MARKET BASED RATE
PARTIAL AND FULL REQUIREMENTS AGREEMENT

DATED AS OF DECEMBER 20, 2013

BY AND AMONG

BIG RIVERS ELECTRIC CORPORATION

AND

NORTHEAST NEBRASKA PUBLIC POWER DISTRICT

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MARKET BASED RATE
PARTIAL AND FULL REQUIREMENTS AGREEMENT

This MARKET BASED RATE PARTIAL AND FULL REQUIREMENTS AGREEMENT is dated as of December 20, 2013 ("Effective Date") and is by and between BIG RIVERS ELECTRIC CORPORATION, ("Company"), and NORTHEAST NEBRASKA PUBLIC POWER DISTRICT ("Customer") (each individually a "Party," or collectively, the "Parties").

RECITALS

WHEREAS, Company, a Kentucky electric generation and transmission cooperative, organized and existing under the laws of the Commonwealth of Kentucky, with a principal place of business at 201 Third Street, Henderson, KY; and

WHEREAS, Customer is a Public Power District chartered and existing under virtue of the laws of the State of Nebraska, with a principal place of business at 1410 W. 7th Street, Wayne, NE; and

WHEREAS, Customer requires Partial Requirements and Full Requirements Service to meet Customer's Retail Load; and

WHEREAS, Customer has retained Company to act as Customer's agent in scheduling Customer's Retail Load in SPP and providing other services necessary to provide firm electric service to Customer's Retail Load in accordance with this Agreement; and

WHEREAS, Company is engaged in the business of wholesale marketing of electric energy and has proposed to supply, subject to the terms and conditions set forth herein, Partial Requirements and Full Requirements Service to meet Customer's energy needs to the Delivery Points and to act as Customer's agent;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree that this Agreement, together with the Appendices attached hereto, sets forth the terms under which Company will supply Partial Requirements and Full Requirements Service to Customer during the Delivery Period and provide related services, and constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral (including without limitation any preliminary term sheet), between the Parties concerning this Agreement.

ARTICLE 1 - DEFINITIONS

The following words and terms shall be understood to have the following meanings when used in this Agreement or in any associated documents entered into in conjunction with this Agreement. This Agreement includes certain capitalized terms that are not explicitly defined herein. Such capitalized terms shall have the meanings specified in the "Related Documents," as the same are in effect from time to time, which meanings are incorporated herein by reference and made a part hereof. In the event of any inconsistency between a definition contained herein and a definition contained in "Related Documents," the definition in this Agreement shall control for purposes of this Agreement. Certain other definitions as required appear in subsequent parts of this Agreement.

1.1 **Affiliate** means, with respect to any person or entity, any other person or entity (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 **Agency Agreement** means the agreement between the Parties designated on Appendix C.

1.3 **Agreement** means this Market Based Rate Partial and Full Requirements Service Agreement, including the Appendices, as amended, modified or supplemented from time to time.

1.4 **Ancillary Services** means the following services provided by SPP or a third party that are required to serve the Retail Load under the terms of this Agreement at the Metering Points: those services set forth in the applicable OATT Tariff schedules and any supplemental or revised tariffs or schedules, adopted by the Transmission Provider, including without limitation, Scheduling, System Control and Dispatch Service, Transmission Owners Scheduling, System Control and Dispatch, Reactive Supply and Voltage Control from Generation or Other Sources Service, Regulation and Frequency Response Service, Energy Imbalance Service, Operating Reserve-Spinning Reserve Service, Operating Reserve-Supplemental Reserve Service, and Black Start Service (as each of those services is defined in the applicable OATT schedules). Also, see Appendix B – Responsibility for Charges and Credits.

1.5 **Basis Differential** means the difference in the price of Energy at Company's generators' commercial pricing node under the regional transmission organization or independent system operator of which Company is a member and at the Interconnection Point.

1.6 **Billing Period** means the calendar month, which shall be the standard period for all payments and metering measurements under this Agreement, unless otherwise specifically required by SPP or the entity providing meter reading services.

1.7 **Business Day** means a day ending at 5:00 p.m. Central Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by the North American Electric Reliability Council; *provided*, that, with respect to any payment due hereunder, a "Business Day" means a day ending at 5:00 p.m. Central Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions are authorized by Law to close; and, *provided, further*, that with respect to any notices for scheduling to be delivered pursuant to any Section hereof, a "Business Day" shall be a day other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by SPP.

1.8 **Capacity** as such term is used in the SPP OATT as may be amended from time to time.

1.9 **Central Prevailing Time** means the prevailing time in Wayne, Nebraska.

1.10 **Claims** means all third party claims or actions, threatened or filed, and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of this Agreement, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.11 **Commission** means the Kentucky Public Service Commission.

1.12 **Confidential Information** means the terms of this Agreement and such other information as a Party designates as confidential. Notwithstanding the foregoing, the following shall not constitute Confidential Information:

(a) Information which was already in a Party's possession prior to its receipt from another Party and not subject to a requirement of confidentiality;

(b) Information which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to the Party by a contractual, legal or fiduciary obligation to the other Party; and

(c) Information which is or becomes publicly available through no fault of the Party.

1.13 **Congestion Costs** means the effect on transmission line loadings as reflected in the cost of transmission (whether positive or negative) associated with either increasing the output of a generation resource or serving an increment of load at a delivery point when the transmission system serving that delivery point is operating under constrained conditions.

1.14 **Congestion Rights** means the mechanism employed by SPP to allocate, using financial rights, hedges or similar items to mitigate Congestion Costs between two Settlement Locations (whether set forth in the SPP OATT or elsewhere).

1.15 **Credit Rating** means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or, if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Fitch, or Moody's.

1.16 **Defaulting Party** means the Party with respect to which an Event of Default has occurred.

1.17 **Delivery Period** means the period as defined in Section 2.2.

1.18 **Delivery Points** means the physical point or points mutually agreed by the Parties at which SPP will deliver and Customer will accept the Firm Energy.

