

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC
ATTORNEYS AT LAW

Ronald M. Sullivan
Jesse T. Mountjoy
Frank Stainback
James M. Miller
Michael A. Fiorella
William R. Dexter
Allen W. Holbrook
R. Michael Sullivan
P. Marcum Willis
Bryan R. Reynolds
Tyson A. Kamuf
Mark W. Starnes
Julia B. Hawes

July 14, 2005

Via Federal Express

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

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COMMISSION

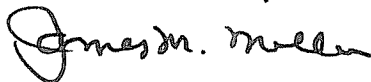
Case No. 2005-00300

Re: In the matter of: Application of Big Rivers Electric Corporation
for Approval of Electrical Interconnection Service to
Thoroughbred Generating Company, LLC

Dear Ms. O'Donnell:

Enclosed are an original and ten copies of the application of Big Rivers Electric Corporation for approval of electrical interconnection service to Thoroughbred Generating Company, LLC. A courtesy copy of the application has been served on the Attorney General, Office of Rate Intervention.

Sincerely yours,



James M. Miller

JMM/ej
Enclosures

cc: David A. Spainhoward
Michael C. Griffen
Holland N. McTyeire, V
Elizabeth Blackford, Esq.
David Kaplan, Esq.
Tom FitzGerald, Esq.

Telephone (270) 926-4000
Telecopier (270) 683-6694

100 St. Ann Building
PO Box 727
Owensboro, Kentucky
42302-0727

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the matter of:

Application of Big Rivers Electric Corporation
for Approval of Electrical Interconnection
Service to Thoroughbred Generating
Company, LLC

Case No. 2005-00300

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF ELECTRICAL INTERCONNECTION
SERVICE TO THOROUGHbred GENERATING COMPANY, LLC**

Big Rivers Electric Corporation ("Big Rivers") files this application ("Application") seeking approval from the Public Service Commission ("Commission") to provide electric transmission interconnection service to Thoroughbred Generating Company, LLC ("Thoroughbred"), a merchant generator, pursuant to the terms of the Interconnection and Operating Agreement by and between Big Rivers and Thoroughbred dated as of May 20, 2005 (the "IOA"), a copy of which is attached as Exhibit 1 to this Application. In support of this Application, Big Rivers states as follows:

1. The applicant, Big Rivers, is a rural electric generating and transmission cooperative corporation organized pursuant to KRS Chapter 279. Big Rivers owns generating assets, and purchases, transmits and sells electricity at wholesale. Its principal purpose is to provide the wholesale electricity requirements of its three distribution cooperative members. Big Rivers' mailing address is P.O. Box 24, 201 Third Street, Henderson, Kentucky 42420. 807 KAR 5:001 Section 8(1).

2. Big Rivers operates the control area that abuts the site in Muhlenberg County where Thoroughbred proposes to develop a 1,500 MW generating project, consisting of two 750

1 MW generating units, one of which will be in the Big Rivers control area. Transmission facilities
2 owned and operated by Big Rivers are located between the Thoroughbred site and wholesale
3 power markets to the north.

4 3. The articles of incorporation of Big Rivers are attached as Exhibit 1 to the
5 Application of Big Rivers in *In the Matter of: The Application of Big Rivers Electric*
6 *Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western*
7 *Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate*
8 *Adjustment for Big Rivers Electric Corporation and for Approval of Transaction*, PSC Case No.
9 97-204. 807 KAR 5:001 Section 8(3).

10 4. The Commission has jurisdiction over the provision by Big Rivers of
11 transmission interconnection service. Big Rivers is subject to the general jurisdiction of the
12 Commission. KRS 279.210(1). And the Commission has expressly assumed jurisdiction over
13 Big Rivers' transmission service, to the extent that the Federal Energy Regulatory Commission
14 ("FERC") has not asserted jurisdiction, and preempted the Commission's jurisdiction. See
15 Order dated July 14, 1998 in P.S.C. Case No. 98-267, pages 19 and 22. FERC has not asserted
16 jurisdiction over electric cooperatives like Big Rivers, and Big Rivers has not otherwise acceded
17 to FERC's jurisdiction.¹

¹ Salt River Project Agricultural Improvement and Power District v. Federal Power Commission,
391 F.2d 470 (D.C. Cir. 1969) (holding that the Federal Power Commission, FERC's
predecessor as regulator of "public utilities" under the Federal Power Act, lacks jurisdictional
over electric cooperatives that are financed by the Rural Electrification Administration ("REA");
see also Dairyland Power Cooperative, 37 F.P.C. 12 (1967) (Federal Power Commission order
concluding that FPC lacks jurisdiction over REA-financed cooperatives). Big Rivers is financed
by the Rural Utilities Service, the REA's successor, and therefore is exempt from regulation as a
public utility by FERC. While Big Rivers obtained a FERC order declaring Big Rivers'
transmission tariff to be an acceptable reciprocity tariff, thereby gaining reciprocal access to
transmission service on public utility transmission systems, Big Rivers did not accede to FERC's
jurisdiction and did not otherwise lose its exemption from FERC regulation.

1 the interconnection facilities and network upgrades that will be needed if one of the two
2 Thoroughbred 750 MW generating units is interconnected with Big Rivers' transmission system.

3 9. On July 17, 2003, Thoroughbred filed its Application for a Construction
4 Certificate to build a Merchant Generating Facility in Muhlenberg County, Kentucky with the
5 Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board"), in Case
6 No. 2002-00150. A Procedural Schedule was issued and a Hearing was held before the Siting
7 Board on November 11, 2003.

8 10. The Siting Board's December 5, 2003 order conditionally granted Thoroughbred
9 a certificate to construct its generating project, setting forth the parameters of the IOA and
10 recognizing that it would be submitted to this Commission for approval, stating as follows:

11 Thoroughbred and Big Rivers are put on notice that any agreement negotiated
12 between them regarding transmission interconnect issues shall comply in all
13 respects with KRS 278.212(2). Thoroughbred shall hold Big Rivers, KU and
14 LG&E harmless for costs of any and all interconnection and network upgrade
15 costs. Kentucky ratepayers may not be required to subsidize Thoroughbred's
16 investment contrary to the provisions of KRS 278.212(2) and contrary to this
17 Board's mandate to ensure economically favorable results when reviewing an
18 application to construct a merchant power plant. Moreover, Thoroughbred shall
19 agree to pay its fair allocated share of operating and maintenance costs of the
20 transmission system. Failure to comply in all respects with this condition shall
21 render the certificate granted herein void.

22
23 As demonstrated below, the IOA complies with the Siting Board's order, KRS 278.212(2) and
24 all other provisions of Kentucky law.

25 **SUMMARY OF PRINCIPAL TERMS OF IOA**

26 11. The IOA establishes the terms and conditions under which Thoroughbred will
27 develop and construct the facilities needed to interconnect the proposed Thoroughbred
28 generating facility with the Big Rivers transmission system, and provides for each party's
29 respective rights, obligations and liabilities for the ongoing operation of the Thoroughbred

1 generating plant and the Big Rivers transmission system. The effective date of the IOA is May
2 20, 2005, but the parties' obligations under the IOA arise only upon the receipt of required
3 regulatory approvals of the agreement. The IOA has an initial term of 30 years, and then will be
4 renewed for successive one-year terms unless terminated by either party or pursuant to the terms
5 of the IOA. See IOA, *Article 2*.

6 12. As noted above, the IOA is limited to interconnection service only, and does not
7 entitle Thoroughbred to transmission service from Big Rivers. Thoroughbred is responsible for
8 obtaining transmission service from Big Rivers under the terms of a separate agreement. See
9 IOA, *Article 3*.

10 13. The IOA, in compliance with KRS 278.212, requires that Thoroughbred pay all
11 costs associated with the construction, operation and maintenance of the facilities needed to
12 interconnect the Thoroughbred generating plant with the Big Rivers transmission system. The
13 IOA provides for Thoroughbred to construct, own and operate at its expense the
14 "Interconnection Facilities", *i.e.*, the local facilities utilized solely by Thoroughbred that connect
15 its generating plant to the Big Rivers transmission system, all of which are located on
16 Thoroughbred's side of the point of interconnection. Thoroughbred will also design and
17 construct the upgrades needed on the Big Rivers transmission system ("Network Upgrades") to
18 accommodate the additional power flows that will result from the operation of the Thoroughbred
19 generating plant, all of which are located at or beyond the point of interconnection. Once
20 completed and placed into service, the Network Upgrades will be owned, operated and
21 maintained by Big Rivers. Big Rivers' other ratepayers will not be responsible for any costs
22 associated with the construction of these Network Upgrades.

1 14. Thoroughbred will design and construct the Network Upgrades consistent with
2 Big Rivers' design standards and requirements. Upon completion to Big Rivers' satisfaction and
3 upon Big Rivers' acceptance of the Network Upgrades, Thoroughbred will convey the Network
4 Upgrades to Big Rivers. Thoroughbred will then be entitled to receive transmission credits equal
5 to the actual cost to construct the Network Upgrades, not to exceed the \$37 million estimated
6 cost of construction memorialized in the IOA. The transmission credits will not include interest
7 on Thoroughbred's construction costs. Thoroughbred will receive the transmission credits only
8 after Big Rivers receives payment for transmission service on the Big Rivers system sourced
9 from the Thoroughbred generating facility, whether paid for by Thoroughbred or the customer
10 taking the output of the Thoroughbred generator. The transmission credits are a dollar-for-
11 dollar credit against the actual amounts paid under the Big Rivers transmission tariff, but only to
12 the extent of the fixed (capital) portion of that rate, which currently is \$570 per MW-month out
13 of the total point-to-point transmission service rate of \$980 per MW-month. Those credits will
14 be available only for seven years from the date of commercial operation of the Thoroughbred
15 generating facility, provided that the seven-year transmission credit period will be extended for
16 up to 12 additional months in the event the actual cost of construction exceeds the \$37 million
17 estimated cost and Thoroughbred has not exhausted the balance of its credits at the end of the
18 initial 7-year transmission credit period. Thoroughbred will not receive transmission credits
19 beyond the initial seven-year period and additional 12-month extension, even if it has not fully
20 recovered its cost to construct the Network Upgrades. See IOA, *Article 9*.

21 15. The ongoing operation and maintenance expenses for the Network Upgrades will
22 be paid through the variable cost portion of the Big Rivers transmission rate. If, during the
23 transmission refund period, the amount of transmission service from the Thoroughbred

1 generating facility is insufficient to enable Big Rivers to recover its operation and maintenance
2 cost for the Network Upgrades, Thoroughbred will make up the difference between the operation
3 and maintenance revenues and the actual costs. See IOA, *Article 6*. At Big Rivers' request,
4 Thoroughbred will provide security for that obligation in an amount equal to one year's
5 operation and maintenance expenses, which is currently estimated to be \$50,000.

