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July 18, 2014

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Midcontinent Independent System Operator, Inc.
FERC Docket No. ER14- _____ -000
Filing of Unexecuted Facilities Construction Agreement
PUBLIC VERSION

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and section 35.12 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) regulations, 18 C.F.R. § 35.12 (2013), the Midcontinent Independent System Operator, Inc. (“MISO”) hereby respectfully submits an unexecuted Facilities Construction Agreement (“FCA”) among **Border Winds Energy, LLC**, a limited liability company organized and existing under the laws of the State of Delaware (“Interconnection Customer”), **Otter Tail Power Company**, a corporation organized under the laws of the State of Minnesota (“Transmission Owner”), and **MISO** (“Transmission Provider”) (collectively, the “Parties”). MISO has designated the Interconnection Agreement as Original Service Agreement No. 2678 under MISO’s FERC Electric Tariff, Fifth Revised Vol. No. 1 (“Tariff”). MISO has designated this project as Project No. J290 in its interconnection queue.

I. OVERVIEW OF FILING

The body of the attached FCA conforms to the *pro forma* Facilities Construction Agreement and contains revisions conditionally accepted by the Commission in Docket No. ER12-309-000 with the exception of Section 3.2.1. In that section, a clause was added to reflect the Transmission Owner’s election to self-fund Network Upgrades and System Protection Facilities. Additional self-funding provisions are found in Appendix A.

Midcontinent Independent
System Operator, Inc.

Mailing Address:
P. O. Box 4202
Carmel, IN 46082-4202

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The Honorable Kimberly D. Bose
July 18, 2014
Page 2

A. MISO POSITION

MISO agrees with the Transmission Owner that the self-fund option for Network Upgrades and System Protection Facilities is available under the FCA based on Commission precedent.¹ Because this is the first time that a transmission owner has requested the self-fund option in a MISO Facilities Construction Agreement, the non-conforming language in Section 3.2.1 of the body of the FCA meets the Commission's standard for case-specific deviations from the *pro forma* text. Specifically, the Commission has required an explanation that "non-conforming provisions are necessary due to reliability concerns, novel legal issues or other unique factors."² In this case, the proposed revision addresses the novel legal issue to clarify the application of the self-fund option to the FCA. The non-conforming revision to Section 3.2.1 to the body of the FCA adds the phrase "except to the extent that Transmission Owner has elected to self-fund the Network Upgrades and System Protection Facilities as detailed in Appendix A." If the Commission agrees with the application of the self-fund option, MISO would propose this edit to its *pro forma* Facilities Construction Agreement and its *pro forma* Multi-Party Facilities Construction Agreement ("MPFCA") in Attachment X of the Tariff to clarify that it would apply to future comparable situations without the need for a non-conforming agreement and a Commission filing each time the self-fund option is selected.

MISO takes no position on the calculation of "return of and on the capital costs" discussed below and in Appendix A, Section 1.9.1 of the FCA. As explained in that section, a separate Facilities Services Agreement between the Transmission Owner and the Interconnection Customer would address those costs.

B. TRANSMISSION OWNER POSITION

The Transmission Owner's election to self-fund the Network Upgrades and System Protection Facilities is consistent with Order No. 2003, which established that non-independent transmission owners could elect to self-fund such upgrades.³ It further is consistent with Section 11.3 of the MISO *pro forma* Generator Interconnection Agreement ("GIA"), which permits the Transmission Owner with which a generating facility is interconnecting to self-fund the Network Upgrades and System Protection

¹ See note 3, *supra* (citing precedent accepting the self-fund option for a Generator Interconnection Agreement).

² *Midwest Independent Transmission System Operator, Inc.*, 120 FERC ¶ 61,066 at P 35 (2007).

³ *Midcontinent Independent System Operator, Inc.*, 145 FERC ¶ 61,111, at P 42, n. 62 (2013), citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 720.

The Honorable Kimberly D. Bose

July 18, 2014

Page 3

Facilities necessary for the interconnection.⁴ The *pro forma* FCA does not contain such a provision with regard to Network Upgrades that must be constructed on an Affected System, but is ambiguous – neither expressly allowing nor expressly permitting the self-fund option. The additional language proposed for Section 3.2.1 would clarify, not change, the currently ambiguous *pro forma* FCA in this regard. This clarification, permitting self-funding by an Affected System Operator treats it comparably to a Transmission Owner and is just and reasonable.⁵ Both Affected System Operators and Transmission Owners are obligated to build upgrades to accommodate generation interconnections,⁶ and therefore are similarly situated and should have the same rights and obligations with regard to constructing, funding, and recovery options for such upgrades. To conclude otherwise would be unduly discriminatory and prohibited by the Federal Power Act.⁷

Furthermore, the revisions to Section 3.2.1 and in Appendix A are appropriate, as well as just and reasonable, because they are consistent with similar revisions previously accepted by the Commission to implement the self-funding option. In Docket No. ER13-2157, MISO filed -- and the Commission accepted -- a GIA which contained terms and conditions necessary to implement a Transmission Owner's election to self-fund the upgrades for a generator interconnection.⁸ The terms and conditions in Appendix A are similar to the provisions in that GIA, including provisions relating to cost recovery.

⁴ Tariff, Att. X, App. 6 § 11.3 (“Transmission Owner shall provide Transmission Provider and Interconnection Customer with written notice pursuant to Article 15 if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner’s System Protection Facilities”).

⁵ See e.g., *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,161, at P 63 (2009) (“[W]e find that since Merchant Transmission Facilities and zones are similarly situated, they should be comparably treated and such comparable treatment is not unduly discriminatory or preferential”); see also *S.C. Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 48 (2013) (citation omitted) (“The comparability principle requires public utility transmission providers . . . to develop a transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers . . . comparably in transmission system planning”); *Dynegy Midwest Generation, Inc. v. FERC*, 633 F.3d 1122 (2011) (vacating Commission orders permitting transmission owners in MISO to elect between two different methods of compensating generators for reactive power which, based on the choice of the transmission owner, could potentially put generators in one transmission zone at a competitive disadvantage compared to generators in a different zone).

⁶ See, e.g., *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at PP 21-22, 738-39 (2003) (discussing generally issues related to construction of Network Upgrades on Transmission Provider Transmission Systems and Affected Systems).

⁷ See, e.g., *Iberdrola Renewables, Inc. v. BPA*, 141 FERC ¶ 61,233, at PP 46-48, 66-67 (2012), *reh’g denied*, 143 FERC ¶ 61,274 (2013) (finding that, because BPA’s hydroelectric resources and other non-federal wind generation resources were both firm transmission customers of BPA, they were similarly situated, and that BPA’s policy to curtail the wind generation resources but not its own hydroelectric resources resulted in non-comparable (i.e., discriminatory) treatment).

⁸ *Midcontinent Independent System Operator, Inc.*, 145 FERC ¶ 61,111; see also *Midwest Independent Transmission System Operator, Inc.*, Letter Order, Docket No. ER13-125-000 (December 12, 2012).

The Honorable Kimberly D. Bose

July 18, 2014

Page 4

In Docket No. ER13-2157, the Commission held that it is “just and reasonable and not unduly discriminatory for the transmission owner to recover capital costs for network upgrades through a network upgrade charge established using the formula in Attachment GG and consistent with MISO’s participant funding allocation methodology.”⁹ The Commission further held that it is appropriate for a transmission owner to recover “the return of and on the capital costs of the network upgrades from an interconnection customer under the self-funding option.”¹⁰ Accordingly, Section 1.9.1 of the FCA provides that “the Transmission Owner and Interconnection Customer shall execute a facilities service agreement, pursuant to which the Interconnection Customer will pay the Transmission Owner’s return on and of the capital costs of the Network Upgrades pursuant to the Tariff.” It further indicates that the rate under the facilities service agreement will be “established and maintained, consistent with FERC precedent, as the return of and return on the capital costs of the Network Upgrades and System Protection Facilities, and shall be calculated using a fixed charge rate of 15.8 percent, consistent with Transmission Owner’s currently-effective rates set forth in Attachment GG of the Tariff.”

C. INTERCONNECTION CUSTOMER POSITION

The Interconnection Customer asked that the agreement be filed unexecuted because it determined that negotiations were at impasse regarding the Transmission Owner’s election to self-fund the network upgrades being constructed under the FCA, and related provisions. The Interconnection Customer will provide further detail regarding its objections to self-funding in its intervention.

II. DOCUMENTS SUBMITTED IN THIS FILING

The documents being submitted with this filing include this transmittal letter and a public and non-public version of the Interconnection Agreement in accordance with the parties’ designation of the diagrams contained in this filing as CEII under the Commission’s rules. 18 C.F.R. §§ 388.112 & 388.113 (2013). Pursuant to the Commission’s Notice Announcing New Combined Notice of Filings, issued on May 13, 2005, and the Commission’s subsequent listing on its website, no form of notice is required under 18 C.F.R. § 35.8 (2011).¹¹ The Parties have designated the diagram of their interconnection in Exhibit A2 along with Original Sheet 36 - Section 1.2.1, and Original Sheet 38 - Number 4 as CEII.

⁹ *Midcontinent Independent System Operator, Inc.*, 145 FERC ¶ 61,111, at P 41.

¹⁰ *Midcontinent Independent System Operator, Inc.*, 145 FERC ¶ 61,111, at P 42.

¹¹ *See* Documents and Filings, Notice Formats, available at <http://www.ferc.gov/docs-filing/not-form.asp>.

The Honorable Kimberly D. Bose

July 18, 2014

Page 5

MISO hereby requests confidential treatment of the CEII contained in Exhibit A2, Original Sheet 36 - Section 1.2.1, and Original Sheet 38 - Number 4 of the non-public version of the Interconnection Agreement enclosed pursuant to 18 C.F.R. § 388.12. The CEII has been marked according to the Commission's instructions.

The Parties assert that Exhibit A2, Original Sheet 36 - Section 1.2.1, and Original Sheet 38 - Number 4 qualify as CEII pursuant to 18 C.F.R. § 388.113(c)(1) for the following reasons: the diagrams attached to the Interconnection Agreement are system maps that provide specific detailed design information about existing critical transmission system infrastructure. The Exhibits are exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552. Members of the public can obtain access to the Exhibits by complying with the Commission's procedures per 18 C.F.R. § 388.113.

Accordingly, MISO requests confidential treatment of the non-public version of this filing as CEII pursuant to 18 C.F.R. § 388.12. MISO submits a non-public version of this agreement under separate cover.

The documents being submitted with this filing include this transmittal letter;

- Tab A Clean copy of the Public Version of the FCA;
- Tab B Redlined copy of the FCA reflecting changes as compared to the *Pro Forma*¹²; and
- Tab C CEII Protective Agreement.

III. PROPOSED EFFECTIVE DATE

MISO respectfully requests that the Commission waive its sixty (60) day notice requirement as required by Section 35.3(a) of the Commission's regulations, 18 C.F.R. § 35.3(a), and make this Interconnection Agreement effective as of July 19, 2014.¹³ The Parties have indicated their intention for and support of an effective date of July 19, 2014. MISO requests that the July 19, 2014 date be used to provide certainty to the Parties as to the status of the agreement. To the extent that the Commission determines that any requirements of 18 C.F.R. § 35 apply that have not been specifically addressed herein, the MISO respectfully requests waiver of such requirements.

¹² MISO notes for the Commission that there is currently no pending language before the Commission in MISO's *pro forma* Facilities Construction Agreement.

¹³ The Commission's policy permits waivers of the 60-day prior notice of filing requirement in the case of a non-rate change to the terms and conditions of a Commission-accepted Rate Schedule. *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,189 (1992).