1.19 **Early Termination Date** is the date selected by the Non-Defaulting Party to terminate this Agreement.

1.20 **Effective Date** has the meaning stated in the first sentence of this Agreement.

1.21 **Energy** means three phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

1.22 **Event of Default** has the meaning set forth in Section 7.1.

1.23 **FERC** means the Federal Energy Regulatory Commission.

1.24 **Firm Energy** means Energy that Company shall sell and deliver and Customer shall purchase and receive unless relieved of their respective obligations by Force Majeure or SPP system emergency or local transmission conditions making delivery or receipt impossible, but only to the extent that, and for the period during which, the Party's performance is prevented thereby.

1.25 **Fitch** means Fitch Ratings, Inc. and its successors.

1.26 **Force Majeure** means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date the Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. The Parties agree and acknowledge that the unavailability of transmission services or other transmission constraints in SPP, MISO, or any other applicable regional transmission organization or independent system operator shall constitute an event of Force Majeure but neither (a) an insufficiency of funds, nor (b) a decline in credit rating, shall constitute a Force Majeure.

1.27 **Full Requirements Service** or **Full Requirements** means the Energy and Capacity, including associated planning reserves, supplied by Company, and the Ancillary Services and Transmission Services, procured by Company in its capacity as MP, in each case, necessary to accomplish the delivery of Firm Energy to the Interconnection Point in an amount required to serve Retail Load, as the same may fluctuate in real time. Full Requirements also means that Company shall have the exclusive right to serve all power

requirements of Customer, unless Company is unable to supply due to lack of Capacity or Force Majeure, as provided for in this Agreement or otherwise to the extent set forth in Section 2.3, 3.8 or 3.10.

1.28 **HE** means the hour ending at the time specified.

1.29 **Interconnection Point** means the physical interconnection point(s) between SPP and MISO identified in Appendix A.

1.30 **Letter(s) of Credit** means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in a form acceptable in its sole discretion to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.31 **Liquidated Gains** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Termination Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner and using a discount rate equal to the Party's average cost of capital.

1.32 **Liquidated Losses** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Termination Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner and using a discount rate equal to the Party's average cost of capital.

1.33 **Load Serving Entity or LSE** means any entity (or the duly designated agent of such an entity), including any transmission owner, taking transmission service on behalf of wholesale or retail power customers, which has undertaken an obligation to provide or obtain electric energy for end-use customers by statute, franchise, regulatory requirement or contract for load located within or attached to the transmission system, and has been authorized by SPP to participate in the energy markets operated by SPP serving end-users within SPP.

1.34 **Losses** means, any transmission loss, transformation loss, sub-transmission and/or distribution losses incurred in providing Partial Requirements or Full Requirements Service hereunder.

1.35 **Market Participant or MP** means any entity (or the duly designated agent of such an entity), that is qualified, pursuant to the procedures established by SPP, to do the following (with all capitalized terms used herein having the meaning set forth in the SPP OATT): (i) submit bilateral transaction schedules to SPP; (ii) submit Bids to purchase, and/or offers to supply electricity in the Day-Ahead and/or Real-Time Balancing Markets; (iii) hold Transmission Congestion Rights and submit Bids to purchase, and/or offers to sell such rights; and (iv) settle all payments and charges with SPP.

1.36 **MISO** means Midcontinent Independent System Operator, Inc. or any successor regional transmission organization or independent system operator of which Company is a member.

1.37 **MISO OATT** means MISO's Open Access Transmission and Energy Markets Tariff, as amended from time to time, or any similar tariff of a successor.

1.38 **Monthly Payment** means the monthly charges set out in Article 4 of this Agreement.

1.39 **Moody's** means Moody's Investors Service, Inc. and its successors.

1.40 **MW** means Megawatt.

1.41 **MWh** means Megawatt-hour.

1.42 **NERC** means the North American Electric Reliability Corporation.

1.43 **Network Integration Transmission Service or NITS** means firm transmission service as set forth in the SPP OATT that provides for open access to the transmission systems within SPP and for the delivery of Firm Energy from the Interconnection Point to the Delivery Points.

1.44 **Non-Defaulting Party** means the Party with respect to which an Event of Default has not occurred.

1.45 **NPPD** means the Nebraska Public Power District, or its successor.

1.46 **NPPD Contract** means the contract between Customer and NPPD which allows Customer to limit and reduce its power purchased from NPPD beginning in 2018.

1.47 **NPPD Contract Reduction Period** refers to the period of time during which Customer will be reducing its purchases of Capacity and Energy and other services from NPPD pursuant to the NPPD Contract and purchasing the remainder of its such requirements from Company. Customer and Company agree that the exact reductions are unknown at the Effective Date.

1.48 **NPPD GFPS Tariff** means the NPPD General Firm Power Service Tariff.

1.49 **NPPD Tariff** means the NPPD Transmission Service Rate Schedule.

1.50 **Partial Requirements** means the Energy and Capacity, including associated planning reserves, supplied by Company, and the Ancillary Services and Transmission Services if Company is acting as the MP, necessary to accomplish the delivery of Firm Energy to the Interconnection Points in an amount required to serve Retail Load, after taking into account Customer's load served by NPPD during those years in which Customer will be taking partial requirements from Company and NPPD during the NPPD Contract Reduction Period.

1.51 **Party(ies)** means Customer or Company or either or both of them, as the context requires.

1.52 **Performance Assurance** means collateral in the form of cash, Letter(s) of Credit or any other security acceptable to the Requesting Party.

1.53 **Prime Rate** means the lesser of (i) the rate published from time to time in *The Wall Street Journal*, as the prime lending rate, and (ii) the maximum rate permitted by applicable law.

1.54 **Qualifying Capacity** means the amount of Capacity, measured in MW, that is capable of satisfying applicable resource adequacy requirements established by SPP; *provided*, that, with respect to any calendar year, such amount may not exceed the annual peak demand of the Retail Load of the prior calendar year.

1.55 **Receiving Party** is defined in Article 6.