6 16. The IOA further provides that, during the seven-year transmission refund period,
7 Thoroughbred will be responsible for funding non-routine repairs or replacements in the event of
8 catastrophic damage to the Network Upgrades, to the extent such replacements or repairs are not
9 covered by insurance or paid for by other ratepayers using the Network Upgrades. If
10 Thoroughbred does fund such repairs or replacements, it will be entitled to receive transmission
11 credits with interest, provided, however, that Big Rivers' credit payment obligation with respect
12 to such costs, and Thoroughbred's entitlement to interest on those amounts, will arise only after
13 the termination of the initial transmission refund period. See IOA, *Article 9*.

14 17. In the event that the IOA is terminated prior to the completion of the Network
15 Upgrades, Big Rivers has the right, but not the obligation, to purchase the unfinished Network
16 Upgrades from Thoroughbred, subject to the approval of the Commission and the grant of
17 adequate rate treatment to allow Big Rivers to recover its cost of owning and operating such
18 upgrades. See IOA, *Article 2*.

19 18. The IOA sets forth the respective operating and maintenance responsibilities of
20 Thoroughbred and Big Rivers. These include Big Rivers' right to direct the operation of the
21 Thoroughbred generating facility during an emergency as necessary to maintain safety and
22 reliability and prevent harm, including requesting the increase or decrease of both real power and

1 reactive power production from the generating facility. Thoroughbred is also required to supply
2 reactive power in accordance with schedules set by Big Rivers. See IOA, *Articles 4 and 5.*

3 19. The IOA establishes a Coordinating Committee, with representatives of both
4 Thoroughbred and Big Rivers, to coordinate work under the IOA. See IOA, *Article 24.* The
5 IOA also provides for alternative dispute resolution of any outstanding issues, which may
6 include mutually agreed-upon arbitration. See IOA, *Article 22.*

7 20. A detailed section-by-section summary of the IOA is attached hereto as Exhibit 2,
8 and incorporated herein by reference.

9 **THE TERMS OF THE IOA ARE FAIR, JUST, REASONABLE**
10 **AND NON-DISCRIMINATORY**

11 21. The IOA appropriately protects the reliability of Big Rivers' transmission system.
12
13 The reliability studies performed by Big Rivers at Thoroughbred's request establish that, with
14 the appropriate Interconnection Facilities and Network Upgrades, the interconnection of the
15 Thoroughbred generating facility with Big Rivers' transmission system will not impair the
16 reliability of the transmission system. Copies of these studies are attached hereto as Exhibits 3
17 and 4, and are incorporated herein by reference. As previously noted, Big Rivers also has the
18 authority under the IOA to review and inspect the designs and the completed construction of the
19 Network Upgrades for compliance with Big Rivers' safety and reliability standards (IOA §§ 9.1-
20 9.2), and there will be an opportunity for appropriate regulatory review before construction
21 commences.

22 22. The terms of the IOA comply with the requirement of KRS 278.212 (2) that "any
23 costs or expenses associated with upgrading the existing electricity transmission grid, as a result
24 of the additional load caused by a merchant electric generating facility, shall be borne solely by
25 the person constructing the merchant electric generating facility and shall in no way be borne by

1 the retail electric customers of the Commonwealth.” KRS 278.212(2). As summarized in
2 paragraphs 14 through 16 of this Application, through the use of a funding and crediting
3 arrangement, the IOA ensures that Thoroughbred will bear the costs of improvements and
4 additions to the Big Rivers transmission system that will be required as a result of the
5 interconnection of the Thoroughbred facility, including the risk that unanticipated circumstances
6 might leave Big Rivers responsible for stranded capital or operating costs for the Network
7 Upgrades. The IOA also requires that, at Big Rivers’ request, Thoroughbred will provide
8 adequate security for its payment obligations.

9 23. Big Rivers seeks an express finding by the Commission that the terms of the IOA
10 comply with the requirements of KRS 278.212(2). The provisions of the IOA protect Big Rivers
11 and its members from having to subsidize any costs or expenses associated with the upgrades to
12 the Big Rivers transmission system required by Thoroughbred’s project in violation of KRS
13 278.212(2).

14 This finding should also satisfy the Siting Board’s concerns that the allocation of
15 interconnection Network Upgrade costs in the IOA be consistent with the requirements of KRS
16 278.212(2), which the Commission is responsible for enforcing.

17 24. The IOA ensures that the interconnection of the Thoroughbred facility with Big
18 Rivers’ transmission system will not jeopardize the reliability of the Big Rivers system. The
19 IOA also ensures that Thoroughbred will bear the costs and expenses associated with the
20 Network Upgrades required to accommodate Thoroughbred’s load. Therefore, the IOA is fair,
21 just and reasonable, complies with the requirements of KRS 278.212(2), and should be
22 approved.

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COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN to before me by Travis Housley, as Vice President,
System Operations for Big Rivers Electric Corporation, on this the 14th day of July, 2005.

Mary E. Johnson
Notary Public, State at Large KY
My commission expires: 7/29/07

EXHIBITS

1. Interconnection and Operating Agreement by and between Big Rivers Electric Corporation and Thoroughbred Generating Company, LLC, dated as of May 20, 2005
2. Summary of Terms and Conditions of the Interconnection and Operating Agreement by and between Big Rivers Electric Corporation and Thoroughbred Generating Company, LLC, dated as of May 20, 2005
3. Thoroughbred Energy Campus Interconnection Study
4. Feasibility Study

**DUPLICATE
ORIGINAL**

Execution Version

INTERCONNECTION AND OPERATING AGREEMENT

by and between

BIG RIVERS ELECTRIC CORPORATION

and

THOROUGHBRED GENERATING COMPANY, LLC

Dated as of May 20, 2005

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Initial Calculation of Loss Factor

Recalculated Loss Factor

INTERCONNECTION AND OPERATING AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 20th day of May, 2005 ("Effective Date"), by and between Thoroughbred Generating Company, LLC, a limited liability company organized and existing under the laws of the State of Delaware, sometimes hereinafter referred to as "Customer", and Big Rivers Electric Corporation, a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, sometimes hereinafter referred to as "Provider". Customer and Provider each may be referred to as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, Provider is an electric generation and transmission cooperative that owns electric facilities and is engaged in the purchase, transmission, and wholesale delivery of electric energy for its member distribution cooperatives and third party customers in the Commonwealth of Kentucky; and

WHEREAS, Customer intends to construct, own, and operate a two-unit, 1,500 MW (750 MW per unit) coal-fired electric generating facility located in Muhlenberg County, Kentucky ("Facility"); and,

WHEREAS, the Facility is located in the vicinity of the transmission facilities of Provider; and,

WHEREAS, Customer has requested, and Provider has agreed to enter into, an interconnection and operating agreement with Customer to interconnect one 750 MW unit of the Facility with the Transmission System (as defined herein).

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

ARTICLE 1 DEFINITIONS

Whenever used in this Agreement, appendices, and attachments hereto, the following terms shall have the following meanings:

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

1.2 “Ancillary Services” shall mean those services identified in Schedules 1 through 6 of Provider’s Transmission Tariff that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission System in accordance with Good Utility Practice.

1.3 “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.

1.4 “Applicable Reliability Standards” shall mean the applicable requirements and guidelines of NERC, ECAR, and the KPSC and Provider’s Requirements for Connection of Generation Facilities, each as may be amended or superseded or replaced by requirements and guidelines issued by successor reliability organizations.

1.5 “Breach” shall have the meaning defined in Section 17.1.

1.6 “Confidential Information” shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise. 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 either of the Parties to the other 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.

1.7 “Control Area” shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection.

1.8 “Coordinating Committee” shall have the meaning defined in Section 24.1.

1.9 “Default” shall have the meaning defined in Section 17.1.

1.10 “ECAR” shall mean the East Central Area Reliability Coordination Agreement, or its successor.

1.11 “Effective Date” shall have the meaning defined in the first paragraph of this Agreement.

1.12 “Emergency” shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case

of Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System or the electric systems of others to which the Transmission System is directly connected; or (3) that, in the case of Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Facility or the Interconnection Facilities. System restoration and black start shall be considered Emergency conditions; provided that Customer is not obligated by this Agreement to possess black start capability. "Emergency" shall include, but not be limited to, a condition, situation, or event with respect to the Transmission System, the electric systems of others to which the Transmission System is directly connected, the Facility, or the Interconnection Facilities, declared by the Provider or deemed to be an emergency under Applicable Reliability Standards.

1.13 "Facility" shall mean Customer's electric generating facility identified generally in the second "Whereas" clause of this Agreement, together with the other property, facilities, and equipment owned and/or controlled by Customer on Customer's side of the Points of Interconnection.

1.14 "FERC" shall mean the Federal Energy Regulatory Commission, or its successor.

1.15 "Force Majeure" shall mean an event or occurrence or circumstance beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure, including, but not limited to, any act of God, labor disturbance (including strikes), act of the public enemy, war, insurrection, riot, fire, storm or flood, earthquakes, lightning, epidemics, civil disturbances, sabotage, explosions, curtailments, orders, regulations or restrictions imposed by governmental, military, or lawfully-established civilian authorities, or any other event or cause which is beyond the claiming Party's reasonable control, and which wholly or in part prevents

the claiming Party from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure.

1.16 “Generator Balancing Service Arrangements” shall have the meaning defined in Section 3.3.6.

1.17 “Good Utility Practice” shall mean any of the practices, methods, and acts engaged in or approved by a significant proportion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the region.

1.18 “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 competent jurisdiction over a Party or 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 Customer, Provider, or any Affiliate thereof.

1.19 “Hazardous Substances” shall mean any chemicals, materials or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “hazardous constituents”, “restricted hazardous materials”, “extremely hazardous substances”, “toxic substances”, “contaminants”, “pollutants”, “toxic pollutants” or

words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law. For purposes of this Agreement, the term “Environmental Law” shall mean Federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety.

1.20 “Indemnified Party” and “Indemnifying Party” shall have the meanings defined in Section 16.1.

1.21 “Interconnection Facilities” shall mean all of Customer’s facilities presently in place or presently proposed to be installed, as identified in Appendix A, or facilities which are later installed, in order to interconnect the Facility with the Transmission System including, but not limited to, connection, distribution, engineering, administrative, transformation, switching, metering, and safety equipment.

1.22 “Interconnection Service” shall mean the services provided by Provider under this Agreement. Interconnection Service does not encompass transmission service on the Transmission System.

1.23 “KPSC” shall mean the Kentucky Public Service Commission, or its successor.

1.24 “Metering Equipment” shall mean all metering equipment installed at the Facility and other locations, as identified in Appendix C.

1.25 “NERC” shall mean the North American Electric Reliability Council, or its successor.

1.26 “Network Upgrades” shall mean all additions, modifications, and upgrades to the Transmission System at or beyond the Points of Interconnection required to accommodate the interconnection of the Facility to the Transmission System, as identified in Appendix B.

1.27 “OASIS” shall mean Provider’s open access same-time information system.

1.28 “Operation Date” shall mean the day commencing at 00:01 hours on the day following the day during which Interconnection Facilities and equipment of the Facility have been completed to Provider’s and Customer’s mutual satisfaction and energized in parallel operation of Provider’s and Customer’s systems as confirmed in a writing substantially in the form shown in Appendix E.