The Honorable Kimberly D. Bose
July 18, 2014
Page 6

IV. COMMUNICATIONS

Correspondence, pleadings and other materials regarding this filing should be addressed to the following persons:

Jacob T. Krouse (jkrouse@misoenergy.org)*
Sally L. Clore (sclore@misoenergy.org)*
Julie Bunn (jbunn@misoenergy.org)
Amy Jones (ajones@misoenergy.org)
Midcontinent Independent System Operator, Inc.
P.O. Box 4202
Carmel, IN 46082-4202
Telephone: 317-249-5400

*Persons authorized to receive service

V. NOTICE AND SERVICE

MISO notes that it has served a copy of this filing electronically, including attachments, upon all Tariff Customers under the Tariff, MISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, MISO Advisory Committee participants, as well as all state commissions within the Region. The filing has been posted electronically on the MISO's website at <https://www.misoenergy.org/Library/FERCFilingsOrders/Pages/FERCFilings.aspx> for other interested parties in this matter. In addition, MISO has served a copy of this filing electronically on all parties to this agreement.

VI. CONCLUSION

For all of the foregoing reasons, MISO respectfully requests that the Commission accept for filing this Interconnection Agreement and grant the proposed effective date of July 19, 2014, and grant waiver of any Commission regulations not addressed herein that the Commission may deem applicable to this filing.

Respectfully submitted,

/s/ Jacob T. Krouse

Jacob T. Krouse
Attorney for the Midcontinent Independent
System Operator, Inc.

Attachment

Tab C

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System) Docket No. ER14-____-000
Operator, Inc.)
)

PROTECTIVE AGREEMENT
(Filed _____, 2014)

1. This Protective Agreement shall govern the use of all CEII Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by the Federal Energy Regulatory Commission (“Commission”).

2. This Protective Agreement applies to materials that a Participant designates as containing critical energy infrastructure information, as defined in 18 CFR § 388.113(c)(1) (Critical Energy Infrastructure Information (“CEII”)).

3. Definitions -- For purposes of this Agreement:

(a) The term “Participant” shall mean a Participant as defined in 18 CFR § 385.102(b).

(b) The term “Presiding officer” shall mean the Presiding officer as defined in 18 CFR § 385.102(e), if any is appointed in this proceeding.

(b)(1) The term “CEII Materials” means (A) materials (including depositions) that are filed with the Commission and/or provided by a Participant in response to discovery requests and designated by such Participant as CEII; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Agreement by the Presiding officer, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of CEII Materials; and (E) copies of CEII Materials. The Participant producing the CEII Materials shall physically mark them on each page as “CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE” or with words of similar import as long as the term “CEII Materials” is included in that designation to indicate that they are CEII Materials. Alternatively, a Participant making available via e-mail, secure website, CD, DVD, or other electronic means files containing CEII Materials may indicate electronically or physically that such files contain “CEII MATERIALS” rather than physically marking each page.

(2) The term “Notes of CEII Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of CEII Materials are subject to the same restrictions provided in this Agreement for CEII Materials.

(3) CEII Materials shall not include (A) any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be CEII by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Agreement. CEII Materials do include any information or document already contained in the files of the Commission that has been previously designated as CEII.

(c) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to CEII Materials shall certify their understanding that such access to CEII Materials is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Participants have read the Protective Agreement and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding officer or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. CEII Materials shall be made available under the terms of this Protective Agreement only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. CEII Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the CEII Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the CEII Materials (excluding Notes of CEII Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain CEII Materials, and Notes of CEII Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the

producing Participant an affidavit stating that, to the best of its knowledge, all CEII Materials and all Notes of CEII Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent CEII Materials are not returned or destroyed, they shall remain subject to the Protective Agreement.

6. All CEII Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any CEII Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of CEII. The Commission retains the right to make determinations regarding any claim of CEII and the discretion to release information necessary to carry out its jurisdictional responsibilities.

7. CEII Materials shall be treated as CEII by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. CEII Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of CEII Materials, but such copies become CEII Materials. Reviewing Representatives may make notes of CEII Materials, which shall be treated as Notes of CEII Materials if they disclose the contents of CEII Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any CEII Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d) above, the Participant shall seek agreement from the Participant providing the CEII Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraph 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Commission for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to CEII Materials pursuant to this Protective Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting CEII prior to disclosure of any CEII Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose CEII Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the CEII Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to CEII Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the certification.

11. Materials designated as CEII Materials shall remain protected and subject to the provisions of this Protective Agreement, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting CEII Materials, including any hearing testimony, exhibits, transcripts, briefs and other documents which refer to CEII Materials, shall be filed and served in sealed envelopes or other appropriate containers (including properly designated electronic means) endorsed to the effect that they are sealed pursuant to this Protective Agreement. Such documents shall be marked "CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE" and shall be filed under seal and served under seal upon the Presiding officer and all Reviewing Representatives who are on the service list. For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding officer. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that CEII Materials are not distributed to unauthorized persons.

13. Nothing in this Protective Agreement shall be construed as precluding any Participant from objecting to the use of CEII Materials on any legal grounds.

14. Reserved.

15. Each party governed by this Protective Agreement has the right to seek changes in it as appropriate from the Commission.

16. All CEII Materials filed with the Commission, the Presiding officer, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers (including properly designated electronic means) marked "CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE."

17. If the Commission's Critical Energy Infrastructure Information Coordinator finds at any time in the course of this proceeding that all or part of the CEII Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Agreement for three (3) business days from the date of issuance of the Critical Energy Infrastructure Information Coordinator's determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding officer's or Critical Energy Infrastructure Information Coordinator's decision respecting CEII Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for CEII Materials in the files of the Commission.

18. Reserved.

19. Reserved.

20. The contents of CEII Materials or any other form of information that copies or discloses CEII Materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System)
Operator, Inc.)
)

Docket No. ER14-_____-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to CEII Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the CEII Materials, any notes or other memoranda, or any other form of information that copies or discloses CEII Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Date: _____

Tab B

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

~~[Interconnection Customer]~~

Border Winds Energy, LLC

And

~~[Transmission Owner]~~

Otter Tail Power Company

entered into on the ____ day of _____, ~~20~~2014

FACILITIES CONSTRUCTION AGREEMENT

THIS FACILITIES CONSTRUCTION AGREEMENT (sometimes hereinafter referred to as “Agreement”) is made and entered into this ____ day of _____, ~~20__~~, 2014, by and among _____, Border Winds Energy, LLC, organized and existing under the laws ~~20__~~, of the State of _____ Delaware (“Interconnection Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and _____, Otter Tail Power Company, a corporation organized under the laws of the State of _____ Minnesota (“Transmission Owner”). Interconnection Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Transmission Owner and Interconnection Customer each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

WHEREAS, Interconnection Customer intends to own, and operate, or manage Interconnection Customer Interconnection Facilities relating to the ~~___~~ 150 MW generating facility located in _____ Rolette County, _____ (“Generating Facility” or “Facility”) with an expected Commercial Operation Date of _____ October 15, 2015 pursuant to the ~~GIA~~ Interconnection Customer’s Interconnection Agreement with Northern States Power Company and will interconnect to the transmission system of _____, Northern States Power Company, which system is either adjacent to or part of the Transmission System; and

WHEREAS, the Transmission System is affected by the interconnection of the Generating Facility to the _____ Northern States Power Company transmission system and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such interconnection; and

WHEREAS, Interconnection Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Interconnection Customer for the purpose of facilitating the interconnection of the Generating Facility by the construction of necessary Network Upgrades to the Transmission System;

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

ARTICLE 1
DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1** “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2** “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Generating Facility is directly interconnected.
- 1.3** “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under section 215 of the Federal Power Act, as applicable.
- 1.4** “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5** “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- 1.6** “Commercial Operation” or “COD” shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.
- 1.7** “Commercial Operation Date” of a unit shall mean the date on which the Generating Facility commences Commercial Operation pursuant to Appendix E to the Generator Interconnection Agreement.
- 1.8** “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.
- 1.9** “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.

- 1.10** “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.
- 1.11** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.12** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.13** “Generator Interconnection Procedures (GIP)” shall mean the interconnection procedures that are included in the Transmission Provider Tariff.
- 1.14** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.15** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.
- 1.16** “In-Service Date” shall mean the date upon which Interconnection Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or System Protection Facilities.
- 1.17** “Interconnection Agreement” or “GIA” shall mean that Generator Interconnection Agreement by and between Transmission Provider, Northern States Power Company and Interconnection Customer and reported in the MISO’s Electronic Quarterly Reports.
- 1.18** “Local Balancing Authority” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing

Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding the MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.

- 1.19** “Loss” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.
- 1.20** “NERC” shall mean the North American Electric Reliability Corporation, or its successor organization.
- 1.21** “Network Upgrades” shall mean the additions, modifications, and upgrades to the Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generating Facility to the Transmission System.
- 1.22** “Non-Breaching Party” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.23** “Reasonable Efforts” shall have the meaning as provided in the Tariff.
- 1.24** “Shared Network Upgrade” shall mean a Network Upgrade or Common Use Upgrade that is funded by an Interconnection Customer(s) and also benefits other Interconnection Customer(s) that are later identified as beneficiaries.
- 1.25** “System Protection Facilities” shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission System or other delivery systems or other generating systems from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems or other generating systems to which the Transmission System is directly connected.
- 1.26** “Tariff” shall mean the Transmission Provider’s Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.27** “Transmission System” shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.
- 2.2 Term.**
- 2.2.1 General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Interconnection Customer for Transmission Owner's design, procurement, construction and installation of the Network Upgrades and System Protection Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Interconnection Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Interconnection Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the Commercial Operation Date for the Facility or the In-Service Date for the Network Upgrades and System Protection Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.
- 2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Interconnection Customer is the Breaching Party and Interconnection Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Interconnection Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Interconnection Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the

Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

2.2.3 Consequences of Termination. In the event of a termination by any Party, other than a termination by Interconnection Customer due to a Breach by Transmission Owner, Interconnection Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and System Protection Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and System Protection Facilities, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

2.3 Regulatory Filing. In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as

a service agreement under the Tariff. If Interconnection Customer has executed this Agreement or any amendment to this Agreement, Interconnection Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

- 2.4 Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.
- 2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Interconnection Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3 CONSTRUCTION OF NETWORK UPGRADES AND SYSTEM PROTECTION FACILITIES

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Interconnection Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and System Protection Facilities identified in Appendix A. All Network Upgrades and System Protection Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Right to Suspend for Force Majeure Event. Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and System Protection Facilities Interconnection Customer will not suspend unless a Force Majeure event occurs. Interconnection Customer must provide written notice of its request for suspension to Transmission Provider and

Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Interconnection Customer milestones and Interconnection Facilities described in the Appendices of this Agreement. Prior to suspension, Interconnection Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's System Protection Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, System Protection Facilities, and Transmission Owner Interconnection Facilities will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and System Protection Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network Upgrades and System Protection Facilities will no longer be constructed. If suspension occurs, Interconnection Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Interconnection Customer's authorization. Interconnection Customer shall be responsible for all costs incurred in connection with Interconnection Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Interconnection Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and System Protection Facilities, shall not accrue during periods in which Interconnection Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Interconnection Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Interconnection Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

3.1.2.2 Recommencing of Work. If Interconnection Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Interconnection Customer to suspend the work. In such event, Interconnection Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the interconnection agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request an Interconnection System Impact Study if conditions have materially changed subsequent to the request to suspend. Interconnection Customer shall be responsible for the costs of any studies required.