1.56 **Related Documents** means for SPP, either collectively or individually, the SPP OATT, the SPP Market Protocols, SPP Business Practices, SPP Criteria, SPP Network Operating Agreement, Market Participant Agreement, SPP Market Participant Application, Network Integration Transmission Service Agreement, Local Security Administrator and other applicable SPP Market Rules And Procedures.

1.57 **Requesting Party** is defined in Article 6.

1.58 **Retail Load** means Customer's own requirements and its end use customers' requirements located within the franchised service territory that Customer has a statutory or contractual obligation to serve, but

excluding any customers obtained through retail marketing or retail choice programs, initiatives or similar efforts of Customer.

1.59 **RPS** refers to any future renewable portfolio supply standard of any federal, state or other governmental authority.

1.60 **S&P** means Standard & Poor's Financial Services, LLC.

1.61 **SPP** means Southwest Power Pool or any successor regional transmission organization or independent system operation in which territory Customer is located.

1.62 **SPP OATT** means SPP's Open Access Transmission Tariff, as amended from time to time, or any successor thereto.

1.63 **Term** is defined in Section 2.1.

1.64 **Termination Costs** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating this Agreement or any arrangement pursuant to which it has hedged its obligations or entered into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the early termination of this Agreement.

1.65 **Termination Payment** means, with respect to this Agreement and the Non-Defaulting Party, the Liquidated Losses or Liquidated Gains, and Termination Costs, expressed in U.S. dollars, which such Party incurs as a result of the early termination of this Agreement.

1.66 **Transmission Services** means NITS, with respect to the transmission of Energy from the Interconnection Point to the Delivery Point, and other transmission services necessary to deliver Energy from Company's generation resources to the Interconnection Point.

ARTICLE 2 - TERM, SERVICE AND DELIVERY PROVISIONS

2.1 <u>Term</u>.

(a) Subject to the condition set forth in Section 2.1(c), the term of this Agreement shall begin as of the Effective Date and, except as provided below, shall extend through and including December 31, 2026, unless either Party declares an Early Termination Date in accordance with the provisions hereof (the "Term"). The applicable provisions of this Agreement shall continue in effect following the termination or expiration hereof in accordance with Section 16.13, and to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other security, set-off, final payments, payments pertaining to liability and indemnification obligations arising from acts or events that occurred during the Delivery Period, or other such provisions that, by their terms or operation, survive the termination of this Agreement. At the end of the Delivery Period, the agreement shall automatically be extended for successive one (1) year evergreen renewal terms unless either Party terminates this Agreement by delivering written notice of such termination. Upon delivery of any such notice, this Agreement shall terminate on December 31 of the year that is the second full calendar year following the year in which such notice was delivered. If either Party desires to terminate this Agreement at the end of the initial Delivery Period, such Party must give a termination notice prior to January 1, 2024 to the other party. If neither party terminates this Agreement by such date, this Agreement will automatically continue for one year beyond the Delivery Period as provided above.

(b) [redacted]

(c) The effectiveness of this Agreement and the Parties obligations hereunder are subject to (i) in the case of Company unless waived, (A) the receipt of an authorization, consent, order, finding, decision or other action (an "Approval") of the Commission, and any other governmental authority required to approve, authorize or consent to the execution, delivery and performance of this Agreement by Company; (B) the compliance by Company with its obligations under its financing arrangements with the USDA Rural Utilities Service, and receipt of any necessary Approval in connection therewith; (C) satisfaction, in its sole discretion, with all MISO transmission studies relating to the ability of Company to deliver Firm Energy to the Interconnection Point during the Delivery Period requested and obtained by Company prior to the commencement of the Delivery Period; and (ii) in the case of either Party, unless waived by it, satisfaction, in its sole discretion, with all SPP transmission studies relating to the ability of Customer to cause delivery of Firm Energy to the Delivery Point during the Delivery Period requested and obtained by such Party prior to the commencement of the Delivery Period.

2.2 **Delivery Period**. The Delivery Period shall commence on January 1, 2018, and continue through the end of the Term.

2.3 **Current and Future Generation.** [redacted]

Company has no current intention to construct electric generation resources in Nebraska during the Delivery Period; *provided, however*, that if Company does elect to construct electric generation resources in Nebraska during the Delivery Period, then Company will grant Customer, together with the municipal

electric systems of the cities of Wayne, Wakefield and South Sioux City, Nebraska if they are served under a power purchase agreement substantively identical to this Agreement, a collective right of first refusal for those electing to participate, to, jointly and severally, construct such generation resources and sell back to Company the output of such generation resources following commencement of commercial operation at the participants' out-of-pocket costs to operate such generation resources during the period Customer remains a Full Requirements customer of Company.

2.4 **Interconnection Point; Delivery Point.** [redacted]

2.5 **Customer Provided Equipment.** Customer will provide or cause to be provided any and all substation and transformation equipment and any and all other facilities required to take delivery of the Partial Requirements or Full Requirements Service to be sold and purchased hereunder at the nominal voltage. Such equipment and other facilities shall be of a quality and of a type required by prudent utility practices. As between Company and Customer, Customer shall be responsible for all costs to install and maintain the metering and the communication facilities sufficient to communicate Customer's real-time demand as required for the implementation of this Agreement. Company will not be responsible for any transmission, distribution, and /or electrical facilities needed within SPP to serve Customers' load.

2.6 **Future Integration of Customer Load into MISO.** [redacted]

ARTICLE 3 - SALE AND PURCHASE

3.1 **Partial Requirements Service and Full Requirements Service.**

[redacted]

[redacted]

[redacted]

3.2 Capacity. During the Delivery Period, Company will provide Capacity and take all other actions necessary to satisfy the Capacity resource adequacy requirements of Customer under the SPP Tariff. Company may supply Capacity from any resources Company elects in its sole discretion.