1.29 “Points of Interconnection” shall mean the point or points, shown in Appendix A, where the facilities of Customer interconnect with the facilities of Provider.

1.30 “Provider” shall have the meaning defined in the first paragraph of this Agreement. References to “Provider” in this Agreement shall include, where appropriate in the context of provisions regarding the operation of facilities and equipment, Provider’s Transmission System operator or Control Area operator, if such operator is not Provider itself.

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

1.32 “RUS” shall mean the Rural Utilities Service, or its successor.

1.33 “Secondary Systems” shall mean control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices,

cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers.

1.34 “Switching and Tagging Procedures” shall mean either Party’s procedures for safe switching, tagging, lock-out, and other safety-related procedures.

1.35 “System Disturbance” shall mean the generation, transmission, distribution, or use of power which directly or indirectly results in a risk of harm to human beings or material damage to or substantial interference with the functioning of Provider’s generating plants; the Henderson Municipal Power & Light Station Two, the Transmission System, the distribution system of any of Provider’s member distribution cooperatives, the system of any third party interconnected provider or customer, or the plant, facility, equipment or operations of any customer of one of Provider’s distribution cooperatives. A System Disturbance includes but is not limited to: (1) Harmonic Distortion: a level of current harmonic total demand distortion (“TDD”) measured at a customer’s point of delivery that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and (2) Phase Imbalance: a use of capacity and energy in such a manner that causes a current imbalance between phases greater than 5% at a customer’s point of delivery.

1.36 “System Protection Facilities” shall mean the equipment required to protect: (1) the Transmission System, the systems of others connected to the Transmission System, and Provider’s customers (including retail customers of Provider’s three distribution cooperative members) from faults occurring at the Facility; and (2) the Facility from faults occurring on the Transmission System or on the systems of others to which the Transmission System is directly or indirectly connected.

1.37 “Term” shall have the meaning defined in Section 2.2.1.

1.38 “Transmission Refund Period” shall have the meaning defined in Section 9.3.3.

1.39 “Transmission System” shall mean all the facilities owned, controlled, or operated by Provider on Provider’s side of the Points of Interconnection for the purpose of providing wholesale transmission service under Provider’s Transmission Tariff.

1.40 “Transmission Tariff” shall mean Provider’s reciprocity open access transmission tariff of Provider approved by the KPSC in Case No. 98-267 on July 14, 1998, and filed with FERC in Docket No. NJ98-5-000, as it may be amended or superseded, under which Provider provides wholesale transmission service on the Transmission System.

ARTICLE 2 TERM AND TERMINATION

2.1 Effective Date. This Agreement shall be effective on the Effective Date, provided that the Parties’ respective obligations under this Agreement shall arise upon receipt of required regulatory authorizations, which may include, without limitation, acceptance, approval, or consent by the KPSC and the RUS.

2.1.1 Regulatory Filing. Promptly after the Effective Date, Provider shall file this Agreement with: (1) the KPSC, to the extent required by Kentucky law, regulation, or order taking into consideration the KPSC’s assumption of jurisdiction over Provider’s Transmission Tariff; and (2) the RUS, to the extent required by law, contract, regulation, or order. Customer agrees reasonably to cooperate with Provider with respect to any such filings and to provide any information, including the rendering of testimony reasonably requested by Provider, as needed to comply with applicable regulatory requirements.

2.2 Term.

2.2.1 General. The term (“Term”) of this Agreement shall commence on the Effective Date and shall continue in full force and effect for an initial term of thirty (30) years,

and thereafter it shall automatically renew for successive periods of one year, unless the Agreement is terminated.

2.3 Termination. Subject to the survival provisions of Section 2.7, this Agreement will terminate in whole or in part in accordance with the provisions of this Section 2.3.

2.3.1 Regulatory Approvals. This Agreement shall terminate in the event the regulatory acceptances and approvals requested in the filings identified in Section 2.1.1 are not obtained.

2.3.2 Written Agreement or Notice. The Parties may mutually agree in writing to terminate this Agreement at any time. The Customer, upon ninety (90) days' prior written notice, may terminate this Agreement at any time after the Effective Date.

2.3.3 Termination for Failure to Follow Schedule. Provider may terminate this Agreement in accordance with the provisions of Section 9.5.

2.3.4 Termination Upon Default. Either Party may terminate this Agreement in accordance with the provisions of Article 17.

2.3.5 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected adversely to affect, either Party's performance under this Agreement, the Parties will negotiate in good faith any amendment or amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Provider shall file such amendment or amendments with the KPSC or RUS to the extent required by law, contract, regulation, or order. If the Parties are unable to reach agreement on any such amendments, Provider shall have the right to make a unilateral filing with the KPSC to modify this Agreement, and to the extent allowed by the KPSC, Customer shall have the right to make a unilateral filing to modify this Agreement;

provided that each Party shall have the right to protest or contest any such filing by the other Party and to participate fully in any proceeding in which such modifications may be considered.

2.3.6 Regulation. Notwithstanding the foregoing, no termination of this Agreement shall become effective until and unless the Parties have complied with all Applicable Laws and Regulations required to be satisfied as a condition of termination.

2.4 Disposition and Obligations Regarding Unfinished Network Upgrades. Upon termination of this Agreement pursuant to Section 2.3, in the event the Network Facilities have not yet been completed and transferred to Provider's ownership, Provider, at its sole discretion, may elect to take ownership of the unfinished Network Upgrades, in whole or in part.

2.4.1 In the event Provider elects not to take ownership of the unfinished Network Upgrades upon termination of this Agreement, or Provider elects to take ownership of only parts of the unfinished Network Upgrades, Customer shall pay all costs incurred by Provider in connection with Provider's performance under this Agreement with respect to the unfinished Network Upgrades to which Provider does not take ownership, including any cancellation costs relating to orders or contracts placed or entered into by Provider for facilities, equipment, or services related to the unfinished Network Upgrades and Provider's costs of designing, reviewing, and inspecting such unfinished Network Upgrades. The Parties shall use Reasonable Efforts to mitigate the costs, damages, and charges arising as a consequence of termination. Customer shall be responsible for all costs associated with the removal, relocation, or other disposition or retirement of materials, equipment, or facilities comprising the unfinished Network Upgrades to which Provider does not take ownership. Such removal, relocation, or other disposition or retirement of materials, equipment, or facilities shall be at the sole option of the Customer. Except with Provider's written approval, Customer may not abandon facilities in

place on property owned, leased, or controlled by Provider, and Customer shall bear all costs of removing from such property unfinished Network Upgrades to which Provider does not take ownership

2.4.2 Provider may elect to take ownership of unfinished Network Upgrades upon termination of this Agreement, in whole or in part, by purchasing such unfinished Network Upgrades from the Customer. Such purchase shall be subject to the approval of the KPSC and the KPSC's grant of rate treatment that will allow Provider to recover its costs of acquiring, owning, operating, and maintaining such Network Upgrades. Customer will secure and maintain the unfinished Network Upgrades during the pendency of the KPSC proceeding requesting such approval and rate treatment through the date such Network Upgrades are transferred to Provider's ownership. Provider promptly will request such approval and rate treatment from the KPSC, and further will request authorization to reimburse Customer its costs of constructing the unfinished Network Upgrades that will be transferred to Provider and its cost of maintaining such Network Upgrades through the date they are transferred to Provider's ownership. In the event the KPSC approves Provider's application for authorization to take ownership of unfinished Network Upgrades but grants Provider rate treatment that will not permit Provider to reimburse Customer its costs of constructing such unfinished Network Upgrades and Customer's cost of maintaining such Network Upgrades through the date they are transferred to Provider's ownership, Customer may refuse to transfer such Network Upgrades to Provider, in which case Customer will bear Provider's costs of obtaining the foregoing approvals and rate treatment from the KPSC. In addition, Customer may request in writing that Provider withdraw its petition to the KPSC for such approvals and rate treatment, in which event Customer's responsibility for Provider's KPSC-related costs will terminate three days after Provider's receipt of Customer's

written request to Provider to withdraw the petition (“Withdrawal Date”), provided that Customer will remain responsible for Provider’s costs incurred prior to the Withdrawal Date but not yet paid. Provider shall have no obligation to Customer to take ownership of unfinished Network Upgrades in the event the KPSC does not permit Provider to take ownership of such facilities or does not allow Provider to recover through rates the costs of taking ownership of, acquiring, owning, operating, and maintaining such unfinished Network Upgrades.

2.5 Effect of Termination on Transmission Credits. Upon termination of this Agreement, Customer shall forfeit its right to any remaining value of transmission credits provided under Section 9.3 of this Agreement.

2.6 Disconnection. Upon termination of this Agreement, the Parties will take all appropriate steps to disconnect the Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by Customer, unless such termination results from Provider’s Default of this Agreement or Provider otherwise is responsible for these costs under this Agreement. In addition, at such time that the Interconnection Facilities no longer are required for the commercial operation of the Facility, the retirement of the Interconnection Facilities shall be Customer’s responsibility.

2.7 Survival. The applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments for costs incurred hereunder, including billings and payments pursuant to this Agreement, which shall become, with the exception of the transmission credit refunds governed by Section 9.3, immediately due and payable upon termination of this Agreement unless acceleration is waived; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to

have access to the lands of the other Party pursuant to this Agreement or other applicable agreements, to disconnect, remove, or salvage its own facilities and equipment.

ARTICLE 3 INTERCONNECTION SERVICE

3.1 Service. Under this Agreement, Provider shall provide Customer with Interconnection Service for the Facility for the Term of this Agreement subject to the limitations, terms, and conditions contained in this Article 3.

3.2 Scope of Service. Provider shall provide Interconnection Service for the Facility at the Points of Interconnection once the conditions precedent to such Interconnection Service specified in Section 3.3 have been satisfied. In the event of an increase in the output of the Facility or other material change or modification to the configuration and/or operation of the Facility during the term of this Agreement, which change or modification shall be subject to the requirements of Article 9, the Parties shall negotiate appropriate revisions to this Agreement in good faith, including as necessary the specifications or requirements set forth in the Appendices to this Agreement, as necessary to permit Provider to provide Interconnection Service to the Facility under this Agreement in a secure and reliable manner.

3.2.1 Except as otherwise provided under Section 4.6.4 of this Agreement, Provider shall have no obligation under this Agreement to pay Customer any wheeling or other charges for electric power and/or energy transferred through Customer's equipment or for power or Ancillary Services provided by Customer under this Agreement for the benefit of the Transmission System.

3.2.2 Provider shall have no obligation under this Agreement to make arrangements or pay under applicable tariffs for transmission service and Ancillary Services

associated with the delivery of electricity and ancillary electrical products produced by the Facility.

3.2.3 Provider shall have no obligation under this Agreement to procure electricity and ancillary electrical products to satisfy Customer's station service or other requirements.