3.1.2.3 Termination in the Event of a Material Modification. In the event Interconnection Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its Commercial Operation Date by three (3) years or more, this Agreement shall be deemed terminated unless Interconnection Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Interconnection Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and System Protection Facilities upon the occurrence of either a Breach that Interconnection Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Interconnection Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Construction Status. Transmission Owner shall keep Interconnection Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Interconnection Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Interconnection Customer determines that the completion of the Network Upgrades and System Protection Facilities will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and System Protection Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.

3.1.4 Timely Completion. Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and System Protection Facilities in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Network Upgrades and System Protection Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Interconnection Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Interconnection Customer and Transmission Owner to evaluate the alternatives available to Interconnection Customer. Transmission Owner and/or Transmission Provider shall also make available to Interconnection Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Interconnection Customer to evaluate alternatives. Transmission Owner shall, at Interconnection Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Interconnection Customer authorizes such actions and the costs associated therewith in advance.

3.2 Interconnection Costs and Credits.

3.2.1 Costs. Interconnection Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and System Protection Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein, [except to the extent that Transmission Owner has elected to self-fund the Network Upgrades and System Protection Facilities as detailed in Appendix A.](#)

Transmission Owner shall install, at Interconnection Customer's expense, any Transmission Owner's System Protection Facilities that may be required on the Transmission Owner's Interconnection Facilities or the Transmission Owner's transmission or distribution facilities as a result of the interconnection of the Generating Facility and the Interconnection Customer's Interconnection Facilities.

In the event the Network Upgrade(s) are determined to be Shared Network Upgrade(s), Transmission Owner and Transmission Provider shall not be responsible for funding obligations related to the Shared Network Upgrade(s) under separate GIAs. Transmission Provider shall only be responsible to reimburse those funds to Interconnection Customer that Transmission Provider receives pursuant to separate GIAs.

3.2.1.1 Lands of Other Property Owners. If any part of the Transmission Owner's Interconnection Facilities, Network Upgrades, System Protection

Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Owner, Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner's Interconnection Facilities, Network Upgrades, System Protection Facilities, and/or Distribution Upgrades upon such property.

3.2.2 Credits.

3.2.2.1 Repayment. Interconnection Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under Attachment FF of the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Interconnection Customer pursuant to Article 3.3.1 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Interconnection Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Interconnection Customer may assign such repayment rights to any person.

If the Generating Facility is designated a Network Resource under the Tariff, or if there are otherwise no incremental payments for Transmission Service resulting from the use of the Generating Facility by Transmission Customer, and in the absence of another mutually agreeable payment schedule any repayments provided under Attachment FF shall be established equal to the applicable rate for Firm Point-To-Point Transmission Service for the pricing zone where the Network Load is located multiplied by the portion of the demonstrated output of the Generating Facility designated as a Network Resource by the Network Customer(s) or in the absence of such designation, equal to the monthly firm single system-wide rate defined under Schedule 7 of the Tariff

multiplied by the portion of the demonstrated output of the Generating Facility under contract to Network Customer(s) and consistent with studies pursuant to Section 3.2.2.2 of the GIP.

3.2.2.2 Amount. Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Interconnection Customer has suspended construction pursuant to Article 3.1.2.1.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent with the provisions of Attachment FF of the Tariff, Interconnection Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Owner takes one of the following actions no later than five (5) years from the Commercial Operation Date: (1) Return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Owner will continue to provide payments to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

3.2.2.4 Impact of Failure to Achieve Commercial Operation. If the Generating Facility fails to achieve Commercial Operation, but it or another generating facility is later constructed and makes use of the Network Upgrades, Transmission Owner shall at that time reimburse Interconnection Customer for the remaining applicable amounts that may be refundable pursuant to Attachment FF of the Tariff, that were advanced for the Network Upgrades on their respective systems as described above. Before any such reimbursement can occur, Interconnection Customer, or the entity that ultimately constructs the Generating Facility, if different, is responsible for identifying the entity to which the reimbursement must be made.

3.2.2.5 Rights not Relinquished. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for Transmission Service that is not associated with the Generating Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Interconnection Customer to Transmission Owner for the installation of the Network Upgrades and System Protection Facilities shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer for the installation of the Network Upgrades and System Protection Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Interconnection Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Interconnection Customer

shall protect, indemnify and hold harmless Transmission Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Interconnection Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Interconnection Customer and at Interconnection Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Interconnection Customer regarding the conduct of such contest. Interconnection Customer shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Interconnection Customer shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Interconnection Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Interconnection Customer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, Interconnection Customer shall provide Transmission Owner with credit assurances sufficient to meet Interconnection Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Interconnection Customer to Transmission Owner for Network Upgrades and System Protection Facilities is to be treated as an up front payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Interconnection Customer to Transmission Owner for Network Upgrades and System Protection Facilities will be reimbursed to Interconnection Customer in accordance with the

terms of this Agreement, provided Interconnection Customer fulfills its obligations under this Agreement.

- 3.3.2 Private Letter Ruling.** At Interconnection Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Owner under this Agreement are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Owner and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.
- 3.3.3 Other Taxes.** Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Interconnection Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

ARTICLE 4 FORCE MAJEURE

- 4.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.

- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 5 INFORMATION REPORTING

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

ARTICLE 6 CREDITWORTHINESS, BILLING AND PAYMENTS

- 6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due date for Interconnection Customer's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Network Upgrades and System Protection

Facilities, Interconnection Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and guarantee payment of the amount specified in the next paragraph of this Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the Network Upgrades and System Protection Facilities have been placed in service and until Interconnection Customer fully compensates Transmission Owner for construction of the Network Upgrades and System Protection Facilities, Interconnection Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Interconnection Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Interconnection Customer shall maintain as of the first day of each month beginning on the due date for Interconnection Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the Commercial Operation Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

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

6.3 Payment. Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the

invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.

- 6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and System Protection Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and System Protection Facilities and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 6.5 Interest.** Interest on any unpaid amounts shall be calculated in accordance with Section 7 of the Tariff.
- 6.6 Payment During Dispute.** In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and System Protection Facilities under this Agreement as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Interconnection Customer's failure to pay Transmission Owner, shall provide notice to Interconnection Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 7 ASSIGNMENT

- 7.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Interconnection Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Interconnection Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or

mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 8 INDEMNITY

- 8.1 General.** To the extent permitted by law, a Party (the "Indemnifying Party") shall at all times indemnify, defend, and hold the other Parties (each an "Indemnified Party") harmless from Loss, only as provided in the Tariff.
- 8.1.1 Indemnified Party.** If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.
- 8.1.2 Indemnifying Party.** If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.
- 8.1.3 Indemnity Procedures.** Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of

such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

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

- 8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

ARTICLE 9 BREACH, CURE AND DEFAULT

- 9.1 Events of Breach.** A Breach of this Agreement shall include:
- (a) The failure to pay any amount when due;
 - (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
 - (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;

- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement or the related GIA; or
- (f) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

9.2 Notice of Breach, Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

9.2.1 Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as ("Cure Period")) which shall be 30 Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Calendar Days.

9.2.2 If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (A) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (B) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

- 9.3 Rights in the Event of Default.** Notwithstanding the foregoing, upon the occurrence of an event of Default, any non Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

ARTICLE 10 TERMINATION OF AGREEMENT

- 10.1 Expiration of Term.** Except as otherwise specified in this Article 10, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.
- 10.2 Termination.** In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.
- 10.3 Disposition of Facilities Upon Termination of Agreement.**
- 10.3.1 Transmission Provider and Transmission Owner Obligations.** Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:
- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades and System Protection Facilities;
 - (b) may keep in place any portion of the Network Upgrades and System Protection Facilities already constructed and installed; and,
 - (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization to return the system to its original state, wind-up work).
- 10.3.2 Interconnection Customer Obligations.** Upon billing by Transmission Owner, Interconnection Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost of any Network Upgrades and System Protection Facilities described in [Appendix A](#). Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall

offset the amounts owed by any salvage value of facilities, if applicable. Interconnection Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

10.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and System Protection Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and System Protection Facilities. To the extent that Interconnection Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall refund such amounts to Interconnection Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Interconnection Customer such facilities as soon as practicable after Interconnection Customer's payment for such facilities.

10.4 Survival of Rights. Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

ARTICLE 11 SUBCONTRACTORS

11.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

11.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by

this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

11.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

11.1.3 No Limitation by Insurance. The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 12 CONFIDENTIALITY

12.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

12.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

12.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of

the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

12.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.

12.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

12.1.5 No Warranties. By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

12.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

- 12.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.
- 12.1.8 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.
- 12.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12.
- 12.1.10 Disclosure to FERC, Its Staff or a State.** Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and

non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

- 12.1.11** Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 13 INFORMATION ACCESS AND AUDIT RIGHTS

- 13.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.
- 13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and System Protection Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Interconnection Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 14 DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.
- 14.2 Rights under the Federal Power Act.** Nothing in this Article 14 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.
- 14.3 Equitable Remedies.** Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 15 NOTICES

- 15.1 General.** Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a

Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

MISO

Attn: Director, Transmission Access Planning

P.O. Box 4202

Carmel, IN 46082-4202

for overnight deliveries:

720 City Center Drive

Carmel, IN 46032

To Transmission Owner:

[Otter Tail Power Company](#)

[Attn: Dean Pawlowski](#)

[PO Box 496](#)

[Fergus Falls, MN 56537](#)

[Otter Tail Power Company](#)

[Attn: Jennifer Smestad](#)

[PO Box 496](#)

[Fergus Falls, MN 56537](#)

To Interconnection Customer:

[Border Winds Energy, LLC](#)

[11101 W 120th Ave, Suite 400](#)

[Broomfield, CO](#)

[80021](#)

15.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

To Transmission Owner:

[Otter Tail Power Company](#)

[Attn: Dean Pawlowski](#)

[PO Box 496](#)

[Fergus Falls, MN 56537](#)

To Transmission Provider:

MISO

Attn: Director, Transmission Access Planning

P.O. Box 4202
Carmel, IN 46082-4202

for overnight deliveries:
720 City Center Drive
Carmel, IN 46032

To Interconnection Customer:

[Border Winds Energy, LLC](#)
[11101 W 120th Ave, Suite 400](#)
[Broomfield, CO 80021](#)

- 15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:

Voice telephone – (317) 249-5700
Facsimile telephone – (317) 249-5358
Email address –misotap@misoenergy.org or
MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:

[Otter Tail Power Company](#)
[Voice Telephone – \(218\) 739-8947](#)
[Facsimile Telephone – \(218\) 739-8731](#)
[Email address - dpawlowski@otpc.com](#)

To Interconnection Customer:

[Voice telephone – \(303\) 439-4200](#)
[Facsimile telephone – \(303\) 439-4299](#)
[Email address –Marcia.emmons@res-americas.com](#)

- 15.4 DUNS #.** If Transmission Owner and Interconnection Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Interconnection Customer will forward their DUNS numbers within five (5) Business

Days of having obtained such numbers to Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission Owner

DUNS Number: [00-692-2419](#)

Interconnection Customer

DUNS Number: [TBD](#)

- 15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Interconnection Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:

Facsimile telephone – (317) 249-5703

And copy to:

MISO

Attn: Director, Transmission Access Planning

PO Box 4202

Carmel, IN 46082-4202

for overnight deliveries:

720 City Center Drive

Carmel, IN 46032

ARTICLE 16 MISCELLANEOUS

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state where the Network

Upgrades and/or System Protection Facilities referenced in Appendix A are located without regard to its conflicts of law principles.

- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Interconnection Customer, Transmission Owner, and Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more

Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 17 REPRESENTATIONS AND WARRANTIES

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

17.1.1 Good Standing. Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of its organization as stated in the preamble of this Agreement.