3.3 Transmission Service. [redacted]

3.4 Transmission Studies. [redacted]

3.5 Ancillary Services. [redacted]

3.6 Losses. [redacted]

3.7 Market Participant Service. [redacted]

[redacted]

[redacted]

3.8 **Renewable Energy.** [redacted]

3.9 **WAPA Purchases; PURPA Purchases.** [redacted]

3.10 **Retail Customer Choice.** During the Term, Customer shall not voluntarily participate in nor authorize or permit any retail customer to participate in any form of retail customer choice unless otherwise mandated and required by applicable law, *provided, further,* that Customer will appeal any such requirement to any governmental authority, as being non-applicable during the remaining Term of this Agreement. Customer will use diligent efforts before any such governmental authority to secure such an exemption or waiver. Except as permitted under Section 2.3 or 3.8, no Retail Load may be served by another supplier, in whole or in part, unless mutually agreed to by the Parties during Full Requirements Service.

3.11 **Economic Development Incentive Rates.** Subject to the terms and conditions in this section, if Company has an economic development rate in effect under its tariff, Customer may elect to serve prospective new industrial retail customers constituting Retail Load under such rate, plus additional charges described below, in lieu of rates that would otherwise apply under this Agreement to recruit economic development opportunities to Customer's service area. Any offer of the economic development rate must comply with all terms and conditions then applicable to the availability of Company's economic development rate to its members' customers. Customer agrees that if new retail customers are served under Company's economic development incentive rate, their future wholesale power cost for loads receiving the incentive will be based on Company's then-existing rate structure, plus applicable charges for Transmission Services and other customary charges, including Congestion Costs, in lieu of the rates otherwise applicable pursuant to this Agreement. All service to Customer for retail customers utilizing economic development incentive rates will be subject to Company having available Capacity from its existing owned generation resources to serve such loads.

Subject to this paragraph, Customer may offer potential industrial retail customers the economic development incentive rate during the period prior to the commencement of Partial Requirements Service. For such period, Customer shall be responsible for the monthly cost of offering such rate in the amount of the difference between the all in rate otherwise applicable to such prospect and Company's economic development rate. From and after the date Company commences Partial Requirements Service or Full Requirements Service, Company will credit Customer's Monthly Payment in an amount equal to each month's cost difference over a term equal in time to the period prior to the commencement of Partial Requirements Service that the economic development rate was in effect for such retail customer; *provided* that such period prior to the commencement of Partial Requirements Service shall be no longer than the remaining term of the Delivery Period (assuming the Delivery Period is terminated at the end of the initial Term without any renewal terms).

3.12 Carbon Legislation or Regulation. If environmental laws, regulations, rules or directives are enacted or changed after the date hereof that regulate, tax, limit, restrict or otherwise are related to carbon, carbon emissions, offsets or credits, Company may bill, and Customer shall reimburse Company for, any new costs associated with such environmental laws, regulations, rules or other directives to the extent such environmental laws, regulations, rules or directives related to performance by Company of its obligations under this Agreement, *provided* that, as a result thereof, either Party may terminate the agreement with a two years written notice delivered to the other Party. The Parties agree that if Customer desires to pay the costs described in the preceding sentence and not terminate this Agreement, (a) Customer shall only be responsible for paying Company for the incremental costs to Company of such environmental laws, regulations, rules or other directives, in addition to any charges, costs or expenses reflected in the charge calculations noted in Article 4, and (b) Company shall not be entitled to duplicate recovery of any such additional amounts payable pursuant to this Section 3.12 as a result of a change in the NPPD GFPS Tariff and recovered in Section 4.2 below with respect to such change in law.

3.13 Irrigation Load. [redacted]

3.14 Basis Differential. [redacted].

3.15 Future Nebraska Load Offers. [redacted].

ARTICLE 4 - MONTHLY BILLING

4.1 Monthly Payment. In each month during the Term, Company shall calculate the Monthly Payment, which shall consist of the Capacity and Energy Charges, Pass Through Items (as described in Section 4.3), and any taxes, fees and levies (as described in Section 4.4) associated with this Agreement and any other amounts due and payable hereunder. Because quantities determined under Article 4 may be estimated, and subject to a reconciliation process, quantities used in calculations shall be subject to adjustment, whether positive or negative, in subsequent months' calculations. Failure to include an amount in one month's Monthly Payment shall not be a basis for its exclusion from a subsequent Monthly Payment calculation.

4.2 **Energy and Capacity Charges.** [redacted]

4.3 **Pass Through Items.** [redacted]

4.4 **Taxes, Fees and Levies.**

All taxes, fees and levies relating to the Retail Load or arising out of this Agreement will be charged by Company to Customer.

4.5 **Payment.**

(a) **Invoice and Payment Date.** Customer shall pay Company any amounts due and payable hereunder on or before the later of the eighteenth (18th) day of each month, or the seventh (7th) day after receipt of invoice, or if such day is not a Business Day, then on the next Business Day.

(b) **Payment Method and Interest.** All invoices shall be paid by electronic funds transfer of immediately available funds, or by other mutually agreeable method(s), to the account designated by the other Party. If all or any part of any amount due and payable pursuant to this Agreement shall remain unpaid after the date due, interest shall thereafter accrue and be payable to Company on such unpaid amount at a rate equal to one and one-half (1½) percent per month or portion thereof on the unpaid balance from the date such payment was due until such time as Company is paid in full; *provided, however*, that no interest shall accrue in respect of adjustment amounts calculated in accordance with Section 4.1.

4.6 **Payment Netting.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to this Agreement through netting, in which case all amounts owed by each Party to the other Party under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. [redacted] If no mutual debts or payment obligations exist and

only one Party owes a debt or obligation to the other during the monthly Billing Period, that Party shall pay such sum in full when due.