3.2.4 Provider shall have no obligation under this Agreement to make arrangements under applicable tariffs for transmission, losses, and ancillary services associated with the use of the Transmission System for the delivery of electricity and ancillary electrical products to Customer's Facility. All such responsibility to procure needed services under applicable tariffs lies with Customer.

3.2.5 The execution of this Agreement does not constitute a request for transmission service and does not entitle Customer to take, nor require Provider to provide, transmission service on the Transmission System.

3.2.6 Provider makes no representations to Customer regarding the availability of transmission service on the Transmission System, and Customer agrees that the availability of transmission service on the Transmission System may not be inferred or implied from Provider's execution of this Agreement or provision of Interconnection Service. If Customer wishes to obtain transmission service on the Transmission System, Customer must request such service in accordance with the provisions of Provider's Transmission Tariff.

3.3 Conditions Precedent to Provider's Obligation to Provide Interconnection Service. Connection of Customer's Facility to Provider's Transmission System shall be made after the following conditions precedent have been satisfied:

3.3.1 Provider has inspected and declared the Interconnection Facilities described in Appendix A to be ready for service. Such inspection shall be consistent with Good Utility Practice. Provider's declaration that the Interconnection Facilities are ready for service shall not constitute Provider's warranty as to fitness, safety, durability, or reliability of the Interconnection Facilities. Provider shall not, by reasons of such inspection and declaration, be responsible for strength, details of design, adequacy, or capacity of the Interconnection Facilities, nor shall Provider's inspection and declaration be deemed to be an endorsement of any facility or equipment.

3.3.2 Customer has met the design, specifications, installation, and construction requirements of Article 9 with respect to the Facility and any Interconnection Facilities and Metering Equipment to be owned by Customer.

3.3.3 Customer has installed or provided, consistent with Applicable Reliability Standards and Good Utility Practice, adequate System Protection Facilities to protect Provider's equipment and facilities, the Transmission System, and the equipment and facilities of Provider's distribution cooperative owners from danger or interruption from electrical faults occurring at the Facility.

3.3.4 All Network Upgrades required to safely and reliably interconnect the Facility with the Transmission System have been installed and are operational consistent with Applicable Reliability Standards and Good Utility Practice.

3.3.5. Provider has tested and accepted the Metering Equipment required by Appendix C, including any necessary communications equipment.

3.3.6. Generator Balancing Service Arrangements. Customer has demonstrated, to Provider's reasonable satisfaction that it has satisfied the requirements of this Article 3.3.6

prior to the submission of any schedules for delivery of energy generated by the Facility to the Transmission System that identify the Facility as the point of receipt for such scheduled delivery.

3.3.6.1 Customer is responsible for ensuring that its actual Facility energy output matches the scheduled energy delivery from the Facility to the Transmission System, consistent with the scheduling requirements of Provider's market structure, including ramping into and out of such scheduled delivery, as measured at the Points of Interconnection, consistent with the scheduling requirements of Provider's Tariff and any applicable market structure. Customer shall arrange for the supply of energy when there is a difference between the actual Facility output and the scheduled delivery from the Facility (the "Generator Balancing Service Arrangements"). Customer may satisfy its obligation for making such Generator Balancing Service Arrangements by:

(a) Obtaining such service from another entity that: (1) has generating resources deliverable within Provider's Control Area; (2) agrees to assume responsibility for providing such Generator Balancing Service Arrangement to Customer; and (3) has appropriate coordination service arrangements or agreements with Provider's Control Area that addresses Generator Balancing Service Arrangements for all generating resources for which the entity is responsible within Provider's Control Area;

(b) Committing sufficient additional unscheduled generating resources to the control of and dispatch by Provider's system operator that are capable of supplying energy not supplied by Customer's scheduled Facility, and entering into an appropriate coordination services agreement with Provider that addresses Generator Balancing Service Arrangements obligations for the Facility;

(c) Entering into an arrangement with another Control Area to dynamically schedule Customer's Facility out of Provider's Control Area and into such other Control Area;

(d) Entering into Generator Balancing Service Arrangements with Provider, if available; or

(e) In the event the load/generation balancing function of Provider's Control Area is accomplished through the function of its market structures, by entering into an arrangement consistent with such market structure.

In the event Customer fails to demonstrate to Provider that it has otherwise complied with this Article 3.3.6, Customer shall be deemed to have elected to enter into Generator Balancing Service Arrangements with Provider's Control Area. Nothing in this provision shall prejudice either Party from filing a tariff with the appropriate Governmental Authority addressing its obligations and rights with respect to Generator Balancing Service Arrangements.

3.4 Suspension of Provider's Obligation to Provide Interconnection Service for the Facility. Provider shall not be obligated to continue to provide Interconnection Service at times when it is entitled to disconnect the Facility from the Transmission System pursuant to Section 4.9 of this Agreement.

3.5 Reporting. Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement. 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.

3.6 Third Party Actions. Customer acknowledges and agrees that from time to time during the terms of this Agreement other persons may develop, construct, and operate, or acquire and operate, generating facilities in Provider's service territory, and that construction or acquisition and operation of any such facilities, and reservations by any such other persons of transmission service under the Transmission Tariff, may adversely affect the Facility and the availability of transmission service for the Facility's electric output. Customer acknowledges and agrees that Provider has no obligation under this Agreement to disclose to Customer any information with respect to third party developments or circumstances, including the identity or existence of any such person or other facilities, except as may be required under Article 4 of this Agreement and elsewhere in this Agreement. Customer and Provider make no guarantees to each other under this Agreement with respect to transmission service that is available under the Transmission Tariff or any other tariff under which transmission service may be available in the region. Customer shall not be responsible for any costs which Provider may incur in order to provide interconnection or transmission service to a third party.

3.7 Ancillary Services. Except as otherwise provided under Section 4.6 of this Agreement with regard to Customer's obligation to provide reactive power for system reliability purposes, Customer specifically reserves unto itself, its successors, and assigns, the right and option, but not the obligation, to provide Ancillary Services into the market, whether or not such ancillary services are addressed in this Agreement.

3.8 Power Losses. Transmission line power losses on the Transmission System will be increased by reason of the interconnection of the Facility with the Transmission System. Customer therefore will be responsible for replacing real power losses associated with transmission service on the Transmission System sourced from the Facility only during the

Transmission Refund Period by way of a loss factor (“Loss Factor”) calculated in accordance with Appendix J. The initial Loss Factor as of the Effective Date has been estimated to be 1.68% for informational purposes. The actual initial Loss Factor, to be used to determine real power losses during the first twelve months of Facility operations, will be determined in accordance with Appendix J not sooner than twelve months prior to the scheduled commencement of transmission service on the Transmission System sourced from the Facility. The Operating Committee will recalculate the Loss Factor in accordance with Appendix J following the first twelve months of Facility operations and subsequently on an annual basis. The Loss Factor so recalculated shall remain the applicable Loss Factor until recalculated in accordance with Appendix J. Any recalculation of the Loss Factor after the first twelve months of Facility operations shall be effective as of the date Provider establishes a revised Transmission System real power loss factor in accordance with Section 15.7 and Schedule 10 of Provider’s Transmission Tariff. In the event Customer is not the transmission customer taking transmission service on the Transmission System sourced from the Facility, Customer will be responsible for replacing the incremental real power losses measured by the difference between the loss factor established in this Section 3.8 and the average system real power loss factor established in Section 15.7 of Provider’s Transmission Tariff, which average system losses will be replaced by the transmission customer.

ARTICLE 4 OPERATIONS

4.1 General. Provider and Customer agree that their respective performances of this Agreement shall comply with Applicable Laws and Regulations and Applicable Reliability Standards and Provider’s “Requirements for Connection of Generation Facilities,” which is provided as Appendix F. To the extent that this Agreement does not specifically address or

provide the mechanisms necessary to comply with Applicable Laws and Regulations, Applicable Reliability Standards, and Provider's "Requirements for Connection of Generation Facilities", Provider and Customer hereby agree that each shall provide to the other all such information as may reasonably be required to comply with such laws, regulations, standards, and requirements and shall operate, or cause to be operated, their respective facilities in accordance with such laws, regulations, standards, and requirements.

4.2 Customer Obligations. Customer shall operate and control the Facility and the Interconnection Facilities: (1) in a safe and reliable manner; (2) in accordance with Good Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives; and (4) in accordance with the provisions of this Agreement.

4.3 Access Rights. The Parties shall provide each other such easements and/or access rights as may be necessary for either Party's performance of their respective operational obligations under this Agreement; provided that, notwithstanding anything stated herein, a Party performing operational work within the boundaries of the other Party's facilities must abide by the rules applicable to that site. The right of access granted by this section 4.3 shall not be exercised by a Party so as to interfere unreasonably with the other Party's use of its premises.

4.4 Switching and Tagging Procedures. Each Party shall provide the other Party a copy of its Switching and Tagging Procedures that are applicable to the other Party's activities. The Parties shall abide by their respective Switching and Tagging Procedures for obtaining clearances for work or for switching operations on equipment on their respective sides of the Points of Interconnection. In the event of a conflict between the Parties' Switching and Tagging Procedures, Provider's Switching and Tagging Procedures shall apply.

4.5 Operating Procedures. The Parties, through the Operating Committee, will develop mutually agreeable standard operating procedures for the facilities and equipment governed by this Agreement.

4.6 Reactive Power.

4.6.1 Obligation to Supply Reactive Power. Customer will supply reactive power to the Transmission System in accordance with Good Utility Practice as reasonably requested by Provider. Customer shall respond to requests from Provider to increase or decrease generator reactive power output in a manner consistent with Customer's obligation to operate the Facility: (1) in a safe and reliable manner; (2) in accordance with Good Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives; and (4) in accordance with the provisions of this Agreement. The Facility shall generate such reactive power in accordance with the voltage schedule prescribed by Provider a minimum of one day in advance as necessary to maintain reactive area support, but not in excess of the amount available from the Facility's equipment in service operating within their design limits.

4.6.2 Reactive Power Standards. The Facility's power factor design limitation minimum requirement shall be a reactive power capability sufficient to maintain a composite power delivery at the Points of Interconnection at a power factor between 0.95 leading and 0.95 lagging. Under normal operating conditions, Customer shall operate the Facility to maintain a voltage schedule at the Points of Interconnection as prescribed by the Transmission System dispatcher or designated representative within the Facility's power factor design limitation. In the event that the voltage schedule at the Points of Interconnection cannot be or is not maintained within this requirement, Provider may request the Facility to be operated (within the design limitation of the equipment in service at the time) to produce its maximum available reactive

power output (measured in MVAR) in order to achieve the prescribed voltage schedule, provided that Provider has requested other generating facilities and other reactive compensation resources in the affected area (including but not limited to Provider's facilities, if any) to produce their maximum available reactive power output (measured in MVAR) in order to achieve the prescribed voltage schedule. Customer shall promptly comply with such requests made by Provider. In the event that under normal Transmission System operating conditions the Facility is unable to consistently maintain a reactive power capability sufficient to maintain a composite power delivery at the Points of Interconnection at a power factor between 0.95 leading and 0.95 lagging, Customer shall take appropriate other steps to configure the Facility to meet such standards, including, as necessary, the installation of static and/or dynamic reactive power compensating devices. Records of requests made by Provider, and records indicating actual responses to these requests, will be maintained by Provider and subject to a third party independent audit at Customer's request and expense. Any such request for an audit will be presented to Provider by Customer no later than twenty-four (24) months following a request by Provider that the Facility produce its maximum available reactive power output.