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

17.1.3 No Conflict. The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.

17.1.4 Consent and Approval. That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

17.1.5 Solvency. That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Midcontinent Independent System Operator, Inc.

By: _____

Name: _____

Title: _____

~~**[Transmission Owner]**~~

Otter Tail Power Company

By: _____

Name: _____

Title: _____

~~**[Interconnection Customer]**~~

Border Winds Energy, LLC

By: _____

Name: _____

Title: _____

Project No. J290

Tab A

SA 2678 OTP-BORDER WINDS CONSTRUCTION AGREEMENT

VERSION 31.0.0

EFFECTIVE 7/19/2014

ORIGINAL SERVICE AGREEMENT NO. 2678

PUBLIC VERSION

FACILITIES CONSTRUCTION AGREEMENT

by and among

Border Winds Energy, LLC,

Otter Tail Power Company

and the

Midcontinent Independent System Operator, Inc.

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

Border Winds Energy, LLC

And

Otter Tail Power Company

entered into on the ____ day of _____, 2014

FACILITIES CONSTRUCTION AGREEMENT

THIS FACILITIES CONSTRUCTION AGREEMENT (sometimes hereinafter referred to as “Agreement”) is made and entered into this ____ day of _____, 2014, by and among **Border Winds Energy, LLC**, organized and existing under the laws of the State of Delaware (“Interconnection Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and **Otter Tail Power Company**, a corporation organized under the laws of the State of Minnesota (“Transmission Owner”). Interconnection Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Transmission Owner and Interconnection Customer each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

WHEREAS, Interconnection Customer intends to own, and operate, or manage Interconnection Customer Interconnection Facilities relating to the 150 MW generating facility located in Rolette County, (“Generating Facility” or “Facility”) with an expected Commercial Operation Date of October 15, 2015 pursuant to the Interconnection Customer’s Interconnection Agreement with **Northern States Power Company** and will interconnect to the transmission system of **Northern States Power Company**, which system is either adjacent to or part of the Transmission System; and

WHEREAS, the Transmission System is affected by the interconnection of the Generating Facility to the **Northern States Power Company** transmission system and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such interconnection; and

WHEREAS, Interconnection Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Interconnection Customer for the purpose of facilitating the interconnection of the Generating Facility by the construction of necessary Network Upgrades to the Transmission System;

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

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1** “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2** “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Generating Facility is directly interconnected.
- 1.3** “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under section 215 of the Federal Power Act, as applicable.
- 1.4** “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5** “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- 1.6** “Commercial Operation” or “COD” shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.
- 1.7** “Commercial Operation Date” of a unit shall mean the date on which the Generating Facility commences Commercial Operation pursuant to Appendix E to the Generator Interconnection Agreement.
- 1.8** “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.
- 1.9** “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.

- 1.10** “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.
- 1.11** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.12** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.13** “Generator Interconnection Procedures (GIP)” shall mean the interconnection procedures that are included in the Transmission Provider Tariff.
- 1.14** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.15** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.
- 1.16** “In-Service Date” shall mean the date upon which Interconnection Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or System Protection Facilities.
- 1.17** “Interconnection Agreement” or “GIA” shall mean that Generator Interconnection Agreement by and between Transmission Provider, **Northern States Power Company** and Interconnection Customer and reported in the MISO’s Electronic Quarterly Reports.
- 1.18** “Local Balancing Authority” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing

Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding the MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.

- 1.19** “Loss” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.
- 1.20** “NERC” shall mean the North American Electric Reliability Corporation, or its successor organization.
- 1.21** “Network Upgrades” shall mean the additions, modifications, and upgrades to the Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generating Facility to the Transmission System.
- 1.22** “Non-Breaching Party” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.23** “Reasonable Efforts” shall have the meaning as provided in the Tariff.
- 1.24** “Shared Network Upgrade” shall mean a Network Upgrade or Common Use Upgrade that is funded by an Interconnection Customer(s) and also benefits other Interconnection Customer(s) that are later identified as beneficiaries.
- 1.25** “System Protection Facilities” shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission System or other delivery systems or other generating systems from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems or other generating systems to which the Transmission System is directly connected.
- 1.26** “Tariff” shall mean the Transmission Provider’s Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.27** “Transmission System” shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.
- 2.2 Term.**
- 2.2.1 General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Interconnection Customer for Transmission Owner's design, procurement, construction and installation of the Network Upgrades and System Protection Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Interconnection Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Interconnection Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the Commercial Operation Date for the Facility or the In-Service Date for the Network Upgrades and System Protection Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.
- 2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Interconnection Customer is the Breaching Party and Interconnection Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Interconnection Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Interconnection Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the

Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

2.2.3 Consequences of Termination. In the event of a termination by any Party, other than a termination by Interconnection Customer due to a Breach by Transmission Owner, Interconnection Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and System Protection Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and System Protection Facilities, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

2.3 Regulatory Filing. In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as

a service agreement under the Tariff. If Interconnection Customer has executed this Agreement or any amendment to this Agreement, Interconnection Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

- 2.4 Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.
- 2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Interconnection Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3 CONSTRUCTION OF NETWORK UPGRADES AND SYSTEM PROTECTION FACILITIES

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Interconnection Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and System Protection Facilities identified in Appendix A. All Network Upgrades and System Protection Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Right to Suspend for Force Majeure Event. Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and System Protection Facilities Interconnection Customer will not suspend unless a Force Majeure event occurs. Interconnection Customer must provide written notice of its request for suspension to Transmission Provider and

Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Interconnection Customer milestones and Interconnection Facilities described in the Appendices of this Agreement. Prior to suspension, Interconnection Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's System Protection Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, System Protection Facilities, and Transmission Owner Interconnection Facilities will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and System Protection Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network Upgrades and System Protection Facilities will no longer be constructed. If suspension occurs, Interconnection Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Interconnection Customer's authorization. Interconnection Customer shall be responsible for all costs incurred in connection with Interconnection Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Interconnection Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and System Protection Facilities, shall not accrue during periods in which Interconnection Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Interconnection Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Interconnection Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

3.1.2.2 Recommencing of Work. If Interconnection Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Interconnection Customer to suspend the work. In such event, Interconnection Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the interconnection agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request an Interconnection System Impact Study if conditions have materially changed subsequent to the request to suspend. Interconnection Customer shall be responsible for the costs of any studies required.

3.1.2.3 Termination in the Event of a Material Modification. In the event Interconnection Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its Commercial Operation Date by three (3) years or more, this Agreement shall be deemed terminated unless Interconnection Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Interconnection Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and System Protection Facilities upon the occurrence of either a Breach that Interconnection Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Interconnection Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Construction Status. Transmission Owner shall keep Interconnection Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Interconnection Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Interconnection Customer determines that the completion of the Network Upgrades and System Protection Facilities will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and System Protection Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.

3.1.4 Timely Completion. Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and System Protection Facilities in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Network Upgrades and System Protection Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Interconnection Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Interconnection Customer and Transmission Owner to evaluate the alternatives available to Interconnection Customer. Transmission Owner and/or Transmission Provider shall also make available to Interconnection Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Interconnection Customer to evaluate alternatives. Transmission Owner shall, at Interconnection Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Interconnection Customer authorizes such actions and the costs associated therewith in advance.

3.2 Interconnection Costs and Credits.

3.2.1 Costs. Interconnection Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and System Protection Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein, except to the extent that Transmission Owner has elected to self-fund the Network Upgrades and System Protection Facilities as detailed in Appendix A.

Transmission Owner shall install, at Interconnection Customer's expense, any Transmission Owner's System Protection Facilities that may be required on the Transmission Owner's Interconnection Facilities or the Transmission Owner's transmission or distribution facilities as a result of the interconnection of the Generating Facility and the Interconnection Customer's Interconnection Facilities.

In the event the Network Upgrade(s) are determined to be Shared Network Upgrade(s), Transmission Owner and Transmission Provider shall not be responsible for funding obligations related to the Shared Network Upgrade(s) under separate GIAs. Transmission Provider shall only be responsible to reimburse those funds to Interconnection Customer that Transmission Provider receives pursuant to separate GIAs.

3.2.1.1 Lands of Other Property Owners. If any part of the Transmission Owner's Interconnection Facilities, Network Upgrades, System Protection

Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Owner, Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner's Interconnection Facilities, Network Upgrades, System Protection Facilities, and/or Distribution Upgrades upon such property.

3.2.2 Credits.

3.2.2.1 Repayment. Interconnection Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under Attachment FF of the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Interconnection Customer pursuant to Article 3.3.1 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Interconnection Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Interconnection Customer may assign such repayment rights to any person.

If the Generating Facility is designated a Network Resource under the Tariff, or if there are otherwise no incremental payments for Transmission Service resulting from the use of the Generating Facility by Transmission Customer, and in the absence of another mutually agreeable payment schedule any repayments provided under Attachment FF shall be established equal to the applicable rate for Firm Point-To-Point Transmission Service for the pricing zone where the Network Load is located multiplied by the portion of the demonstrated output of the Generating Facility designated as a Network Resource by the Network Customer(s) or in the absence of such designation, equal to the monthly firm single system-wide rate defined under Schedule 7 of the Tariff

multiplied by the portion of the demonstrated output of the Generating Facility under contract to Network Customer(s) and consistent with studies pursuant to Section 3.2.2.2 of the GIP.

3.2.2.2 Amount. Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Interconnection Customer has suspended construction pursuant to Article 3.1.2.1.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent with the provisions of Attachment FF of the Tariff, Interconnection Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Owner takes one of the following actions no later than five (5) years from the Commercial Operation Date: (1) Return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Owner will continue to provide payments to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

3.2.2.4 Impact of Failure to Achieve Commercial Operation. If the Generating Facility fails to achieve Commercial Operation, but it or another generating facility is later constructed and makes use of the Network Upgrades, Transmission Owner shall at that time reimburse Interconnection Customer for the remaining applicable amounts that may be refundable pursuant to Attachment FF of the Tariff, that were advanced for the Network Upgrades on their respective systems as described above. Before any such reimbursement can occur, Interconnection Customer, or the entity that ultimately constructs the Generating Facility, if different, is responsible for identifying the entity to which the reimbursement must be made.

3.2.2.5 Rights not Relinquished. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for Transmission Service that is not associated with the Generating Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Interconnection Customer to Transmission Owner for the installation of the Network Upgrades and System Protection Facilities shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer for the installation of the Network Upgrades and System Protection Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Interconnection Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Interconnection Customer shall protect, indemnify and hold harmless Transmission Owner and its Affiliates,

from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Interconnection Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Interconnection Customer and at Interconnection Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Interconnection Customer regarding the conduct of such contest. Interconnection Customer shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Interconnection Customer shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Interconnection Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Interconnection Customer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, Interconnection Customer shall provide Transmission Owner with credit assurances sufficient to meet Interconnection Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Interconnection Customer to Transmission Owner for Network Upgrades and System Protection Facilities is to be treated as an up front payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Interconnection Customer to Transmission Owner for Network Upgrades and System Protection Facilities will be reimbursed to Interconnection Customer in accordance with the

terms of this Agreement, provided Interconnection Customer fulfills its obligations under this Agreement.

- 3.3.2 Private Letter Ruling.** At Interconnection Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Owner under this Agreement are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Owner and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.
- 3.3.3 Other Taxes.** Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Interconnection Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

ARTICLE 4 FORCE MAJEURE

- 4.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.

- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 5 INFORMATION REPORTING

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

ARTICLE 6 CREDITWORTHINESS, BILLING AND PAYMENTS

- 6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due date for Interconnection Customer's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Network Upgrades and System Protection Facilities, Interconnection Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and guarantee payment of the amount specified in the next paragraph of this

Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the Network Upgrades and System Protection Facilities have been placed in service and until Interconnection Customer fully compensates Transmission Owner for construction of the Network Upgrades and System Protection Facilities, Interconnection Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Interconnection Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Interconnection Customer shall maintain as of the first day of each month beginning on the due date for Interconnection Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the Commercial Operation Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

- 6.2 Invoice.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.
- 6.3 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.
- 6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and System Protection Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and System Protection Facilities and shall set forth such costs in sufficient detail to enable

Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

- 6.5 Interest.** Interest on any unpaid amounts shall be calculated in accordance with Section 7 of the Tariff.
- 6.6 Payment During Dispute.** In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and System Protection Facilities under this Agreement as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Interconnection Customer's failure to pay Transmission Owner, shall provide notice to Interconnection Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 7 ASSIGNMENT

- 7.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Interconnection Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Interconnection Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 8 INDEMNITY

8.1 General. To the extent permitted by law, a Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold the other Parties (each an “Indemnified Party”) harmless from Loss, only as provided in the Tariff.

8.1.1 Indemnified Party. If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

8.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

8.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of

criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be reasonably withheld, conditioned or delayed.

8.2 Consequential Damages. In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

ARTICLE 9 BREACH, CURE AND DEFAULT

9.1 Events of Breach. A Breach of this Agreement shall include:

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

9.2 Notice of Breach, Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

9.2.1 Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as (“Cure Period”) which shall be 30 Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Calendar Days.

9.2.2 If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (A) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (B) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

9.3 Rights in the Event of Default. Notwithstanding the foregoing, upon the occurrence of an event of Default, any non Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

ARTICLE 10 TERMINATION OF AGREEMENT

10.1 Expiration of Term. Except as otherwise specified in this Article 10, the Parties’ obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

10.2 Termination. In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

10.3 Disposition of Facilities Upon Termination of Agreement.

10.3.1 Transmission Provider and Transmission Owner Obligations. Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:

- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades and System Protection Facilities;
- (b) may keep in place any portion of the Network Upgrades and System Protection Facilities already constructed and installed; and,
- (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization to return the system to its original state, wind-up work).

10.3.2 Interconnection Customer Obligations. Upon billing by Transmission Owner, Interconnection Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost of any Network Upgrades and System Protection Facilities described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Interconnection Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

10.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and System Protection Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and System Protection Facilities. To the extent that Interconnection Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall refund such amounts to Interconnection Customer. If

Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Interconnection Customer such facilities as soon as practicable after Interconnection Customer's payment for such facilities.

- 10.4 Survival of Rights.** Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

ARTICLE 11 SUBCONTRACTORS

- 11.1 Subcontractors.** Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

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

11.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

11.1.3 No Limitation by Insurance. The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 12 CONFIDENTIALITY

12.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

12.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

12.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

- 12.1.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.
- 12.1.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 12.1.5 No Warranties.** By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.
- 12.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.
- 12.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

- 12.1.8 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.
- 12.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12.
- 12.1.10 Disclosure to FERC, Its Staff or a State.** Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.
- 12.1.11** Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information

under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 13 INFORMATION ACCESS AND AUDIT RIGHTS

- 13.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.
- 13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and System Protection Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Interconnection Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 14 DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.
- 14.2 Rights under the Federal Power Act.** Nothing in this Article 14 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.
- 14.3 Equitable Remedies.** Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 15 NOTICES

- 15.1 General.** Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

MISO

Attn: Director, Transmission Access Planning

P.O. Box 4202

Carmel, IN 46082-4202

for overnight deliveries:

720 City Center Drive

Carmel, IN 46032

To Transmission Owner:

Otter Tail Power Company

Attn: Dean Pawlowski

PO Box 496

Fergus Falls, MN 56537

Otter Tail Power Company

Attn: Jennifer Smestad

PO Box 496

Fergus Falls, MN 56537

To Interconnection Customer:

Border Winds Energy, LLC
11101 W 120th Ave, Suite 400
Broomfield, CO
80021

- 15.2 Billings and Payments.** Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

To Transmission Owner:

Otter Tail Power Company
Attn: Dean Pawlowski
PO Box 496
Fergus Falls, MN 56537

To Transmission Provider:

MISO
Attn: Director, Transmission Access Planning
P.O. Box 4202
Carmel, IN 46082-4202

for overnight deliveries:

720 City Center Drive
Carmel, IN 46032

To Interconnection Customer:

Border Winds Energy, LLC
11101 W 120th Ave, Suite 400
Broomfield, CO 80021

- 15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:

Voice telephone – (317) 249-5700
Facsimile telephone – (317) 249-5358
Email address –misotap@misoenergy.org or
MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:

Otter Tail Power Company
Voice Telephone – (218) 739-8947
Facsimile Telephone – (218) 739-8731
Email address - dpawlowski@otpc.com

To Interconnection Customer:

Voice telephone – (303) 439-4200
Facsimile telephone – (303) 439-4299
Email address –Marcia.emmons@res-americas.com

- 15.4 DUNS #.** If Transmission Owner and Interconnection Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Interconnection Customer will forward their DUNS numbers within five (5) Business Days of having obtained such numbers to Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission Owner

DUNS Number: 00-692-2419

Interconnection Customer

DUNS Number: TBD

- 15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Interconnection Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:

Facsimile telephone – (317) 249-5703

And copy to:
MISO
Attn: Director, Transmission Access Planning
PO Box 4202
Carmel, IN 46082-4202

for overnight deliveries:
720 City Center Drive
Carmel, IN 46032

ARTICLE 16
MISCELLANEOUS

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state where the Network Upgrades and/or System Protection Facilities referenced in Appendix A are located without regard to its conflicts of law principles.
- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Interconnection Customer, Transmission Owner, and Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 17 REPRESENTATIONS AND WARRANTIES

- 17.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 17.1.1 Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of its organization as stated in the preamble of this Agreement.
- 17.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 17.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 17.1.4 Consent and Approval.** That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with

jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

17.1.5 Solvency. That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Midcontinent Independent System Operator, Inc.

By: _____

Name: _____

Title: _____

Otter Tail Power Company

By: _____

Name: _____

Title: _____

Border Winds Energy, LLC

By: _____

Name: _____

Title: _____

Project No. J290

Facilities Construction Agreement (FCA)

APPENDIX A NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY PAYMENT SCHEDULE

This Appendix A is a part of the Facilities Construction Agreement among Interconnection Customer, Transmission Owner, and Transmission Provider. The Parties acknowledge that Section 16.8 provides that conflicts between the Appendices and the body of the FCA are to be resolved in favor of the body of the FCA. The Parties acknowledge that the items set forth below are intended to explain the provisions of the FCA and to set forth the specific agreement of the Interconnection Customer and Transmission Owner relating to certain aspects of the agreements between the Parties which are not resolved by the terms of the FCA. The specific items set forth below are not intended to be in conflict with the provisions of the FCA.

1.1 Transmission Owner's Interconnection Facilities – Not Applicable

1.2 Network Upgrades to be installed by Transmission Owner.

1.2.1 Transmission Owner Substation Network Upgrades

The Rugby 230/115kV substation is located in Section 7, Township 156N, Range 72 West with a physical address of 6491 31st Ave N.E. Rugby, North Dakota 58368.

CEII MATERIAL

Total Cost Estimate Accuracy:	+/-20% 2014 dollars
Total Project Cost:	\$3,977,930

1.3 Special Protection Facilities - None

1.4 First Equipment Order (including permitting). See Table 1

1.4.1. Permitting and Land Rights – Transmission Owner Network Upgrades - None. Transmission Owner does not anticipate requiring any state permits or additional land rights, to perform its obligations under this Agreement.

1.5 Transmission Credits. None.

1.6 Construction Schedule. See construction schedule in Table 1 below.**Table_1_: Transmission Owner Construction Activities**

MILESTONE NUMBER	DESCRIPTION	START DATE
1	Execute Agreement	July 17, 2014
1a	Execute Escrow Agreement	July 17, 2014
2	Receive acceptable security (escrow funded in the amount of \$3,977,930)	July 17 2014
3	Start design and procurement	July 21,2014
4	Start construction	September 30, 2014
5	In-Service Date	September 15, 2015
6	Final Statement of Cost	December 1, 2015
7	Tender facilities service agreement described in Section 1.9 of Appendix A to Interconnection Customer	Within 60 days after delivery of Final Statement of Costs
8	Execute facilities service agreement	Within 120 days after tender of facilities service agreement
9	File facilities service agreement with FERC	Within 180 days after delivery of Final Statement of Costs

Notes:

1. Interconnection Customer shall post security in the form of a cash-funded escrow account, pursuant to an escrow agreement that is reasonably acceptable to Transmission Owner.
2. The construction schedule assumes Transmission Owner has obtained final authorizations and security from Interconnection Customer and all necessary major permits from

Governmental Authorities as necessary prerequisites to commence construction of any of the Network Upgrades. Transmission Owner does not anticipate requiring any state permits to perform its obligations under this Agreement. Certain minor, local permits may be required for Transmission Owner to perform its obligations under this Agreement; Transmission Owner has not identified all such permits at this time, but assumes those permits can be acquired within timeframes that will not disrupt the construction schedule.

3. The construction schedule also assumes that there are no other major construction projects scheduled on the transmission system in the region that would not allow required facilities to be taken out of service at the times needed to accommodate the construction schedule in this Agreement. Some of this scheduled is also seasonal dependent.
4. **CEII MATERIAL**
5. The schedule assumes Central Power Electric Cooperative will have its work completed at the Rugby substation in time for Transmission Owner's work to be energized pursuant to the construction schedule.

1.7 Interconnection Customer Schedule.

Table 2: Interconnection Customer's Milestones.

MILESTONE NUMBER	DESCRIPTION	DATE
1	Execute Agreement/Request Agreement to be filed unexecuted	July 17, 2014
1a	Execute Escrow Agreement for security deposit	July 17, 2014
2	Fund escrow in the amount of \$3,977,930	July 17,2014
3	Provide Transmission Owner with reasonable evidence that a construction agreement has been entered into with Central Power Electric Cooperative	July 25, 2015
4	Execute Transmission Owner's Control Area Service Agreement	No later than sixty (60) days prior to the Initial Synchronization Date (as defined in the GIA) of the Generating Facility under the J290 GIA.
5	Provide Transmission Owner with a copy of their Meter Data Management Agreement	No later than sixty (60) days prior to the Initial Synchronization Date (as defined in the GIA) of the Generating Facility under GIA

6	Provide Transmission Owner with a station service plan and/or copy of approved Schedule 20 application	No later than thirty (30) days prior to the Initial Synchronization Date (as defined in the GIA) of the Generating Facility under GIA
7	Interconnection Customer's substation backfeed date	July 30, 2015
8	Interconnection Customer's Initial Synchronization Date (as defined in the GIA)	October 1, 2015
9	Interconnection Customer's COD (as defined in the GIA)	October 15, 2015
10	Execute a facilities service agreement, or request that such agreement be filed unexecuted with FERC	No later than sixty (60) days of TO milestone 7 in Table 1 being completed

Notes:

1. Interconnection Customer shall post security in the form of a cash-funded escrow account, pursuant to an escrow agreement that is reasonably acceptable to Transmission Owner.
2. Interconnection Customer's provision of security as provided in this Agreement operates as a condition precedent to Transmission Owner's obligations to construct any Network Upgrades, and failure to meet this schedule will constitute a Breach pursuant to Article 9.1 of this Agreement, subject to cure rights as provided in Article 9.2.

1.8 Permits, Licenses and Authorizations. No major permits required.

1.9 Self-Funding of Network Upgrades By Transmission Owner

Consistent with the principles set forth in Article 11.3 of the pro forma GIA in Attachment X of the Tariff, Transmission Owner has elected to self-fund the Network Upgrades set forth in section 1.2 of this Appendix A and, to accommodate this self-funding arrangement for this interconnection, the Parties agree to the terms and conditions set forth in this section 1.9.