4.7 **Billing Disputes.** If a Party, in good faith, disputes an invoice, the disputing Party shall, as soon as practicable, notify the other Party of the basis for the dispute and pay under protest the entire invoice no later than the due date. Upon resolution of the dispute, any required payment or refund shall be made within two (2) Business Days of such resolution along with any accrued interest from and including the due date to but excluding the date paid (or, in the case of refunds, accrued interest from and including the date the payment was made to but excluding the date the refund is paid), together with interest at the Prime Rate plus two percent (2%). Payments not made when due shall bear interest at the greater of the Prime Rate plus two percent (2%) or the interest paid by the Party carrying the cost to a third party with respect to the obligation. Inadvertent overpayments shall be returned or deducted from subsequent payments at the option of the overpaying Party with interest accrued at the Prime Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

4.8 **Availability or Manipulation of NPPD GFPS Tariff.** [redacted]

4.9 **Metering.** [redacted]

ARTICLE 5 - ISO IMPLEMENTATION AND CONGESTION MANAGEMENT

5.1 **Implementation.**

(a) [redacted]

(b) Market Participant (MP). Company shall act as an MP under this Agreement and agrees that it will become SPP MP and agrees to remain an MP throughout the Term. Customer shall pay all costs, expenses and changes, and shall indemnify, defend and hold Company harmless for all losses, costs, expenses, damages, liabilities, charges, suits, proceedings and litigation (including reasonable attorneys' fees) in connection with or arising out of Company acting as MP on behalf of Customer, except to the extent arising out of the gross negligence or willful misconduct of Company.

(c) **Designated Agent.** If required, Company shall act as Customer's designated agent as provided in Appendix C hereto. If required, Customer agrees to execute and maintain in effect Section 13 of the Market Participant Agreement delegating to Company the authority to act as Customer's agent to fulfill Company's requirements for providing the Full Requirements Service to the extent set forth in such sections.

(d) [redacted]

(e) **Information Access.** Customer further gives permission to Company to access information at SPP that Company reasonably requests to facilitate Company's performance of its obligations under this Agreement.

5.2 **Management of Congestion Risks.**

[redacted]

[redacted]

[redacted]

ARTICLE 6 - CREDITWORTHINESS

6.1 **Financial Information.** If requested by either Party, the other Party shall deliver within 150 days following the end of each fiscal year a copy of the annual report containing its audited consolidated financial statements for such fiscal year. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles and shall fairly present in all material respects the financial condition of the party as of the date thereof and the results of operations and cash flows of the party for the periods presented; *provided, however*, that should any such statements not be available on a timely basis due to a delay in preparation for certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

6.2 **Performance Assurance.** [redacted]

[redacted]

[redacted]

[redacted]

6.3 **Cash Collateral.** [redacted]

6.4 **Remedies with respect to Performance Assurance.** [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted]

ARTICLE 7 - DEFAULT AND REMEDIES

7.1 **Events of Default**. Any one or more of the following shall constitute an "Event of Default" hereunder with respect to either Party (the "Defaulting Party"):

(a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) Any representation or warranty made by a Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) The failure by either Party to provide Performance Assurance as set forth in Article 6;

(d) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified herein) if such failure is not remedied within three (3) Business Days after written notice;

(e) Such Party: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due; or

(f) Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

(g) Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 12.

7.2 **Declaration of an Early Termination Date and Calculation of Termination Payment**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is given and no later than 20 days after such notice is given, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the Agreement between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement, set off any amounts owed by the Defaulting Party against amounts owed by the Non-Defaulting Party, or both withhold payments due and set off amounts owed, (iii) suspend performance, (iv) exercise the remedies with respect to Performance Assurance set forth in Section 6.4, or (v) exercise any remedies available at law or in equity.

The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment for this Agreement as of the Early Termination Date. The Termination Payment will be determined by the Non-Defaulting Party using the Forecasted Remaining Quantities. As used in this paragraph, "Forecasted Remaining Quantities" means the Non-Defaulting Party's commercially reasonable forecast of the quantities of Energy required to provide Partial Requirements or Full Requirements Service for the remainder of the Delivery Period as if such early termination had not occurred, which shall be based on the amount of Customer's Retail Load during each hour of the twelve (12) months preceding the Early Termination Date escalated annually for the remainder of the Delivery Period at the average annual rate of

growth of Customer's Retail Load over the three (3) full calendar years preceding the Early Termination Date.

7.3 **Net Out of Termination Payment**. The Non-Defaulting Party shall aggregate the Termination Payment into a single amount by: netting out (a) the Termination Payment that is due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 6, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) the Termination Payment that is due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party, as appropriate.

7.4 **Notice of Payment of Termination Payment**. As soon as practicable after a termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective. Notwithstanding any provision to the contrary in this Agreement, the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under Article 7 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that any other obligations of any kind whatsoever of the Defaulting Party to make payments to or perform any obligation for the benefit of the Non-Defaulting Party under this Agreement or otherwise have been fully performed or provided for.

7.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; *provided, however,* [redacted]

7.6 **Suspension of Deliveries.** [redacted]

7.7 **Obligations Following Expiration or Termination**. Upon the termination or expiration of this Agreement, in addition to such rights and obligations enumerated elsewhere in this Agreement, the grant of any and all right and interest to Company to supply the Partial Requirements or Full Requirements Service shall cease, and Customer and Company shall immediately make all necessary filings with SPP and perform all other acts necessary to transfer all such rights and interests back to Customer.

7.8 **Termination Based on Governmental Action**. If any approval, authorization, consent, order, finding, decision or other action required by Section 2.1(c) or 3.13 shall not be obtained and received after the exercise of commercially reasonable efforts, or shall contain any change to a material term hereof or impose a material condition or a material additional burden on a Party, the Party affected may terminate this Agreement without cost or liability (including without payment of the Termination Payment) by providing written notice thereof to the other Party no later than five (5) Business Days following the date on which any appeal, challenge, request for rehearing or similar requests have been denied and such governmental action becomes final and non-appealable.

7.9 Termination Based on Transmission Studies. If any condition to the effectiveness of this Agreement relating to any transmission studies required by Section 2.1(c) shall not be satisfied on or prior to December 31, 2016, either Party may terminate this Agreement without cost or liability (including without payment of the Termination Payment) by providing written notice thereof to the other Party at any time thereafter but prior to commencement of the Delivery Period.