4.6.3 Emergency. During an Emergency as declared by Provider on the Transmission System or on an adjacent transmission system, Provider shall have the authority to direct Customer to increase or decrease real power production (measured in MW) and/or reactive power production (measured in MVAR), within the design and operational limitations of the Facility equipment in service at the time, in order to maintain Transmission System security. In the event of such a declaration of an Emergency, determinations: (1) that Transmission System security is in jeopardy; and (2) that there is a need to increase or decrease reactive power production, even if real power production is adversely affected, will be made solely by Provider

or its designated representative. The Facility operator will honor Provider's orders and directives concerning Facility real power and/or reactive power output within the design limitations of the Facility's equipment in service at the time, such that the security of the Transmission System is maintained. Provider shall restore Transmission System conditions to normal as quickly as possible to alleviate any such Emergency. Provider will take all reasonable steps to equitably allocate among all generating units and other reactive compensation resources the responsibility to provide reactive power support to the Transmission System.

4.6.4 Reactive Power Compensation. Provider will pay Customer for reactive power pursuant to Customer's rate schedule for such service on file with FERC, if any, provided that Provider has requested in writing (or verbally and subsequently confirmed in writing), and Customer has supplied, reactive power. Provider will pay Customer for reactive power supplied at Provider's request on and after the effective date of Customer's rate schedule on file with FERC. If Customer does not have a rate schedule for such service on file with FERC at the time it provides such service to Provider, Provider agrees to compensate Customer in such amount as would have been due Customer had the rate schedule been in effect at the time service commenced; provided that such rate schedule is filed with FERC or other appropriate Governmental Authority within (60) calendar days of the commencement of the service and FERC accepts the rate schedule for filing effective as of the time service was provided.

4.6.5 Failure to Comply with Reactive Power Requirements.

4.6.5.1 In the event Customer consistently fails or refuses to supply reactive power to the Transmission System or fails to enable or maintain the Facility's ability to maintain a reactive power capability sufficient to maintain a composite power delivery at the Points of Interconnection at a power factor between 0.95 leading and 0.95 lagging and fails to

take appropriate other steps to configure the Facility to meet such standards, including, as necessary, the installation of static and/or dynamic reactive power compensating devices, then Provider may, at its reasonable discretion: (1) disconnect the Facility from the Transmission System; (2) supply or purchase reactive power from other resources at Customer's expense; or (3) install at Customer's sole expense static and/or dynamic reactive power compensating devices.

4.6.5.2 In the event Customer willfully fails or refuses during an Emergency to comply with Provider's direction to increase or decrease real power production (measured in MW) and/or reactive power production (measured in MVAR), within the design and operational limitations of the Facility equipment in service at the time, in order to maintain Transmission System security, Provider may, at its reasonable discretion: (1) disconnect the Facility from the Transmission System; or (2) supply or purchase reactive power from other resources at Customer's expense. In the event Customer's willful failure or refusal during an Emergency to comply with Provider's direction to increase or decrease real power production and/or reactive power production within the design and operational limitations of the Facility equipment in service at the time contributes to Provider's inability to maintain Transmission System security, Provider may, at its reasonable discretion, impose a penalty on Customer. For Customer's first willful failure or refusal, Provider may impose a penalty in the amount of \$5,000 per Emergency. For Customer's second and subsequent willful failure(s) or refusal(s), Provider may impose a penalty in the amount of \$10,000 per Emergency. Nothing in Section 4.6.5 constitutes a waiver of Provider's rights under Article 17 of this Agreement.

4.7 Operating Expenses. Customer shall be responsible for all expenses associated with owning and operating its own property, equipment, facilities, and appurtenances on its side

of the Points of Interconnection, including without limitation its Facility and the Interconnection Facilities.

4.8 Protection and System Quality. It is understood that the Facility normally will remain connected to and be operated in parallel with the Transmission System. The Parties will install and operate System Protection Facilities in conformance with the following requirements:

4.8.1 Customer Obligations. Customer shall, at its sole expense, install, maintain, and operate System Protection Facilities consistent with Applicable Reliability Standards and Good Utility Practice, including such protective and regulating devices as necessary to comply with Applicable Reliability Standards and such other System Protection Facilities as are otherwise necessary to protect personnel and equipment and to minimize deleterious effects to Provider's electric service operation arising from the Facility, all in compliance with Good Utility Practice. Customer also shall provide sufficiently trained personnel to operate and maintain such System Protection Facilities. Any such protective or regulating devices that may be required on Provider's facilities in connection with the operation of the Facility shall be installed by Provider at Customer's expense. Customer shall assume any loss, liability, or damage to Customer's system and equipment caused by lack of or failure of System Protection Facilities under Customer's operational control.

4.8.2 Mutual Obligations. Each Party's System Protection Facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice. Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice. Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Section 5.5. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing

unnecessary breaker operations and/or the tripping of Customer's Facility. Each Party will test, operate, and maintain System Protection Facilities in accordance with Good Utility Practice. Prior to the interconnection of the Facility with the Transmission System, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

4.8.3 Requirements for Protection. In compliance with Applicable Reliability Standards, Customer shall provide, install, own, and maintain relays, circuit breakers, and all other devices necessary to promptly remove any fault contribution of the Facility to any short circuit occurring on the Transmission System not otherwise isolated by Provider's equipment, such that the removal of the fault condition shall be coordinated with the protective requirements of the Transmission System. Such System Protection Facilities equipment shall include, without limitation, a disconnecting device or switch with load interrupting capability to be located between the Facility and the Transmission System at an accessible, protected, and satisfactory site selected upon mutual agreement of the Parties. Customer shall be responsible for protection of the Facility and Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, reverse power, over- or under-voltage, overexcitation, underexcitation, and generator loss-of-field. Customer shall be solely responsible for provisions to disconnect the Facility and Customer's other equipment when any of the above described disturbances occur on the Transmission System. Additional information regarding

these requirements is provided in Provider's "Requirements for Connection of Generation Facilities" document in Appendix F.

4.8.4 System Quality. Customer's facilities and equipment shall not cause excessive voltage excursions nor cause the voltage to drop below or rise above the range maintained by Provider without Customer's Facility in service. Customer's facilities and equipment shall not cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, or any applicable superseding electric industry standard. For voltage flicker in the frequency range of 1 to 25 Hz, voltage flicker levels are unacceptable if either of the following conditions exist: (1) the cumulative RMS voltage flicker at the Points of Interconnection exceeds 0.30% for 1.0% of a representative time period; or (2) the instantaneous voltage flicker level regularly exceeds 0.45% at the Points of Interconnection (this is approximately equal to a cumulative RMS voltage flicker of 0.45% for 0.01% of a representative time period.)

4.8.5 Approval and Inspection. Prior to the commencement of parallel operation between the Facility and the Transmission System, Customer shall obtain the written approval of Provider regarding all protective relay equipment and direct transfer trip equipment installed for the protection of the Transmission System, which approval shall not unreasonably be withheld. Prior to granting or denying such approval, Provider or Customer shall inspect and calibrate the System Protection Facilities in accordance with relay setting data issued by Provider. Inspection and calibration must either be performed or witnessed by Provider at Customer's expense. Customer shall record the actual settings and inspection data on the relay setting document furnished by Provider, and return such document to Provider for approval, which approval shall not be unreasonably denied if it meets applicable standards. After

commencement of parallel operation, Provider shall have the right, but shall have no obligation or responsibility to: (1) observe Customer's tests and/or inspection of any of Customer's System Protection Facilities; (2) review the settings of Customer's System Protection Facilities; and (3) review Customer's maintenance records relative to the Facility and/or Customer's System Protection Facilities. The foregoing, rights may be exercised by Provider from time to time as deemed necessary by Provider upon reasonable notice to Customer. However, the exercise or non-exercise by Provider of any of the foregoing rights of observation, review, or inspection shall be construed neither as an endorsement or confirmation of any aspect, feature, element, or condition of the Facility or Customer's System Protection Facilities or the operation thereof, nor as a warranty as to the fitness, safety, desirability, or reliability of same.

4.9 Outages, Interruptions, and Disconnection.

4.9.1 Outage Authority and Coordination. In accordance with Good Utility Practice, each Party may, in close cooperation with the other, remove from service its facilities and equipment that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent the existence or imminence of an Emergency, the Party scheduling a removal of facilities or equipment from service will use Reasonable Efforts to schedule such removal on a date mutually acceptable to both Parties, in accordance with Good Utility Practice.

4.9.2 Outage Schedules. Provider shall post scheduled outages of transmission facilities on its Transmission System on its OASIS. Customer shall submit its planned maintenance schedules for the Facility and Interconnection Facilities to Provider for a minimum of a rolling twenty-four month period. Customer shall update its planned maintenance schedules as necessary.

4.9.2.1 Outage Rescheduling. Provider may request Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System. Unless Provider's request for rescheduling is made necessary by the existence or imminence of an Emergency on the Transmission System, Provider shall compensate Customer for any additional direct costs that the Customer incurs as a result of having to reschedule maintenance including any overtime, breaking of maintenance contracts, or other costs above and beyond the cost the Customer would have incurred absent the Provider's request to reschedule maintenance.

4.9.3 Outage Restoration.

4.9.3.1 Unplanned Outage. In the event of an unplanned outage of a Party's facilities and equipment that adversely affects the other Party's facilities and equipment, the Party that owns or controls the facilities and equipment out of service will use Reasonable Efforts to promptly restore those facilities and equipment to service in accordance with Good Utility Practice. The Party that owns or controls the facilities and equipment that are out of service shall provide the other Party, to the extent such information is known, information on the outage, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed as soon as practicable with written notice explaining the nature of the outage.

4.9.3.2 Planned Outage. In the event of a planned outage of a Party's facilities and equipment that adversely affects the other Party's facilities and equipment, the Party that owns or controls the facilities and equipment out of service will use Reasonable Efforts to promptly restore such facilities and equipment to service in accordance with Good Utility Practice and in accordance with its schedule for the work that necessitated the planned outage.

4.9.4 Interruption of Service. Consistent with Good Utility Practice, Provider may require Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Section 4.9.4:

4.9.4.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

4.9.4.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the Transmission System whose interruption is necessary to permit safe and reliable operation and maintenance of the Transmission System;

4.9.4.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Provider shall notify Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

4.9.4.4 Except during the existence of an Emergency, when the interruption or reduction can be scheduled without advance notice, Provider shall notify Customer in advance regarding the timing of such scheduling and further notify Customer of the expected duration. Provider shall coordinate with Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to Customer and Provider;

4.9.4.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Facility, the Interconnection Facilities, and the

Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

4.9.5 Disconnection.

4.9.5.1 Disconnection after Agreement Terminates. Upon termination of the Agreement by its terms, Provider may disconnect the Facility from the Transmission System in accordance with a plan for disconnection upon which the Parties agree. However, any such plan for disconnection must be developed in accordance with the provisions of Section 2.6 of this Agreement, unless the Parties agree otherwise. Notwithstanding the above, Provider shall be entitled unilaterally to disconnect the Facility beginning 90 days after the termination of this Agreement by its terms, whether or not a mutually agreeable plan for disconnection has been agreed to by Provider.