1.9.1 Facilities Service Agreement

By the dates specified above in Table 2, the Transmission Owner and Interconnection Customer shall execute a facilities service agreement, pursuant to which the Interconnection Customer will pay the Transmission Owner's return on and of the capital costs of the Network Upgrades pursuant to the Tariff ("Transmission Owner's Network Upgrade Reimbursement"). The facilities service agreement shall be filed for acceptance with FERC. Transmission Owner's Network Upgrade Reimbursement will be established and maintained, consistent with FERC precedent, as the return of and return on the capital costs of the Network Upgrades and System Protection Facilities, and shall be calculated

using a fixed charge rate of 15.8 percent, consistent with Transmission Owner's currently-effective rates set forth in Attachment GG of the Tariff. The facilities service agreement shall provide for recovery of the Transmission Owner's Network Upgrade Reimbursement on a monthly basis over a 20-year term and shall establish a monthly charge to be collected from Interconnection Customer (the "Monthly Revenue Requirement"). The facilities services agreement shall also establish the amount and type of security that Interconnection Customer must post and maintain for service under that agreement. The form of security shall be reasonably acceptable to Transmission Owner, as consistent with the Tariff. Following establishment of the Monthly Revenue Requirement, the amount of the Monthly Revenue Requirement shall not be changed, amended or modified without the written consent of both Transmission Owner and Interconnection Customer.

1.9.2 Security and Creditworthiness

(a) No later than the date, and in an amount no less than that, listed in Table 2 of Appendix A to this Agreement, Interconnection Customer shall provide Transmission Owner with a form of adequate assurance of creditworthiness (i.e. "security") reasonably acceptable to Transmission Owner and consistent with the requirements in Article 6.1 of this Agreement. Consistent with Article 2.2.1, this Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the date on which Interconnection Customer and Transmission Owner have fully executed the facilities service agreement, as specified in Tables 1 and 2 of Appendix A of this Agreement; or (ii) the Parties terminate this Agreement pursuant to Article 2.

(b) Interconnection Customer shall maintain assurance of creditworthiness as described in 1.9.2(a) in the full amount until the earlier of (i) Interconnection Customer has entered into a facilities service agreement under which security will be provided for the amount to be reimbursed to Transmission Owner for funding the Network Upgrades, or (ii) the Parties terminate this Agreement pursuant to Article 2.5, subject to the Interconnection Customer's reimbursement obligations provided in such article.

(c) In the event of a dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades listed in section 1.2 of this Appendix A as long as Interconnection Customer maintains adequate assurance of creditworthiness as required by this section 1.9.2 and Article 6.1 of this Agreement.

(d) In the event that construction of the Network Upgrades listed in section 1.2 of Appendix A cannot be completed in accordance with the schedules described in the Appendices of this Agreement because: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades are not needed by any other project; or (3) Transmission Owner or Transmission

Provider determines that a Force Majeure event prevents construction, security shall be released upon the determination that the Network Upgrades are no longer to be constructed and once Interconnection Customer has reimbursed Transmission Owner for any costs, including but not limited to termination, cancellation, or removal costs, associated with Network Upgrades the Transmission Owner has incurred prior to such termination.

1.9.3 Termination.

Upon any termination of this Agreement, including but not limited to termination in the event of a material modification as described in Article 3.1.2.3 of this Agreement, Interconnection Customer shall be responsible for any reimbursement that is due to Transmission Owner pursuant to Article 2.5 of this Agreement.

1.9.4 Final Statement

In lieu of a final invoice to be provided pursuant to Article 6.4 of this Agreement, Transmission Owner shall provide a final statement of cost describing in reasonable detail all amounts self-funded by Transmission Owner for the Network Upgrades set forth in section 1.2 of this Appendix A and the Monthly Revenues Requirement for the facilities service agreement. Audit Rights pursuant to Article 13.2 of this Agreement shall be for the duration of this Agreement and for twenty-four months following the Transmission Owner's issuance of the final statement of cost.

Facilities Construction Agreement

APPENDIX B NOTIFICATION OF COMPLETED CONSTRUCTION

This Appendix B is a part of the Facilities Construction Agreement among Interconnection Customer, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the Transmission Owner Interconnection Facilities, Network Upgrades and/or System Protection Facilities, Transmission Owner shall send notice to Interconnection Customer and Transmission Provider, in substantially the form following:

[Date]

MISO

Attn: Director, Transmission Access Planning
P.O. Box 4202
Carmel, IN 46082-4202

for overnight deliveries:
720 City Center Drive
Carmel, IN 46032

Interconnection Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade/System Protection Facilities

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Interconnection Customer], and the MISO, dated _____, 20__.

On [Date], Transmission Owner completed to its satisfaction all work on the Network Upgrades and/or System Protection Facilities required to facilitate the safe and reliable interconnection and operation of Interconnection Customer's Generating Facility. Transmission Owner confirms that the Network Upgrade and/or System Protection Facilities are in place.

Thank you.

[Signature]

Dean Pawlowski

Facilities Construction Agreement

APPENDIX C Exhibits

This Appendix C is a part of the Facilities Construction Agreement among Interconnection Customers, Transmission Owner, and Transmission Provider.

Exhibit A1- {Reserved}

CEII MATERIAL

FERC rendition of the electronically filed tariff records in Docket No. ER14-02464-000

Filing Data:

CID: C001344

Filing Title: 2014-07-18_SA 2678 OTP-Border Winds Energy FCA (J290)

Company Filing Identifier: 10226

Type of Filing Code: 10

Associated Filing Identifier:

Tariff Title: Midwest ISO Agreements

Tariff ID: 13

Payment Confirmation:

Suspension Motion:

Tariff Record Data:

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

SA 2678, OTP-Border Winds Energy FCA (J290), 31.0.0, A

Record Narrative Name:

Tariff Record ID: 10217

Tariff Record Collation Value: 285234176 Tariff Record Parent Identifier: 4506

Proposed Date: 2014-07-19

Priority Order: 1000000000

Record Change Type: NEW

Record Content Type: 1

Associated Filing Identifier:

SA 2678 OTP-BORDER WINDS CONSTRUCTION AGREEMENT

VERSION 31.0.0

EFFECTIVE 7/19/2014

ORIGINAL SERVICE AGREEMENT NO. 2678

PUBLIC VERSION

FACILITIES CONSTRUCTION AGREEMENT

by and among

Border Winds Energy, LLC,

Otter Tail Power Company

and the

Midcontinent Independent System Operator, Inc.

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

Border Winds Energy, LLC

And

Otter Tail Power Company

entered into on the ____ day of _____, 2014

FACILITIES CONSTRUCTION AGREEMENT

THIS FACILITIES CONSTRUCTION AGREEMENT (sometimes hereinafter referred to as “Agreement”) is made and entered into this ____ day of _____, 2014, by and among **Border Winds Energy, LLC**, organized and existing under the laws of the State of Delaware (“Interconnection Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and **Otter Tail Power Company**, a corporation organized under the laws of the State of Minnesota (“Transmission Owner”). Interconnection Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Transmission Owner and Interconnection Customer each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

WHEREAS, Interconnection Customer intends to own, and operate, or manage Interconnection Customer Interconnection Facilities relating to the 150 MW generating facility located in Rolette County, (“Generating Facility” or “Facility”) with an expected Commercial Operation Date of October 15, 2015 pursuant to the Interconnection Customer’s Interconnection Agreement with **Northern States Power Company** and will interconnect to the transmission system of **Northern States Power Company**, which system is either adjacent to or part of the Transmission System; and

WHEREAS, the Transmission System is affected by the interconnection of the Generating Facility to the **Northern States Power Company** transmission system and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such interconnection; and

WHEREAS, Interconnection Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Interconnection Customer for the purpose of facilitating the interconnection of the Generating Facility by the construction of necessary Network Upgrades to the Transmission System;

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

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1** “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2** “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Generating Facility is directly interconnected.
- 1.3** “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under section 215 of the Federal Power Act, as applicable.
- 1.4** “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5** “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- 1.6** “Commercial Operation” or “COD” shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.
- 1.7** “Commercial Operation Date” of a unit shall mean the date on which the Generating Facility commences Commercial Operation pursuant to Appendix E to the Generator Interconnection Agreement.
- 1.8** “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.

- 1.9** “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.
- 1.10** “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.
- 1.11** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.12** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.13** “Generator Interconnection Procedures (GIP)” shall mean the interconnection procedures that are included in the Transmission Provider Tariff.
- 1.14** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.15** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.
- 1.16** “In-Service Date” shall mean the date upon which Interconnection Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or System Protection Facilities.
- 1.17** “Interconnection Agreement” or “GIA” shall mean that Generator Interconnection Agreement by and between Transmission Provider, **Northern**

States Power Company and Interconnection Customer and reported in the MISO's Electronic Quarterly Reports.

- 1.18** "Local Balancing Authority" shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding the MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.
- 1.19** "Loss" shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.
- 1.20** "NERC" shall mean the North American Electric Reliability Corporation, or its successor organization.
- 1.21** "Network Upgrades" shall mean the additions, modifications, and upgrades to the Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generating Facility to the Transmission System.
- 1.22** "Non-Breaching Party" shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.23** "Reasonable Efforts" shall have the meaning as provided in the Tariff.
- 1.24** "Shared Network Upgrade" shall mean a Network Upgrade or Common Use Upgrade that is funded by an Interconnection Customer(s) and also benefits other Interconnection Customer(s) that are later identified as beneficiaries.
- 1.25** "System Protection Facilities" shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission System or other delivery systems or other generating systems from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems or other generating systems to which the Transmission System is directly connected.
- 1.26** "Tariff" shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the

Commission, and as amended or supplemented from time to time, or any successor tariff.

- 1.27** “Transmission System” shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.

2.2 Term.

2.2.1 General. This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Interconnection Customer for Transmission Owner’s design, procurement, construction and installation of the Network Upgrades and System Protection Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Interconnection Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Interconnection Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the Commercial Operation Date for the Facility or the In-Service Date for the Network Upgrades and System Protection Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.

2.2.2 Termination Upon Default. In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a

threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Interconnection Customer is the Breaching Party and Interconnection Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Interconnection Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Interconnection Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

2.2.3 Consequences of Termination. In the event of a termination by any Party, other than a termination by Interconnection Customer due to a Breach by Transmission Owner, Interconnection Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and System Protection Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and System Protection Facilities, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to

make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

- 2.3 Regulatory Filing.** In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as a service agreement under the Tariff. If Interconnection Customer has executed this Agreement or any amendment to this Agreement, Interconnection Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.
- 2.4 Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.
- 2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Interconnection Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3 CONSTRUCTION OF NETWORK UPGRADES AND SYSTEM PROTECTION FACILITIES

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Interconnection Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and System Protection Facilities identified in Appendix A. All Network Upgrades and System Protection Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Right to Suspend for Force Majeure Event. Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and System Protection Facilities Interconnection Customer will not suspend unless a Force Majeure event occurs. Interconnection Customer must provide written notice of its request for suspension to Transmission Provider and Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Interconnection Customer milestones and Interconnection Facilities described in the Appendices of this Agreement. Prior to suspension, Interconnection Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's System Protection Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, System Protection Facilities, and Transmission Owner Interconnection Facilities will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and System Protection Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network Upgrades and System Protection Facilities will no longer be constructed. If suspension occurs, Interconnection Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and

property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Interconnection Customer's authorization. Interconnection Customer shall be responsible for all costs incurred in connection with Interconnection Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Interconnection Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and System Protection Facilities, shall not accrue during periods in which Interconnection Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Interconnection Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Interconnection Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

3.1.2.2 Recommencing of Work. If Interconnection Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Interconnection Customer to suspend the work. In such event, Interconnection Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the interconnection agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request an Interconnection System Impact Study if conditions have materially changed subsequent to the request to suspend. Interconnection Customer shall be responsible for the costs of any studies required.