ARTICLE 8 - CURTAILMENT, TEMPORARY INTERRUPTIONS AND FORCE MAJEURE

8.1 Curtailment. Upon being notified by SPP of a requirement to curtail, regardless of whether such notice is provided by SPP or other reliability authority directly or indirectly through Company, Customer will institute procedures which will cause a corresponding curtailment of the use of Energy by its Retail Load. If upon notification of a requirement to curtail Energy deliveries to its Retail Load, Customer fails to institute such procedures, Company shall be entitled to limit deliveries of Energy to Customer in order to effectuate reductions in Energy deliveries equivalent to the reduction which would have been effected had Customer fulfilled its curtailment obligation hereunder during the period any shortage exists, and, in such event, Company shall not incur any liability to Customer in connection with any such action so taken by Company.

8.2 Temporary Interruptions. Company will use reasonable diligence in undertaking its obligations under this Agreement to furnish Firm Energy to Customer, but Company does not guarantee that the supply of Firm Energy furnished to Customer will be uninterrupted or that voltage and frequency will be at all times constant. Temporary interruption of Firm Energy deliveries hereunder shall not constitute a breach of the obligations of Company under this Agreement, and Company shall not in any such case be liable to Customer for damages resulting from any such temporary interruptions of service, provided such temporary interruption is not the result of Company's ability to resell the Partial Requirements or Full Requirements Service to a third party at a price greater than the pricing set forth in this Agreement.

8.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations under the Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. The occurrence of a Force Majeure shall not relieve Customer of its payment obligations under Article 4, including its payment obligations with respect to any portion of the Monthly Payment. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

8.4 Force Majeure Exceptions. [redacted]

ARTICLE 9 - NOTICES, REPRESENTATIVES OF THE PARTIES

9.1 Notices. Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. Such notice shall be sent by facsimile, electronic messaging (confirmed by telephone), courier, personally delivered or mailed, postage prepaid, to the representative of the other Parties designated in this Article 9. Any such notice, demand, or request shall be deemed to be given (i) when received by facsimile or electronic messaging, (ii) when actually received if delivered by courier, overnight mail or personal delivery, or (iii) three (3) days after deposit in the United States mail, if sent by first class mail.

Notices and other communications by Company to Customer shall be addressed to:

CEO
Northeast Nebraska Public Power District
1410 W. 7th Street
Wayne, NE 68787
Facsimile: 402.375.1233

Notices and other communications by Customer to Company shall be addressed to:

CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Facsimile: 270.827.2558

Any Party may change its representative by written notice to the other Party.

9.2 Authority of Representative. The Parties' representatives designated in Section 9.1 shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. The Parties' representatives shall not, however, have the authority to amend, modify or waive any provision of this Agreement unless they are authorized officers of their respective entities and such amendment, modification or waiver is made pursuant to Article 16.

ARTICLE 10 - LIABILITY, INDEMNIFICATION, AND RELATIONSHIP OF PARTIES

10.1 Limitation on Consequential, Incidental and Indirect Damages.

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CUSTOMER NOR COMPANY, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS MEMBERS, PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, UNLESS OTHERWISE SPECIFIED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PROVISIONS OF THIS SECTION 10.1 SHALL APPLY REGARDLESS OF

FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

10.2 **Indemnification.**

(a) Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident occurring or existing during the period when control and title to Partial Requirements or Full Requirements Service is vested in such Party as provided in Section 10.4.

(b) Each Party shall indemnify and hold harmless the other Party from and against any and all legal and other expenses, claims, costs, losses, suits or judgments for damages to any person or entity or destruction of any property arising in any manner directly or indirectly by reason of the acts of such Party's authorized representatives while on the premises of the other Party under the rights of access provided herein.

(c) Company assumes no responsibility of any kind with respect to the construction, maintenance or operation of the system or other property owned or used by Customer; and Customer agrees to protect, indemnify and save harmless Company from any and all claims, demands or actions for injuries to person or property by any person or entity in any way resulting from, growing out of or arising in or in connection with (a) the construction, maintenance or operation of Customer's system or other property, or (b) the use of, or contact with, Energy delivered hereunder after it is delivered to Customer and while it is flowing through the lines of Customer, or is being distributed by Customer, or is being used by Retail Load.

(d) If any Party intends to seek indemnification under this Section 10.2 from the other Party with respect to any Claim, the Party seeking indemnification shall give such other Party notice of such Claim within fifteen (15) days of the commencement of, or actual knowledge of, such Claim. Such Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such Claim. The Party seeking indemnification shall not compromise or settle any such Claim without the prior consent of the other Party, which consent shall not be unreasonably withheld.

10.3 **Independent Contractor Status.** Nothing in this Agreement shall be construed as creating any relationship among Customer and Company other than that of independent contractors for the sale and purchase of Partial Requirements or Full Requirements Service. Except to the extent Company is authorized to act as Customer's Market Participant hereunder, no Party shall be deemed to be the agent of any other Party for any purpose by reason of this Agreement. No partnership or joint venture or fiduciary relationship among the Parties is intended to be created by this Agreement.

10.4 **Title; Risk of Loss.** Title to and risk of loss related to the Partial Requirements or Full Requirements Service shall transfer from Company to Customer at the Interconnection Point. Company warrants that it will deliver Partial Requirements or Full Requirements Service to Customer free and clear of all Claims or any interest therein or thereto by any person or entity arising prior to the Interconnection Point.

ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

11.1 **Representations and Warranties of Each Party.** Company and Customer each represents and warrants to the other that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and has the power and authority to execute and deliver this

Agreement, to perform its obligation hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the Term hereof;

(b) It has, or will, upon execution of this Agreement, promptly seek, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, including but not limited to any organizational documents, charters, bylaws, indentures, mortgages or any other contracts or documents to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) This Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity;

(e) It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it, which would result in it being or becoming bankrupt; and

(f) There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially and/or adversely affect its ability to perform its obligations under this Agreement.