4.9.5.2 Disconnection in Event of Emergency. Subject to the provisions of Section 4.9, Provider or Customer shall have the right to disconnect the Facility from the Transmission System without notice if, in Provider's or Customer's sole opinion, an Emergency exists and immediate disconnection is necessary to protect persons or property from damage or interference caused by interconnection of the Facility with the Transmission System or lack of proper or properly-operating System Protection Facilities. For purposes of this Section 4.9.5.2, System Protection Facilities may be deemed by Provider to be not properly operating if Provider's review under Article 5 discloses irregular or otherwise insufficient maintenance on such devices or that maintenance records do not exist or are otherwise insufficient to demonstrate that adequate maintenance has been and is being performed, and Customer has failed, upon Provider's request, to promptly provide adequate assurances that its System Protection Facilities are capable of proper operation.

4.9.5.3 Disconnection after Underfrequency Load Shed Event. NERC

Planning Criteria require the interconnected transmission system frequency be maintained between 59.95 Hz and 60.05 Hz. Pursuant to ECAR Document No. 3 (Emergency Operations), as it may be superseded or amended, in the event of an underfrequency system disturbance, the Transmission System is designed to automatically activate a six-tier load shed program. The six load sheds occur at 59.5, 59.3, 59.1, 58.9, 58.7, and 58.5 Hz, respectively. To ensure “ride-through” capability of the Transmission System, Customer shall implement an underfrequency relay set point for the Facility no greater than 58.3 Hz. If the Facility is receiving power from the Transmission System, it may implement a higher underfrequency relay set point if necessary to protect the Facility from being tripped off-line.

4.9.6 System Disturbances.

4.9.6.1 Customer Reporting. Customer shall report to Provider any System Disturbances of which it is aware, and shall comply promptly with any reasonable requests by Provider for information necessary to ascertain the sources or causes of System Disturbances. Customer shall comply with disturbance monitoring equipment requirements pursuant to ECAR Document No. 10 (Criteria for Generation Control and Documentation) and ECAR Document No. 14 (Disturbance Monitoring), as they may be superseded or amended.

4.9.6.2 Provider Action. When Provider has notice of any System Disturbance, it initially shall attempt to ascertain the cause and take such measures as are necessary to prevent (or if prevention is impossible, to limit) damage to the Transmission System, generating facilities interconnected with the Transmission System, the distribution systems interconnected with the Transmission System, or the facilities and equipment of any customer interconnected with said distribution systems, and also to prevent physical harm to any

person. Such measures may include, to the extent required consistent with Good Utility Practice, disconnecting (or causing the disconnection of) the Facility or any other suspected source of the System Disturbance from the Transmission System, or such other actions as are prudent under the circumstances. Provider will attempt, to the extent prudent, to issue notice to Customer if Provider suspects Customer of causing the System Disturbance and allow Customer to react accordingly before disconnecting the Facility from the Transmission System or taking other action. Upon receipt of such notice of a System Disturbance, Customer will take all reasonable efforts, and Provider will provide all reasonable cooperation to assist, under the circumstances involved to investigate its operations to determine if it is the source of the System Disturbance.

4.9.6.3 Customer Action. In the event Customer becomes aware that the Facility is causing a System Disturbance, Customer shall promptly notify Provider and take action consistent with Good Utility Practice to remedy the cause of the System Disturbance. In the event Customer is unable to remedy the cause of the System Disturbance and the System Disturbance is ongoing, Customer shall, in coordination with Provider, disconnect the Facility from the Transmission System. If Provider gives Customer notice that the Facility is causing a System Disturbance or Customer becomes aware that the Facility is causing a System Disturbance, Customer will take all appropriate action with respect to the Facility at its sole expense to cure, correct, or suppress any System Disturbance.

4.10 Non-Discrimination. To the extent possible while allowing compliance with Provider's obligation under Kentucky law to provide higher transmission curtailment priority to native load customers, Provider shall implement curtailments, interruptions, or reductions of the Facility on an equitable, non-discriminatory basis with other generating facilities in the Provider's control area.

4.11 RTO Operations. In the event Provider transfers ownership or control of its Transmission System to a regional transmission organization (“RTO”), to the extent the RTO’s applicable tariffs, rules, and business practices would require a change to the Parties’ operations and practices under this Agreement, the Parties will adapt their operations and practices to the RTO’s requirements so long as such requirements are consistent with the requirements of Kentucky law and other applicable laws and regulations. To the extent the RTO’s applicable tariffs, rules, and business practices would require a change to the transmission crediting provisions of this Agreement, the Parties will revise those provisions in a manner that does not impose any additional costs to Provider’s rate payers with respect to Provider’s obligations under this Agreement to provide transmission credits to Customer.

4.12 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Agreement. Any such Recordings will be secured from improper access and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties’ agreement with respect to the topic of the conversation unless the Parties’ agreement is memorialized in writing, in which event the writing shall control in the event of any conflict with the terms of a Recording.

ARTICLE 5 MAINTENANCE

5.1 Customer Obligations. Customer shall maintain its facilities and equipment: (1) in a safe and reliable manner; (2) in accordance with Good Utility Practice; (3) in accordance with applicable operational and/or reliability criteria, protocols, and directives; and (4) in accordance with the provisions of this Agreement.

5.2 Access Rights. The Parties shall provide each other such easements and/or access rights as may be necessary for either Party's performance of their respective maintenance obligations under this Agreement; provided that, notwithstanding anything stated herein, a Party performing maintenance work within the boundaries of the other Party's facilities must abide by the rules applicable to that site, including, without limitation, the applicable Switching and Tagging Procedures. The right of access granted by this section 5.2 shall not be exercised by a Party so as to interfere unreasonably with the other Party's use of its premises.

5.3 Maintenance Expenses. Customer shall be responsible for all expenses associated with maintaining its own property, equipment, facilities, and appurtenances on its side of the Points of Interconnection, including without limitation the Facility and the Interconnection Facilities.

5.4 Coordination. The Parties agree to confer regularly to coordinate the planning and scheduling of preventative and corrective maintenance. Each Party shall conduct preventive and corrective maintenance activities as planned and scheduled in accordance with this section.

5.5 Inspections and Testing. Each Party shall perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Facility with the Transmission System in a safe and reliable manner. Customer shall comply with the required testing of the Facility pursuant to

ECAR Document No. 4 (Criteria and Methods for Uniform Rating of Generating Equipment) or its successor.

5.6 Right to Observe Testing. Each Party shall, at its own expense, have the right to observe the testing of any of the other Party's facilities and equipment whose performance may reasonably be expected to affect the reliability of the observing Party's facilities and equipment. Each Party shall notify the other Party in advance of its performance of tests of its facilities and equipment, and the other Party may have a representative attend and be present during such testing.

5.7 Cooperation. Each Party agrees to cooperate with the other in the inspection, maintenance, and testing of those Secondary Systems directly affecting the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party will provide advance notice to the other Party before undertaking any work in these areas, especially in electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

5.8 Observation of Deficiencies. If a Party observes any deficiencies or defects on, or becomes aware of a lack of scheduled maintenance and testing with respect to, the other Party's facilities and equipment that might reasonably be expected to adversely affect the observing Party's facilities and equipment, the observing Party shall provide notice to the other Party that is prompt under the circumstances, and the other Party shall make any corrections required in accordance with Good Utility Practice.

ARTICLE 6
OPERATING AND MAINTENANCE EXPENSES

6.1 Customer shall be responsible for Provider's cost to operate and maintain the Network Upgrades in accordance with the following:

6.1.1 To the extent Customer and/or third parties are taking transmission service on the Transmission System sourced from the Facility, the Provider will recover its cost of operating and maintaining the Network Upgrades through the operations and maintenance ("O&M") component of the transmission service rate under the Transmission Tariff applicable to all customers taking transmission service from the Provider, provided that the level of such transmission service on the Transmission System sourced from the Facility is sufficient to generate transmission revenues to Provider adequate to permit Provider to recover its O&M costs for the Network Upgrades from the O&M component of such transmission revenues.

6.1.2 If the level of transmission service taken by Customer and/or third parties on the Transmission System sourced from the Facility is insufficient to generate transmission revenues to Provider adequate to permit Provider to recover its O&M costs for the Network Upgrades from the O&M component of such transmission revenues, Customer will pay Provider the difference between the amount of O&M-related revenues generated by such transmission service and Provider's actual O&M expense for the Network Upgrades. During the Transmission Refund Period, at Provider's request, Customer shall provide Provider with security in an amount equal to Provider's estimated O&M obligations for one year under this Agreement, including any applicable taxes ("O&M Security"). Customer shall provide the O&M Security as a cash or cash equivalent deposit or a standby letter of credit or guaranty backed by a creditworthy issuer acceptable to Provider in a form acceptable to Provider, or other or different security acceptable to Provider at the time that the Provider takes ownership of the

Network Upgrades. The amount of the estimated O&M Security shall be set forth in Appendix I. In the event Customer fails to make a required O&M-related payment under this Agreement, Provider may deduct the amount of the payment from the O&M security provided by Customer, in which event Customer shall replenish the O&M security to the full amount required under this Section 6.1.2. At the end of the Transmission Refund Period, Customer's obligation to provide O&M Security shall terminate and any O&M Security outstanding at that time shall be returned to the Customer.

ARTICLE 7 EMERGENCIES

7.1 Obligations. Each Party shall comply with Applicable Reliability Standards with respect to Emergency procedures and Provider and Customer Emergency procedures, as applicable, with respect to Emergencies. Each Party shall respond to Emergencies consistent with Good Utility Practice.

7.2 Notice. Provider shall provide Customer with oral notification that is prompt under the circumstances of an Emergency that may reasonably be expected to affect Customer's operation of the Facility, to the extent Provider is aware of the Emergency. Customer shall provide Provider with oral notification that is prompt under the circumstances of an Emergency which may reasonably be expected to affect the Transmission System, to the extent Customer is aware of the Emergency. To the extent the Party becoming aware of an Emergency is aware of the facts of the Emergency, such notification shall describe the Emergency, the extent of the damage or deficiency, its anticipated duration, and the corrective action taken and/or to be taken, and shall be followed as soon as practicable with written notice.

7.3 Immediate Action. In the event of an Emergency, the Party becoming aware of the Emergency may, in accordance with Good Utility Practice and using its reasonable judgment,

take such action as is reasonable and necessary to prevent, avoid, or mitigate injury, danger, and loss. In the event Customer has identified an Emergency involving the Transmission System, Customer shall obtain the consent of Provider personnel prior to manually performing any switching operations unless, in Customer's reasonable judgment, immediate action is required to prevent, avoid, or mitigate injury, danger, and loss.

