplied through transmission facilities which have adequate capacity for transmitting such power and energy, in accordance with any applicable GRSP reliability standards and procedures.

3. Schedules of Rates

3.1 The rates and term for Interruptible Load Replacement Energy Service shall be negotiated by the Parties arranging the Transaction when the Seller (i) is a Public Utility that has been granted market-based rate authority by the FERC, or (ii) is not a Public Utility.

Product M: General Purpose Energy Service

1. Service to be Provided

1.1 This Product provides for the supply of General Purpose Energy by a Seller to a Buyer to enhance economic system operation.

2. Conditions of Service

2.1 To the extent practicable, General Purpose Energy shall be used to improve the overall economy of the systems involved in the Transaction.

2.2 General Purpose Energy shall be supplied through transmission facilities which have adequate capacity for transmitting such energy, in accordance with any applicable reliability standards and procedures.

3. Schedule of Rates

The rates and term for General Purpose Energy shall be negotiated by the Parties arranging the Transaction when the Seller (i) is a Public Utility that has been granted market-based rate authority by the FERC, or (ii) is not a Public Utility.

EXHIBIT A
MID-CONTINENT ENERGY MARKETERS ASSOCIATION
CAPACITY AND ENERGY TARIFF

CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, ____ between
_____ (as "Seller") and _____ (as "Buyer")

regarding the sale/purchase of the Product under the terms and conditions as follows:

Schedule P Product:

- Into _____, Seller's Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- Non-Firm
- 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: _____)

Schedule Q Product:

- Product A -- Participation Power Interchange Service
- Product J -- Firm Power Interchange Service
- Product K -- System Participation Power Interchange Service
- Product L -- Interruptible Load Replacement Energy Service
- Product M -- General Purpose Energy Service

Issued by: Michael B. Critchley
Executive Director
Issued on: December 29, 2008

Effective: February 27, 2009

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Mid-Continent Energy Marketers Association Capacity and Energy Tariff (the "Tariff") and constitutes part of and is subject to the terms and provisions of such Tariff. Terms used but not defined herein shall have the meanings ascribed to them in the Tariff.

Seller

Buyer

By: _____

By: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

Issued by: Michael B. Critchley
Executive Director
Issued on: December 29, 2008

Effective: February 27, 2009

EXHIBIT B

Mid-Continent Energy Marketers Association
Capacity and Energy Tariff

SUPPLEMENTARY AGREEMENT

Between

Manitoba Hydro-Electric Board
and

This Supplementary Agreement is made as of November 1, 2006 ("Effective Date") by Manitoba Hydro-Electric Board ("Party A") and ("Party B").

Whereas Party A and Party B are members of the Mid-Continent Energy Marketers Association ("MEMA") and desire to transact in accordance with the terms and conditions contained in the MEMA Tariff, as amended, restated or replaced from time to time ("Agreement");

And Whereas, if and to the extent that Party A and Party B carry on business, transact or act pursuant to the Agreement, Party A and Party B wish to make elections with respect to certain options contained in the Agreement. Such elections shall not, however, apply as between Party A or Party B and any other members of MEMA;

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that if and to the extent that Party A and Party B carry on business, transact or act pursuant to the Agreement:

1. Article 3 Election - Confirmations

X Written Confirmation

X Oral Confirmation

Electronic Confirmation

If Electronic Confirmation is applicable, complete the appropriate specific confirmation provisions below

Specific Confirmation Provisions

(i) Electronic Confirmation Method:

(ii) Other Provisions: (if required)

See Appendix 1 regarding additional information outlining individuals authorized to transact on behalf of Manitoba Hydro.

Issued by: Michael B. Critchley
Executive Director
Issued on: September 1, 2006

Effective: November 1, 2006

2. Article 9 Election - Credit Assurance

For the purposes of Article 9, the Parties hereto make the following elections:

Section 9.2 Credit Assurances

Option 1

X Option 2

Option 3

If Option 3 is applicable, complete the following:

Downgrade Event for Party A shall mean:

Downgrade Event for Party B shall mean:

Option 4 (see schedule A) :

3. Guarantors

Party A:

X Not Applicable

Applicable

If applicable, complete the following:

Guarantor for Party A:

Party B:

Not Applicable

X Applicable

If applicable, complete the following:

Guarantor for Party B:

4. Amendments to Tariff

Not Applicable

X Pursuant to Section 3.6 of the Tariff, Party A and Party B agree to amend the Tariff as follows:

With respect to Transactions entered into under the Tariff in which Manitoba Hydro is the Seller.

1. Section 2.15 of the Tariff is substituted for the following: "Delivery Point" means the point or points where the transmission facilities operated by the applicable Canadian Transmission Provider cross the international boundary between Canada and the United States of America.

2. The following Section 4.4. is added immediately after Section 4.3:

4.4 Transmission Beyond Delivery Point. Notwithstanding Sections 4.1 and 4.2, Seller with consent from the Buyer may arrange for transmission service to a location

Issued by: Michael B. Critchley
Executive Director

Effective: November 1, 2006

Issued on: September 1, 2006

other than the Delivery Point and, notwithstanding such arrangements, neither Section 2.15 nor Section 11.3 shall be deemed amended.

5. Notices

Party A:
Address

Manitoba Hydro-Electric Board - Marketing
820 Taylor Avenue
Winnipeg, Manitoba
R3C 2P4
CANADA

Attention Contract Administration
Telephone No. (204) 474-3683
Facsimile No. (204) 453-5359

With a copy of any notice or communication under section 5 or 6 to:

Address Manitoba Hydro-Electric Board
820 Taylor Avenue
Winnipeg, Manitoba
R3C 2P4
CANADA

Attention General Counsel and Corporate Secretary
Facsimile No. (204) 474-4947

Party B:
Address

Attention
Telephone No.
Facsimile No.

6. Effect. This Supplementary Agreement shall be applicable to all Transactions entered into between Party A and Party B pursuant to the Agreement on or after the Effective Date without the need to reference this Supplementary Agreement in any such Transaction unless Party A and Party B mutually agree otherwise with respect to a particular Transaction.

7. Entire Agreement. This Supplementary Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.

8. Counterparts. This Supplementary Agreement may be executed and delivery in counterparts (including by facsimile transmission), each of which will be deemed an original.

9. Authority to Bind. By signing below, each individual additionally warrants that he or she is authorized to sign this Supplementary Agreement on behalf of the Party for which it was executed.

Issued by: Michael B. Critchley
Executive Director
Issued on: September 1, 2006

Effective: November 1, 2006

10. Headings. The headings used in this Supplementary Agreement are for convenience of reference only and are not to effect the construction of or to be taken into consideration in interpreting this Supplementary Agreement.

In witness whereof, the Parties have executed this Supplementary Agreement with effect from the date above written.

Party A:

Party B: ✓

Date: |

Name: .
Title:

Issued by: Michael B. Critchley
Executive Director
Issued on: September 1, 2006

Effective: November 1, 2006