11.2 Customer Additional Covenants. Customer represents, warrants and agrees to and with Company that except as otherwise provided herein, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of its status as a municipality under Federal or state law or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

ARTICLE 12 - ASSIGNMENT

12.1 General Prohibition Against Assignments. Except as provided in Section 12.2 below, no Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

12.2 Exceptions to Prohibition Against Assignments. A Party may, without the other Party's prior written consent (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an Affiliate of such Party (which Affiliate shall be of equal or greater creditworthiness); or (iii) transfer or assign this Agreement to any person or entity succeeding by merger or by acquisition to all or substantially all of the assets whose creditworthiness is equal to or higher than that of the assigning Party; *provided, however,* [redacted]

12.3 Limitation on Assignment. Notwithstanding Section 12.2, in no event may either Party assign this Agreement (including as part of a sale of all or substantially all of the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, (ii) to any Person that does not agree to assume all rights and obligations of the assigning Party under this Agreement and be bound by the terms and conditions hereof, or (iii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

12.4 Duties. No permitted assignment or transfer will change the duties of the Parties or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party shall be released from its obligations under this Agreement pursuant to any assignment.

ARTICLE 13 - CONFIDENTIALITY

To the extent permitted by law, all Confidential Information shall be held and treated by the Parties and their agents in confidence, used solely in connection with this Agreement, and shall not, except as hereinafter provided, be disclosed without the other Party's prior written consent.

Notwithstanding the foregoing, Confidential Information may be disclosed (a) to a third party for the purpose of effectuating the supply, transmission and/or distribution of Partial Requirements or Full Requirements Service to be delivered pursuant to this Agreement, (b) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable law, regulation or order including any Nebraska sunshine law (provided Company's trade secret or proprietary information is redacted to the fullest extent permitted by law), (c) as part of any required, periodic filing or disclosure with or to any regulatory authority of competent jurisdiction and (d) to third parties in connection with merger, acquisition/disposition and financing transactions provided that any such third party shall have signed a confidentiality agreement with the disclosing party containing customary terms and conditions that protect against the disclosure of the Confidential Information and that strictly limit the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance.

In the event the non-disclosing party receives a written request applicable to the Confidential Information, under a sunshine law such as the Nebraska Public Information Act ("Public Information Act Request") and Customer does not believe the request is subject to the Public Information Act, the non-disclosing party shall, in accordance with the procedures in the Public Information Act, (i) timely request a ruling from the Nebraska Attorney General that the information is not subject to disclosure (ii) timely provide to the Attorney General a letter or brief explaining why the information should not be subject to public disclosure and (iii) provide to the disclosing party prompt notice of the Public Information Act Request so that the disclosing party will have an opportunity to submit a statement to the Attorney General providing the reasons why the Confidential Information should not be disclosed. To the extent any provision of this Agreement conflicts with the provisions of the Nebraska Public Information Act, the provisions of the Nebraska Public Information Act shall control, and no further liability or responsibility shall be borne by either party so long as the provisions of the Nebraska Public Information Act are followed in good faith.

In the event that a Party ("Disclosing Party") is requested or required to disclose any Confidential Information, the Disclosing Party shall provide the other Party with prompt written notice of any such request or requirement so that the other Party may seek an appropriate protective order, other confidentiality arrangement or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order, other confidentiality arrangement or the receipt of a waiver hereunder, the Disclosing Party, in the opinion of counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose.

The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. In addition to the foregoing, the Disclosing Party shall indemnify, defend and hold harmless the other Parties from and against any Claims, threatened or filed, and any losses, damages, expenses, attorneys' fees or court costs incurred by such Party in connection with or arising directly or indirectly from or out of the Disclosing Party's disclosure of the Confidential Information to third parties except as permitted above.

Notwithstanding the above provisions, Company shall be permitted to communicate with SPP any necessary information, including Confidential Information, with regard to implementation of this Agreement and will make all reasonable efforts to ensure that Confidential Information remains confidential.

ARTICLE 14 - REGULATORY AUTHORITIES

14.1 Compliance with Laws. Each Party shall perform its obligations hereunder in accordance with applicable laws, rules and regulations. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as those laws may be amended, supplemented or superseded, or which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.

14.2 Tariffs. Each Party agrees if it seeks to amend any applicable FERC filed tariff during the Term, such amendment will not in any way affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert or defend itself on the basis that any applicable tariff is inconsistent with this Agreement.

ARTICLE 15 - STANDARD OF REVIEW FOR PROPOSED CHANGES, DISPUTE RESOLUTION

15.1 Standard of Review. The rates, charges, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. It is the intent of this section that, to the maximum extent permitted by applicable law, the rates, charges, terms and conditions of this Agreement shall not be subject to such change. Absent the agreement of the Parties to the proposed change and subject to any applicable law, including the rules and regulations of the Commission, the standard of review under the Federal Power Act for changes to rates, charges, terms and conditions of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the "*Mobile-Sierra*" doctrine); provided that the standard of review for any amendment requested by a non-contracting third party or FERC acting *sua sponte* shall be the most stringent standard permissible under applicable law.

15.2 Dispute Resolution.

(a) In the event of any dispute among the Parties arising out of or relating to this Agreement, the Parties shall refer the matter to their duly authorized officers for resolution who shall meet within ten (10) days after notice is given by either Party. If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution to the dispute then the Parties may, upon mutual agreement of the Parties, agree to binding arbitration before a single arbitrator. If the parties fail to select an arbitrator within thirty (30) days after mutual agreement to submit a matter to arbitration, the arbitrator shall be named in accordance with AAA's Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties shall share equally the services and expenses of the arbitrator, and each shall pay

its own costs, expenses, and attorneys' fees. Fees and expenses of the court reporter shall be paid in equal parts by the Parties hereto.

(b) In the event the Parties do not mutually agree to binding arbitration, Company and Customer each hereby knowingly, voluntarily and intentionally waives any rights it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with, this Agreement, any course of conduct, course of dealing, statements (whether oral or written) or actions of Company and Customer related hereto, and expressly agree to have any disputes arising under or in connection with this Agreement be adjudicated by a judge in any court of competent jurisdiction sitting without a jury, and each party waives any right to a trial by jury in such courts.