7.4 Provider Authority. Provider may, consistent with Good Utility Practice, take whatever actions or inactions with regard to the Transmission System Provider deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the Transmission System; (3) limit or prevent damage; and (4) expedite restoration of service. Provider shall use reasonable efforts to minimize the effect of such actions or inactions on the Facility.

7.5 Customer Authority. Customer may, consistent with Good Utility Practice, take whatever actions or inactions with regard to the Facility Customer deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the Facility, (3) limit or prevent damage; and (4) expedite restoration of service. Customer shall use reasonable efforts to minimize the effect of such actions or inactions on the Transmission System.

7.6 Audit Rights. Each Party shall keep and maintain record of actions taken during an Emergency that may reasonably be expected to impact the other Party's facilities and make such records available for third party independent audit upon the request and expense of the party affected by such action. Any such request for an audit will be no later than twenty-four (24) months following the action taken.

ARTICLE 8 SAFETY

8.1 General. Provider and Customer agree that all work performed by either Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Applicable Laws and Regulations and other requirements pertaining to the safety of persons or property. A Party performing work within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site, including but not limited to the applicable Switching and Tagging Rules.

8.2 Environmental Releases. Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty-four (24) hours after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.

ARTICLE 9 CONSTRUCTION AND MODIFICATIONS

9.1 Interconnection Facilities.

9.1.1 Design. At Customer's expense, Customer shall design, procure, construct, and install the Facility and the Interconnection Facilities. Customer shall submit all specifications for the Interconnection Facilities, including System Protection Facilities, to Provider for review at least ninety (90) days prior to interconnecting such Interconnection Facilities and equipment with the Transmission System. The Interconnection Facilities shall satisfy all Applicable Laws and Regulation and all Applicable Reliability Standards. Provider shall review such specifications to ensure that the Interconnection Facilities are compatible with

Provider's technical specifications and operational control and safety requirements. Within thirty (30) working days after receipt by Provider from Customer of such design, plans, and specifications, Provider shall advise Customer in writing whether such design, plans, and specifications are in accordance with standards no less stringent than those now used by Provider for its own installations. Consistent with Article 3 of this Agreement, Provider shall not be required to interconnect Customer's Facility with the Transmission System if the specifications, design, installation, and construction of the' Interconnection Facilities are not in accordance with the requirements of this Section 9.1.1.

9.1.2 No Provider Endorsement. Provider's review of Customer's specifications for the Interconnection Facilities shall be construed neither as confirming nor as endorsing the design, nor as any warranty as to fitness, safety, durability, or reliability of the Interconnection Facilities. Provider shall not, by reasons of such review or failure to review, be responsible for strength, details of design, adequacy, or capacity of the Interconnection Facilities, nor shall Provider's acceptance be deemed to be an endorsement of any facility or equipment. Customer agrees to make changes to the Interconnection Facilities as may be reasonably required to meet the reasonable changing requirements of Provider.

9.1.3 Construction. Customer shall construct the Interconnection Facilities pursuant to the specifications reviewed with the Provider and in accordance with Good Utility Practice.

9.1.4 Drawings. Upon completion of the Interconnection Facilities, but not later than sixty (60) days thereafter, Customer shall issue "as built" drawings of the Interconnection Facilities to Provider, unless the Parties reasonably agree that such drawings are not necessary.

9.1.5 Licenses and Permits. Customer shall be responsible for obtaining at its own cost all required licenses, construction certificates, and permits, including where applicable certificates of convenience and necessity, required to construct, own and operate the Facility and the Interconnection Facilities. Customer shall make Reasonable Efforts to obtain such licenses and permits in a timely manner so as to meet the Development and Construction Schedule set forth in Appendix D to this Agreement, as that schedule may be modified in accordance with this Agreement.

9.2 Network Upgrades. Customer shall, in coordination with Provider, arrange for the design, construction, and installation of the Network Upgrades at Customer's own expense. The Network Upgrades are identified in Appendix B. Customer shall engineer, procure equipment, and construct the Network Upgrades using Good Utility Practice and using standards and specifications provided in advance by Provider.

9.2.2 Customer's engineering, procurement, and construction of the Network Upgrades shall comply with all requirements of law and RUS requirements and standards to which Provider would be subject in the engineering, procurement, or construction of the Network Upgrades.

9.2.3 Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of the Network Upgrades. Customer shall submit all specifications for the Network Upgrades to Provider for review at least ninety (90) days prior to the commencement of construction of such facilities. Customer shall give Provider at least sixty (60) days' prior notice of its intention to submit such specifications to Provider for its review; such notice may be provided to Provider's representatives on the Coordinating Committee. The Network Upgrades shall satisfy all requirements of applicable safety and/or engineering codes,

Applicable Reliability Standards, and Applicable Laws and Regulations. Provider shall review such specifications to ensure that the Network Upgrades are compatible with Provider's technical specifications and operational control and safety requirements. Within thirty (30) working days after receipt by Provider from Customer of such design, plans, and specifications, Provider shall advise Customer in writing whether such design, plans, and specifications are in accordance with standards no less stringent than those now used by Provider for its own installations. Consistent with Article 3 of this Agreement, Provider shall not be required to interconnect Customer's Facility with the Transmission System if the specifications, design, installation, and construction of Customer's Network Upgrades are not in accordance with the requirements of this Section 9.2.3.

9.2.4 Prior to commencement of construction, Customer shall provide to Provider a schedule for construction of the Network Upgrades and shall promptly respond to requests for information from Provider regarding construction of the Network Upgrades.

9.2.5 At any time during construction, Provider shall have the right to gain access to the Network Upgrades during normal operating hours and shall adhere to all applicable safety rules and procedures as may be established by the Customer.

9.2.6 At any time during construction, should any phase or aspect of the engineering, equipment procurement, or construction of the Network Upgrades not meet the standards and specifications provided by Provider, Customer shall be obligated to remedy deficiencies in that portion of the Network Upgrades.

9.2.7 Consistent with the provisions of Article 16 and without limiting or changing the application of Article 16, Customer shall indemnify Provider for claims arising from Customer's construction of the Network Upgrades under the procedures identified in

Article 16. Customer shall not indemnify Provider with respect to claims arising from Provider's gross negligence or intentional wrongdoing.

9.2.8 Customer shall transfer control and ownership of the Network Upgrades to Provider prior to their placement into service. In the event of the termination of this Agreement, Customer shall transfer control and ownership of any uncompleted Network Upgrades to Provider prior to termination if Provider elects, pursuant to Section 2.4, to take ownership of such Network Upgrades in whole or in part.

9.2.9 Provider shall approve and accept for ownership, operation and maintenance the Network Upgrades provided that they have been engineered and constructed using equipment in accordance with this Section 9.2.

9.2.10 Drawings. Upon completion of the Network Upgrades, but not later than sixty (60) days thereafter, Customer shall deliver to Transmission Provider "as-built" drawings, information, and any other documents that are reasonably required by Provider to assure that the Network Upgrades are built to the standards and specifications required by Provider. Upon completion of any construction or modification to Customer's facilities and equipment that may reasonably be expected to affect the Transmission System, but not later than sixty (60) days thereafter, Customer shall issue "as built" drawings to Provider, unless the Parties reasonably agree that such drawings are not necessary.

9.2.11 Licenses and Permits. Provider shall be responsible for obtaining, all required licenses and permits, including where applicable certificates of convenience and necessity, required to construct, own, and operate the Network Upgrades. Customer shall reimburse Provider for its actual costs to obtain such licenses and permits. Provider shall make Reasonable Efforts to obtain such licenses and permits at a reasonable cost and in a timely

manner so as to meet the Development and Construction Schedule set forth in Appendix D to this Agreement as that schedule may be modified in accordance with this Agreement.

9.3 Transmission Credits for Network Upgrades.

Provider will refund to Customer the cost of the Network Upgrades paid for by the Customer pursuant to this Section 9.3.

9.3.1 Refund Payment. Provider will pay refunds to the Customer monthly on a dollar-for-dollar basis as the Provider receives payment under the Transmission Tariff for transmission service on the Transmission System sourced from the Facility. Provider shall have no obligation to pay Customer refunds with respect to transmission service for which it has not been paid by the transmission customer.

9.3.2 Refund Amount. The monthly refund shall be an amount equivalent to the product of the quantity of transmission service on the Transmission System sourced from the Facility, measured in MW, purchased from Provider (whether by Customer and/or third parties), and the non-usage sensitive portion of Provider's point-to-point transmission service rate (i.e., the non-O&M component of Provider's rate), provided that Provider has been paid such amount by the transmission customer. Any such refund shall be separately identified by Provider in an invoice prepared pursuant to Article 13 and refunded in cash to the Customer on a monthly basis or applied monthly against charges due Provider under Customer's applicable transmission service agreement. As of the Effective Date, the non-usage sensitive portion of Provider's point-to-point transmission service rate is \$570 per MW-month, out of the total point-to-point transmission service rate of \$980 per MW-month under the Transmission Tariff. In the event Provider's point-to-point transmission service rate is changed, Provider will, as necessary for

purposes of this Agreement and subject to Section 9.3.3, determine the non-usage sensitive portion of said rate and notify Customer.

9.3.3 Refund Period. Refunds will commence effective the date Customer provides written notice to Provider that the Facility is available for commercial operations. Refunds will continue until the earlier of such time as the cost of Network Upgrades paid for by Customer has been fully refunded or seven (7) years (“Transmission Refund Period”), provided that in the event Customer has not exhausted the transmission credits owed to it at the end of the Transmission Refund Period and the actual cost of the Network Upgrades constructed under this Agreement exceeds the estimated cost of the Network Upgrades identified in Appendix B, the Transmission Refund Period will be extended by a period not to exceed twelve months.

9.3.3.1 The Provider and Customer have agreed to the Transmission Refund Period and possible extension of that period based on the Provider’s point-to-point transmission service rate in effect at the time this Agreement is executed. In the event Provider’s point-to-point transmission service rate decreases during the Transmission Refund Period from the point-to-point transmission rate in effect as of the Effective Date of this Agreement, the monthly refund amount in subsequent months calculated pursuant to Section 9.3.2 will be determined on the basis of the non-usage sensitive portion of Provider’s point-to-point transmission service rate (i.e., the non-O&M component of Provider’s rate) in effect as of the Effective Date,

9.3.4 In the event that the Network Upgrades are subject to catastrophic damage such that non-routine repairs or replacement of the Network Upgrades or components thereof are required to permit the Facility’s continued interconnection with the Transmission System, the Parties will consult and determine what repairs or replacements of Network Upgrade facilities

will be undertaken. In the event the Parties agree to effect repairs or replacements of Network Upgrade facilities, Customer shall contribute to the cost of the repairs or replacements not covered by the proceeds of insurance as follows:

9.3.4.1 If all the transmission service over the Network Upgrades subject to repair or replacement is transmission service sourced from the Facility, Customer will fund all the costs of repair or replacement not covered by the proceeds of insurance. Provider will refund Customer, through transmission credits, Customer's costs incurred in the repair or replacement of the Network Upgrades with interest, provided that interest will begin to accrue only after the termination of the Transmission Refund Period established in Section 9.3.3 and Provider will commence the payment of such new transmission credits only after the termination of the Transmission Refund Period.