3.1.2.3 Termination in the Event of a Material Modification. In the event Interconnection Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its Commercial Operation Date by three (3) years or more, this Agreement shall be deemed terminated unless Interconnection Customer demonstrates that the change is not a Material

Modification under FERC precedent.

- 3.1.2.4 Right to Suspend Due to Default.** Transmission Owner reserves the right, upon written notice to Interconnection Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and System Protection Facilities upon the occurrence of either a Breach that Interconnection Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Interconnection Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.
- 3.1.3 Construction Status.** Transmission Owner shall keep Interconnection Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Interconnection Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Interconnection Customer determines that the completion of the Network Upgrades and System Protection Facilities will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and System Protection Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.
- 3.1.4 Timely Completion.** Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and System Protection Facilities in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Network Upgrades and System Protection Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Interconnection Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Interconnection Customer and Transmission Owner to evaluate the alternatives available to Interconnection Customer. Transmission Owner and/or Transmission Provider shall also make available to Interconnection Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is

reasonably needed by Interconnection Customer to evaluate alternatives. Transmission Owner shall, at Interconnection Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Interconnection Customer authorizes such actions and the costs associated therewith in advance.

3.2 Interconnection Costs and Credits.

3.2.1 Costs. Interconnection Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and System Protection Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein, except to the extent that Transmission Owner has elected to self-fund the Network Upgrades and System Protection Facilities as detailed in Appendix A.

Transmission Owner shall install, at Interconnection Customer's expense, any Transmission Owner's System Protection Facilities that may be required on the Transmission Owner's Interconnection Facilities or the Transmission Owner's transmission or distribution facilities as a result of the interconnection of the Generating Facility and the Interconnection Customer's Interconnection Facilities.

In the event the Network Upgrade(s) are determined to be Shared Network Upgrade(s), Transmission Owner and Transmission Provider shall not be responsible for funding obligations related to the Shared Network Upgrade(s) under separate GIAs. Transmission Provider shall only be responsible to reimburse those funds to Interconnection Customer that Transmission Provider receives pursuant to separate GIAs.

3.2.1.1 Lands of Other Property Owners. If any part of the Transmission Owner's Interconnection Facilities, Network Upgrades, System Protection Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Owner, Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the

Transmission Owner's Interconnection Facilities, Network Upgrades, System Protection Facilities, and/or Distribution Upgrades upon such property.

3.2.2 Credits.

3.2.2.1 Repayment. Interconnection Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under Attachment FF of the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Interconnection Customer pursuant to Article 3.3.1 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Interconnection Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Interconnection Customer may assign such repayment rights to any person.

If the Generating Facility is designated a Network Resource under the Tariff, or if there are otherwise no incremental payments for Transmission Service resulting from the use of the Generating Facility by Transmission Customer, and in the absence of another mutually agreeable payment schedule any repayments provided under Attachment FF shall be established equal to the applicable rate for Firm Point-To-Point Transmission Service for the pricing zone where the Network Load is located multiplied by the portion of the demonstrated output of the Generating Facility designated as a Network Resource by the Network Customer(s) or in the absence of such designation, equal to the monthly firm single system-wide rate defined under Schedule 7 of the Tariff multiplied by the portion of the demonstrated output of the Generating Facility under contract to Network Customer(s) and consistent with studies pursuant to Section 3.2.2.2 of the GIP.

3.2.2.2 Amount. Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final

invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Interconnection Customer has suspended construction pursuant to Article 3.1.2.1.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent with the provisions of Attachment FF of the Tariff, Interconnection Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Owner takes one of the following actions no later than five (5) years from the Commercial Operation Date: (1) Return to Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Owner will continue to provide payments to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.

3.2.2.4 Impact of Failure to Achieve Commercial Operation. If the Generating Facility fails to achieve Commercial Operation, but it or another generating facility is later constructed and makes use of the Network Upgrades, Transmission Owner shall at that time reimburse Interconnection Customer for the remaining applicable amounts that may be refundable pursuant to Attachment FF of the Tariff, that were advanced for the Network Upgrades on their respective systems as described above. Before any such reimbursement can occur, Interconnection Customer, or the entity that ultimately constructs the Generating Facility, if different, is responsible for identifying the entity to which the reimbursement must be made.

3.2.2.5 Rights not Relinquished. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission

congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for Transmission Service that is not associated with the Generating Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Interconnection Customer to Transmission Owner for the installation of the Network Upgrades and System Protection Facilities shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer for the installation of the Network Upgrades and System Protection Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Interconnection Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Interconnection Customer shall protect, indemnify and hold harmless

Transmission Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Interconnection Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Interconnection Customer and at Interconnection Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Interconnection Customer regarding the conduct of such contest. Interconnection Customer shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Interconnection Customer shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Interconnection Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Interconnection Customer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, Interconnection Customer shall provide Transmission Owner with credit assurances sufficient to meet Interconnection Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Interconnection Customer to Transmission Owner for Network

Upgrades and System Protection Facilities is to be treated as an up front payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Interconnection Customer to Transmission Owner for Network Upgrades and System Protection Facilities will be reimbursed to Interconnection Customer in accordance with the terms of this Agreement, provided Interconnection Customer fulfills its obligations under this Agreement.

3.3.2 Private Letter Ruling. At Interconnection Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Owner under this Agreement are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Owner and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

3.3.3 Other Taxes. Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Interconnection Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

ARTICLE 4

FORCE MAJEURE

- 4.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.
- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 5 INFORMATION REPORTING

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

ARTICLE 6 CREDITWORTHINESS, BILLING AND PAYMENTS

- 6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due

date for Interconnection Customer's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Network Upgrades and System Protection Facilities, Interconnection Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and guarantee payment of the amount specified in the next paragraph of this Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the Network Upgrades and System Protection Facilities have been placed in service and until Interconnection Customer fully compensates Transmission Owner for construction of the Network Upgrades and System Protection Facilities, Interconnection Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Interconnection Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Interconnection Customer shall maintain as of the first day of each month beginning on the due date for Interconnection Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the Commercial Operation Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

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

shall be paid by the owing Party.

- 6.3 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.
- 6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and System Protection Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and System Protection Facilities and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 6.5 Interest.** Interest on any unpaid amounts shall be calculated in accordance with Section 7 of the Tariff.
- 6.6 Payment During Dispute.** In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and System Protection Facilities under this Agreement as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Interconnection Customer's failure to pay Transmission Owner, shall provide notice to Interconnection Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 7 ASSIGNMENT

- 7.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with

an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Interconnection Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Interconnection Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 8 INDEMNITY

- 8.1 General.** To the extent permitted by law, a Party (the "Indemnifying Party") shall at all times indemnify, defend, and hold the other Parties (each an "Indemnified Party") harmless from Loss, only as provided in the Tariff.
- 8.1.1 Indemnified Party.** If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.
- 8.1.2 Indemnifying Party.** If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.
- 8.1.3 Indemnity Procedures.** Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

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

- 8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

ARTICLE 9 BREACH, CURE AND DEFAULT

- 9.1 Events of Breach.** A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;

- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
- (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement or the related GIA; or
- (f) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

9.2 Notice of Breach, Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

9.2.1 Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as ("Cure Period") which shall be 30 Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Calendar Days.

9.2.2 If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (A) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (B) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

- 9.3 Rights in the Event of Default.** Notwithstanding the foregoing, upon the occurrence of an event of Default, any non Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

ARTICLE 10 TERMINATION OF AGREEMENT

- 10.1 Expiration of Term.** Except as otherwise specified in this Article 10, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

- 10.2 Termination.** In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

- 10.3 Disposition of Facilities Upon Termination of Agreement.**

10.3.1 Transmission Provider and Transmission Owner Obligations.

Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:

- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network

Upgrades and System Protection Facilities;

- (b) may keep in place any portion of the Network Upgrades and System Protection Facilities already constructed and installed; and,
- (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (e.g., construction demobilization to return the system to its original state, wind-up work).

10.3.2 Interconnection Customer Obligations. Upon billing by Transmission Owner, Interconnection Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost of any Network Upgrades and System Protection Facilities described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Interconnection Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

10.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and System Protection Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and System Protection Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and System Protection Facilities. To the extent that Interconnection Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall refund such amounts to Interconnection Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Interconnection Customer such facilities as soon as practicable after Interconnection Customer's payment for such facilities.

10.4 Survival of Rights. Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing

adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

ARTICLE 11 SUBCONTRACTORS

11.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

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

11.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

11.1.3 No Limitation by Insurance. The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 12 CONFIDENTIALITY

12.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to

another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

12.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

12.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

12.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.

12.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

12.1.5 No Warranties. By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

12.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

12.1.7 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of

this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

12.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.

12.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article

12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12.

12.1.10 Disclosure to FERC, Its Staff or a State. Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC

and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

12.1.11 Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 13 INFORMATION ACCESS AND AUDIT RIGHTS

13.1 Information Access. Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other

Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.

- 13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and System Protection Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Interconnection Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 14 DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.
- 14.2 Rights under the Federal Power Act.** Nothing in this Article 14 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.
- 14.3 Equitable Remedies.** Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 15 NOTICES

- 15.1 General.** Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be

tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

MISO

Attn: Director, Transmission Access Planning

P.O. Box 4202

Carmel, IN 46082-4202

for overnight deliveries:

720 City Center Drive

Carmel, IN 46032

To Transmission Owner:

Otter Tail Power Company

Attn: Dean Pawlowski

PO Box 496

Fergus Falls, MN 56537

Otter Tail Power Company

Attn: Jennifer Smestad

PO Box 496

Fergus Falls, MN 56537

To Interconnection Customer:

Border Winds Energy, LLC

11101 W 120th Ave, Suite 400

Broomfield, CO

80021

15.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

To Transmission Owner:

Otter Tail Power Company

Attn: Dean Pawlowski

PO Box 496

Fergus Falls, MN 56537

To Transmission Provider:

MISO

Attn: Director, Transmission Access Planning
P.O. Box 4202
Carmel, IN 46082-4202

for overnight deliveries:
720 City Center Drive
Carmel, IN 46032

To Interconnection Customer:

Border Winds Energy, LLC
11101 W 120th Ave, Suite 400
Broomfield, CO 80021

- 15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:

Voice telephone – (317) 249-5700
Facsimile telephone – (317) 249-5358
Email address – misotap@misoenergy.org or
MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:

Otter Tail Power Company
Voice Telephone – (218) 739-8947
Facsimile Telephone – (218) 739-8731
Email address - dpawlowski@otpc.com

To Interconnection Customer:

Voice telephone – (303) 439-4200
Facsimile telephone – (303) 439-4299
Email address – Marcia.emmons@res-americas.com

- 15.4 DUNS #.** If Transmission Owner and Interconnection Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Interconnection Customer will forward their DUNS numbers within five (5) Business Days of having obtained such numbers to Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission Owner

DUNS Number: 00-692-2419

Interconnection Customer

DUNS Number: TBD

- 15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Interconnection Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:

Facsimile telephone – (317) 249-5703

And copy to:

MISO

Attn: Director, Transmission Access Planning

PO Box 4202

Carmel, IN 46082-4202

for overnight deliveries:

720 City Center Drive

Carmel, IN 46032

**ARTICLE 16
MISCELLANEOUS**

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state where the Network Upgrades and/or System Protection Facilities referenced in Appendix A are located without regard to its conflicts of law principles.

- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Interconnection Customer, Transmission Owner, and Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.

- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 17 REPRESENTATIONS AND WARRANTIES

- 17.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 17.1.1. Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of its organization as stated in the preamble of this Agreement.
- 17.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 17.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 17.1.4 Consent and Approval.** That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and

performance of this Agreement.

17.1.5 Solvency. That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Midcontinent Independent System Operator, Inc.

By: _____

Name: _____

Title: _____

Otter Tail Power Company

By: _____

Name: _____

Title: _____

Border Winds Energy, LLC

By: _____

Name: _____

Title: _____

Project No. J290

Facilities Construction Agreement (FCA)

APPENDIX A NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY PAYMENT SCHEDULE

This Appendix A is a part of the Facilities Construction Agreement among Interconnection Customer, Transmission Owner, and Transmission Provider. The Parties acknowledge that Section 16.8 provides that conflicts between the Appendices and the body of the FCA are to be resolved in favor of the body of the FCA. The Parties acknowledge that the items set forth below are intended to explain the provisions of the FCA and to set forth the specific agreement of the Interconnection Customer and Transmission Owner relating to certain aspects of the agreements between the Parties which are not resolved by the terms of the FCA. The specific items set forth below are not intended to be in conflict with the provisions of the FCA.

1.1 Transmission Owner's Interconnection Facilities – Not Applicable

1.2 Network Upgrades to be installed by Transmission Owner.

1.2.1 Transmission Owner Substation Network Upgrades

The Rugby 230/115kV substation is located in Section 7, Township 156N, Range 72 West with a physical address of 6491 31st Ave N.E. Rugby, North Dakota 58368.

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Total Cost Estimate Accuracy:	+/-20% 2014 dollars
Total Project Cost:	\$3,977,930

1.3 Special Protection Facilities - None

1.4 First Equipment Order (including permitting). See Table 1

1.4.1. Permitting and Land Rights – Transmission Owner Network Upgrades - None. Transmission Owner does not anticipate requiring any state permits or additional land rights, to perform its

obligations under this Agreement.

1.5 Transmission Credits. None.

1.6 Construction Schedule. See construction schedule in Table 1 below.

Table_1_: Transmission Owner Construction Activities

MILESTONE NUMBER	DESCRIPTION	START DATE
1	Execute Agreement	July 17, 2014
1a	Execute Escrow Agreement	July 17, 2014
2	Receive acceptable security (escrow funded in the amount of \$3,977,930)	July 17 2014
3	Start design and procurement	July 21,2014
4	Start construction	September 30, 2014
5	In-Service Date	September 15, 2015
6	Final Statement of Cost	December 1, 2015
7	Tender facilities service agreement described in Section 1.9 of Appendix A to Interconnection Customer	Within 60 days after delivery of Final Statement of Costs
8	Execute facilities service agreement	Within 120 days after tender of facilities service agreement
9	File facilities service agreement with FERC	Within 180 days after delivery of Final Statement of Costs

Notes:

1. Interconnection Customer shall post security in the form of a cash-funded escrow account, pursuant to an escrow agreement that is reasonably acceptable to Transmission Owner.
2. The construction schedule assumes Transmission Owner has obtained final authorizations and security from Interconnection Customer and all necessary major permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Network Upgrades. Transmission Owner does not anticipate requiring any state permits to perform its obligations under this Agreement. Certain minor, local permits may be required for Transmission Owner to perform its obligations under this Agreement; Transmission Owner has not identified all such permits at this time, but assumes those permits can be acquired within timeframes that will not disrupt the construction schedule.
3. The construction schedule also assumes that there are no other major construction projects scheduled on the transmission system in the region that would not allow required facilities to be taken out of service at the times needed to accommodate the construction schedule in this Agreement. Some of this scheduled is also seasonal dependent.
4. **CEII MATERIAL**
5. The schedule assumes Central Power Electric Cooperative will have its work completed at the Rugby substation in time for Transmission Owner's work to be energized pursuant to the construction schedule.

1.7 Interconnection Customer Schedule.**Table 2: Interconnection Customer's Milestones.**

MILESTONE NUMBER	DESCRIPTION	DATE
1	Execute Agreement/Request Agreement to be filed unexecuted	July 17, 2014
1a	Execute Escrow Agreement for security deposit	July 17, 2014
2	Fund escrow in the amount of \$3,977,930	July 17,2014
3	Provide Transmission Owner with reasonable evidence that a construction agreement has been entered into with Central Power Electric Cooperative	July 25, 2015
4	Execute Transmission Owner's Control	No later than sixty (60)

	Area Service Agreement	days prior to the Initial Synchronization Date (as defined in the GIA) of the Generating Facility under the J290 GIA.
5	Provide Transmission Owner with a copy of their Meter Data Management Agreement	No later than sixty (60) days prior to the Initial Synchronization Date (as defined in the GIA) of the Generating Facility under GIA
6	Provide Transmission Owner with a station service plan and/or copy of approved Schedule 20 application	No later than thirty (30) days prior to the Initial Synchronization Date (as defined in the GIA) of the Generating Facility under GIA
7	Interconnection Customer's substation backfeed date	July 30, 2015
8	Interconnection Customer's Initial Synchronization Date (as defined in the GIA)	October 1, 2015
9	Interconnection Customer's COD (as defined in the GIA)	October 15, 2015
10	Execute a facilities service agreement, or request that such agreement be filed unexecuted with FERC	No later than sixty (60) days of TO milestone 7 in Table 1 being completed

Notes:

1. Interconnection Customer shall post security in the form of a cash-funded escrow account, pursuant to an escrow agreement that is reasonably acceptable to Transmission Owner.
2. Interconnection Customer's provision of security as provided in this Agreement operates as a condition precedent to Transmission Owner's obligations to construct any Network Upgrades, and failure to meet this schedule will constitute a Breach pursuant to Article 9.1 of this Agreement, subject to cure rights as provided in Article 9.2.

1.8 Permits, Licenses and Authorizations. No major permits required.

1.9 Self-Funding of Network Upgrades By Transmission Owner

Consistent with the principles set forth in Article 11.3 of the pro forma GIA in Attachment X of the Tariff, Transmission Owner has elected to self-fund the Network Upgrades set forth in section 1.2 of this Appendix A and, to accommodate this self-funding arrangement for this interconnection, the Parties agree to the terms and conditions set forth in this section 1.9.

1.9.1 Facilities Service Agreement

By the dates specified above in Table 2, the Transmission Owner and Interconnection Customer shall execute a facilities service agreement, pursuant to which the Interconnection Customer will pay the Transmission Owner's return on and of the capital costs of the Network Upgrades pursuant to the Tariff ("Transmission Owner's Network Upgrade Reimbursement"). The facilities service agreement shall be filed for acceptance with FERC. Transmission Owner's Network Upgrade Reimbursement will be established and maintained, consistent with FERC precedent, as the return of and return on the capital costs of the Network Upgrades and System Protection Facilities, and shall be calculated using a fixed charge rate of 15.8 percent, consistent with Transmission Owner's currently-effective rates set forth in Attachment GG of the Tariff. The facilities service agreement shall provide for recovery of the Transmission Owner's Network Upgrade Reimbursement on a monthly basis over a 20-year term and shall establish a monthly charge to be collected from Interconnection Customer (the "Monthly Revenue Requirement"). The facilities services agreement shall also establish the amount and type of security that Interconnection Customer must post and maintain for service under that agreement. The form of security shall be reasonably acceptable to Transmission Owner, as consistent with the Tariff. Following establishment of the Monthly Revenue Requirement, the amount of the Monthly Revenue Requirement shall not be changed, amended or modified without the written consent of both Transmission Owner and Interconnection Customer.

1.9.2 Security and Creditworthiness

(a) No later than the date, and in an amount no less than that, listed in Table 2 of Appendix A to this Agreement, Interconnection Customer shall provide Transmission Owner with a form of adequate assurance of creditworthiness (i.e. "security") reasonably acceptable to Transmission Owner and consistent with the requirements in Article 6.1 of this Agreement. Consistent with Article 2.2.1, this Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the date on which Interconnection Customer and Transmission Owner have fully executed the facilities service

agreement, as specified in Tables 1 and 2 of Appendix A of this Agreement; or (ii) the Parties terminate this Agreement pursuant to Article 2.

(b) Interconnection Customer shall maintain assurance of creditworthiness as described in 1.9.2(a) in the full amount until the earlier of (i) Interconnection Customer has entered into a facilities service agreement under which security will be provided for the amount to be reimbursed to Transmission Owner for funding the Network Upgrades, or (ii) the Parties terminate this Agreement pursuant to Article 2.5, subject to the Interconnection Customer's reimbursement obligations provided in such article.

(c) In the event of a dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades listed in section 1.2 of this Appendix A as long as Interconnection Customer maintains adequate assurance of creditworthiness as required by this section 1.9.2 and Article 6.1 of this Agreement.

(d) In the event that construction of the Network Upgrades listed in section 1.2 of Appendix A cannot be completed in accordance with the schedules described in the Appendices of this Agreement because: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction, security shall be released upon the determination that the Network Upgrades are no longer to be constructed and once Interconnection Customer has reimbursed Transmission Owner for any costs, including but not limited to termination, cancellation, or removal costs, associated with Network Upgrades the Transmission Owner has incurred prior to such termination.

1.9.3 Termination.

Upon any termination of this Agreement, including but not limited to termination in the event of a material modification as described in Article 3.1.2.3 of this Agreement, Interconnection Customer shall be responsible for any reimbursement that is due to Transmission Owner pursuant to Article 2.5 of this Agreement.

1.9.4 Final Statement

In lieu of a final invoice to be provided pursuant to Article 6.4 of this Agreement, Transmission Owner shall provide a final statement of cost describing in reasonable detail all amounts self-funded by Transmission Owner for the Network Upgrades set forth in section

1.2 of this Appendix A and the Monthly Revenues Requirement for the facilities service agreement. Audit Rights pursuant to Article 13.2 of this Agreement shall be for the duration of this Agreement and for twenty-four months following the Transmission Owner's issuance of the final statement of cost.

Facilities Construction Agreement

APPENDIX B NOTIFICATION OF COMPLETED CONSTRUCTION

This Appendix B is a part of the Facilities Construction Agreement among Interconnection Customer, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the Transmission Owner Interconnection Facilities, Network Upgrades and/or System Protection Facilities, Transmission Owner shall send notice to Interconnection Customer and Transmission Provider, in substantially the form following:

[Date]

MISO

Attn: Director, Transmission Access Planning
P.O. Box 4202
Carmel, IN 46082-4202

for overnight deliveries:

720 City Center Drive
Carmel, IN 46032

Interconnection Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade/System Protection Facilities

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Interconnection Customer], and the MISO, dated _____, 20____.

On [Date], Transmission Owner completed to its satisfaction all work on the Network Upgrades and/or System Protection Facilities required to facilitate the safe and reliable interconnection and operation of Interconnection Customer's Generating Facility. Transmission Owner confirms that the Network Upgrade and/or System Protection Facilities are in place.

Thank you.

[Signature]
Dean Pawlowski

Facilities Construction Agreement

APPENDIX C Exhibits

This Appendix C is a part of the Facilities Construction Agreement among Interconnection Customers, Transmission Owner, and Transmission Provider.

[Exhibit A1- {Reserved}](#)

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Document Content(s)

J290 FCA Transmittal Letter_Public.PDF.....	1-6
CEII Protective Agreement.PDF.....	7-13
Redline_J290 FCA.PDF.....	14-49
J290 FCA Public unexecuted agreement.PDF.....	50-94
FERC GENERATED TARIFF FILING.RTF.....	95-144