(c) [redacted]

ARTICLE 16 - GENERAL PROVISIONS

16.1 Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties thereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party hereto.

16.2 Waivers. The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.

16.3 Interpretation. The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the State of Kentucky, without giving effect to its conflicts of law provisions, except that issues pertaining to Customer's status as a municipal entity or the applicability of the Nebraska Public Information Act shall be governed by Nebraska law.

16.4 Jurisdiction. Nothing in this Agreement prohibits a Party from referring to FERC or any other governmental authority any matter properly within its jurisdiction. In any proceeding hereunder, each Party irrevocably waives, to the fullest extent allowed by law, its right, if any, to trial by jury. Each Party hereby agrees to accept service of any papers or process in any action or proceeding arising under or relating to this Agreement, at the address set forth in Section 9.1, and agrees that such service shall be, for all purposes, good and sufficient.

16.5 Good Faith Efforts. The Parties agree that each will in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; *provided*, that no Party will be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement or approval of either Party must be obtained hereunder, such consent, agreement or approval may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably

exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

16.6 Further Assurances. The Parties shall execute such additional documents and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

16.7 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.

16.8 Modification. No modification to this Agreement will be binding on any Party unless it is in writing and signed by the Parties.

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

16.10 Headings. Article and section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement.

16.11 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party invoices evidencing the quantities of Partial Requirements or Full Requirements Service. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments to such invoice and the payments thereof will be made promptly and shall bear interest calculated at the Prime Rate plus two percent (2%) from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of the twelve (12) months succeeding rendition thereof, and thereafter any objection shall be deemed waived.

16.12 Records. The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least three (3) years such records as may be needed to afford a clear history of the Partial Requirements or Full Requirements Service supplied pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended.

16.13 Survival. The provisions of Articles 4, 7, 9, 10, 13, 15 and 17 and Sections 16.11, 16.12 and 16.13 shall survive termination of this Agreement hereof, and any other section of this Agreement that specifies by its terms that it survives termination shall survive the termination or expiration of this Agreement.

ARTICLE 17 - RULES OF CONSTRUCTION

Terms used in this Agreement but not listed in this Article or defined in Article 1 shall have meanings as commonly used in the English language.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

The masculine shall include the feminine and neuter.

The words "include", "includes" and "including" are deemed to be followed by the words "without limitation."

References to contracts, agreements, tariffs and other documents and instruments shall be references to the same as amended, supplemented or otherwise modified from time to time.

The Appendices attached hereto are incorporated in and are intended to be a part of this Agreement.

References to laws and to terms defined in, and other provisions of, laws shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.

References to a person or entity shall include its successors and permitted assigns and, in the case of a governmental authority, any entity succeeding to its functions and capacities.

References to "Articles," "Sections," or "Appendices" shall be to articles, sections, or appendices of this Agreement.

The word "or" need not be exclusive as the context implies.

Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number (and vice versa); terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Agreement rather than any particular part of the same.

This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

[*Signatures Follow on Next Page*]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

NORTHEAST NEBRASKA PUBLIC POWER DISTRICT

By: Donald R. Larsen

Name: Don Larsen

Title: President

BIG RIVERS ELECTRIC CORPORATION

By: Mark A. Bailey

Name: Mark A. Bailey

Title: President and CEO

APPENDIX A

LIST OF PHYSICAL DELIVERY POINT(S) AND INTERCONNECTION POINT

LIST OF PHYSICAL DELIVERY POINT(S)

Point Name	Voltage	Adjustment Factor
As agreed by the Parties pursuant to Section 2.4	As agreed by the Parties pursuant to Section 2.4	As agreed by the Parties pursuant to Section 2.4

LIST OF INTERCONNECTION POINTS

Point Name
[redacted]

APPENDIX B
RESPONSIBILITY FOR ISO/RTO CHARGES AND CREDITS

Credits/Charges Allocated to Customer, if applicable

[redacted]

[redacted]

APPENDIX C
LETTER OF AGENCY

Northeast Nebraska Public Power District ("Customer") appoints Big Rivers Electric Corporation ("Company"), and Company accepts such appointment, as agent to act on behalf of Customer in accordance with the terms of the Market Based Rate Partial Requirements and Full Requirements Service Agreement dated December 20, 2013 ("Full Requirements Agreement") as follows:

1. Company shall act as Customer's representative in dealing directly with the SPP with respect to matters relating to the provision of electric service under and in accordance with the Full Requirements Agreement and matters relating to the charges and credits set forth in Appendix B thereto. Without limitation, such activities shall include bidding Customer's load into the SPP market, nominating and obtaining TCRs, ARRs, or Long-Term Firm Transmission Service applicable to the Full Requirements Service provided under the Agreement, and other Market Participant related responsibilities required by the Full Requirements Agreement.

2. Company shall also provide any requested assistance in the development and administration of Customer's network integration transmission service agreement and other related agreements to be entered into by Customer for the delivery of the Full Requirements Service to be sold by Company to Customer under the Full Requirements Agreement.

3. There shall be no separate charges billed under this Letter of Agency; as all costs and charges associated with Company's services are included in the Full Requirements Agreement. This Letter of Agency shall not be construed to create or give rise to any liability on the part of SPP or Company, and Customer waives any such claims that may arise against SPP under this Letter of Agency. This Letter of Agency shall not be construed to modify any of the SPP agreements and in the event of conflict any incidental charges by third parties, MISO, SPP, shall be billed to customer with no markup by Company. Between this Letter of Agency and the SPP agreement, the applicable SPP agreement shall control.

4. Upon termination of this Agreement, Company shall not act as Market Participant on behalf of Customer (unless otherwise agreed) and shall advise SPP about this termination. Further, Company shall notify the Transmission Provider that it is no longer acting as Customer's agent.

Northeast Nebraska Public Power District

By: Donald R Larsen
Name: Don Larsen
Title: President
Date: DECEMBER 17, 2013

Big Rivers Electric Corporation

By: Mark A. Bailey
Name: Mark A. Bailey
Title: President and CEO
Date: February 10, 2014