9.3.4.2 If the transmission service over the Network Upgrades subject to repair or replacement is sourced from the Facility and other resources, Provider will use Reasonable Efforts to gain a contribution to the cost of the repairs or replacements from other users of the Network Upgrades, and Customer will fund the balance of the costs of repair or replacement not covered by the proceeds of insurance. Provider will refund to Customer, through transmission credits, Customer's costs incurred in the repair or replacement of the Network Upgrades with interest, provided that interest will begin to accrue only after the termination of the Transmission Refund Period established in Section 9.3.3 and Provider will commence the payment of such new transmission credits only after the termination of the Transmission Refund Period.

9.4 Land Rights.

9.4.1 Land Owned or Controlled by Either Party. A Party (“Granting Party”) shall furnish, at no cost to the other Party, any necessary access, easements, licenses, and/or rights of way upon, over, under, and across lands owned or controlled by the Granting Party and/or its affiliated interests for the construction and operation of necessary lines, substations, and other equipment to accomplish interconnection of the Facility with the Transmission System under this Agreement. Customer shall, at all reasonable times, give Provider, or its agents, free access to such lines, substations, and equipment. An accessible, protected and satisfactory site selected upon mutual agreement by the Parties and located on Customer’s premises shall be provided by and at Customer’s expense for Provider’s installation of Metering Equipment, unless Provider elects to install Metering Equipment on poles or other locations which it controls. Customer grants to Provider at all reasonable times and with reasonable supervision, the right of free ingress and egress to Customer’s premises for the purpose of installing, testing, reading, inspecting, repairing, operating, altering, or removing any of Provider’s property located on Customer’s premises or for other purposes necessary to enable Provider to receive electric energy, suspend the receipt thereof, or determine Customer’s compliance with this Agreement.

9.4.2 Land Owned or Controlled by Third Parties. If any part of the Network Upgrades are to be installed on property owned by other than Customer, Customer shall, in cooperation with Provider and at Customer’s expense, procure from the owners thereof any necessary rights of use, licenses, rights of way, and easements for the construction, operation, maintenance and replacement of facilities upon such property. Customer will work cooperatively with Provider in procuring land rights owned by third parties, to help Provider maintain good community relations. Customer shall, at Provider’s request, permit Provider to

serve as Customer's agent in procuring third party property rights. In such event Provider shall charge Customer for its actual costs, including overheads, incurred in procuring said rights of use, licenses, rights of way, and easements, but may not charge any fee or commission for serving as Customer's agent.

Customer shall not agree to any purchase price for rights of use, licenses, rights of way, and easements required for the Network Upgrades without Provider's approval, which approval shall not be unreasonably withheld. Any rights of use, licenses, rights of way, and easements procured from a third party and used in connection with the design, construction, and installation of the Network Upgrades shall be acquired in Provider's name. Subject to the other terms of this Agreement, Provider grants to Customer, and Customer accepts, the exclusive use and control of those rights of use, licenses, rights of way, and easements during the design, construction, and installation of the Network Upgrades, and until ownership of the Network Upgrades is transferred to Provider or this Agreement is terminated, in whole or in part.

9.4.3 If Customer cannot obtain any necessary rights of use, licenses, rights of way, and easements procured from a third party for use in connection with the design, construction, and installation of the Network Upgrades, the Provider shall, at Customer's expense, use Reasonable Efforts, as it shall determine at its sole discretion and consistent with state law, to procure from such third parties such necessary rights of use, licenses, rights of way, and easements. Customer may not challenge Provider's determination with respect to actions taken to procure or attempt to procure rights of use, licenses, rights of way, and easements procured from a third party. Notwithstanding the foregoing, Customer reserves the right to dispute Provider's refusal to approve, pursuant to Section 9.4.2, Customer's proposed purchase price for rights of use, licenses, rights of way, and easements procured from a third party.

9.5 Schedule. Customer shall develop and construct the Interconnection Facilities and Network Upgrades in accordance with the milestone schedule identified in Appendix D.

9.5.1 Provider shall have the right to terminate this Agreement in the event that the Customer fails to make reasonable progress toward meeting each of the milestones set forth in Appendix D. Customer shall inform Provider as soon as possible of any expected delays in the milestone dates in Appendix D.

9.5.2 Upon written request of the Customer, Provider shall agree to extend any of the milestones set forth in Appendix D for up to 365 days, provided that the date of commercial operation of the Facility is not extended by more than 365 days from the date shown in Appendix D.

9.5.3 Provider shall reasonably extend the milestone dates shown in Appendix D beyond the 365 day period set forth in 9.5.2 upon written request of the Customer; provided that: (1) the requested delay was not caused and could not have been remedied through the exercise of due diligence by the Customer; and (2) the requested delay will not have a material adverse impact on the cost or timing of any other generators who have submitted an interconnection request to the Provider and will not have a material adverse impact on Provider's cost to its other customers.

9.5.4 A customer of the Provider ("Requesting Customer"), or the Provider itself, may request that a portion or all of the Network Upgrades identified in interconnection studies as required for the interconnection of the Customer's Facility be constructed in advance of the "First Fire" date identified in Appendix D, as that date may be modified in accordance with Sections 9.5.2 and 9.5.3 of this Agreement. Customer shall have the option to agree to use Reasonable Efforts to construct such Network Upgrades, consistent with the requirements of

Section 9.2, in advance of the First Fire Date identified in Appendix D to accommodate the request or allow the Requesting Customer or the Provider to construct such Network Upgrades on such schedule. The Requesting Customer or Provider shall pay for the initial cost of such Network Upgrades, including any costs associated with expediting the construction and any applicable taxes (“Construction Cost”). Customer shall reimburse the Requesting Customer or Provider for the construction cost of the Network Upgrades on the Operations Date to the extent that the Requesting Customer has not received construction reimbursement from Provider or Provider has not been granted rate treatment to allow it to recover those costs. Customer shall reimburse the Requesting Customer or Provider for expediting costs for the construction only in the event and only to the extent that such costs was required because Customer modified the First Fire Date identified in Appendix D and only to the extent that the Requesting Customer has not received construction reimbursement from Provider. Customer shall make such payment upon the earlier of: (1) its completion of the remaining Network Upgrades; or (2) the Operations Date. Customer shall be entitled to refund payments pursuant to this Agreement for any amounts it reimburses other Requesting Customers, including Provider, for the advanced construction of Network Upgrade.

9.6 Modifications.

9.6.1 Modification to the Facility. Customer may undertake modifications to the Facility, provided that if Customer intends to modify the Facility in a manner that will increase its generating capacity, Customer must initiate a new request for interconnection service from Provider under Provider’s interconnection procedures to allow Customer’s proposal to be studied for its impact, if any, on the Transmission System. Customer shall be solely responsible for: (1) the construction, installation, and cost of any new Interconnection Facilities or

modifications to existing Interconnection Facilities caused by Customer's proposed Facility modifications; and (2) Provider's cost for any new Network Upgrades or modifications to existing Network Upgrades caused by Customer's proposed Facility modifications.

9.6.2 Modification to Interconnection Facilities and Network Upgrades. Either Party may undertake modifications to its facilities. In the event a Party plans to undertake a modification that reasonably may be expected to impact the other Party's facilities, that Party shall provide the other Party with sufficient information regarding such modification, including, without limitation, the notice required in accordance with Article 12 so that the other Party can evaluate the potential impact of such modification prior to commencement of the work. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) days in advance of the work or such shorter period upon which the Parties may agree, which agreement will not unreasonably be withheld or delayed. Before undertaking such future additions or modifications, the Parties shall use good faith to consult, develop plans, and coordinate schedules of activities so as to ensure continuous and reliable operation of the Interconnection Facilities. In the event Customer intends to make additions or modification to the Interconnection Facilities, the cost of such future additions or modifications to the Interconnection Facilities shall be borne by Customer, unless agreed otherwise at the time of negotiation. The ownership, operation, and maintenance responsibilities for any such future additions or modifications shall be made consistent with the responsibilities allocated in this Agreement.

9.7 Safety. In connection with each Party's exercise of its rights under this Article 9, while on the other Party's premises, each Party's personnel and agents shall comply with all applicable safety rules or regulations.

ARTICLE 10
METERING EQUIPMENT AND COMMUNICATIONS

10.1 General. Provider shall provide, install, own, and maintain, all at Customer's sole expense, Metering Equipment necessary to meter the electrical output of the Facility and to allow the Parties to meet their obligations under this Agreement. If necessary, Metering Equipment shall be either located or adjusted, at Provider's option, in such manner to account for any transformation or interconnection losses between the location of the meter and the Points of Interconnection. Metering quantities, in analog and/or digital form, shall be provided to Customer upon request. All reasonable costs associated with the administration of Metering Equipment and the provision of metering data to Customer shall be borne by Customer. All reasonable costs associated with either the initial installation of metering, as more fully described in Appendix C, or any changes to Metering Equipment requested by Customer, shall be borne by Customer.

10.2 Testing of Metering Equipment. Provider shall, at Customer's expense, inspect and test all Metering Equipment upon installation and at least once every two years thereafter. If requested to do so by Customer, Provider shall inspect or test Metering Equipment more frequently than every two years, at the expense of Customer. Provider shall give reasonable notice of the time when any inspection or test shall take place, and Customer may have representatives present at the test or inspection. If Metering Equipment is found to be defective or inaccurate by not more than one percent (1%), then any previous recordings of such meter shall be deemed accurate, but the meter shall be immediately adjusted, repaired or replaced at Customer's expense in order to provide accurate metering. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than one percent (1%), then the Parties shall use their reasonable best efforts, by the best means

available, to determine or to estimate amounts delivered during the period affected by such error, service outage or failure to register properly. The appropriate Party shall then be paid by the other Party the full amount of any under or over payment attributable to the inaccurate metering.

10.3 Metering Data. At Customer's expense, metered data shall be telemetered to Provider's control center and one or more locations designated by Customer.

10.4 Communications.

10.4.1 At Customer's expense, Customer shall maintain satisfactory operating communications with Provider's system dispatcher or representative, as designated by Provider. Customer will provide a dedicated voice communication circuit from the Facility control room to Provider Control Center. Customer will provide for a dedicated data circuit(s) extending from Customer's Facility to Provider's control center. Any required maintenance of such communications equipment shall be performed at Customer's expense, but may be performed by Customer or by Provider. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation; scheduled and unscheduled shutdowns; equipment clearances; and hourly and daily load data.

10.4.2. A Remote Terminal Unit(s) ("RTU") or equivalent data collection and transfer equipment acceptable to both Parties shall be installed by Provider at Customer's expense, to gather accumulated and instantaneous data to be telemetered to Provider's control center through use of a dedicated point-to-point data circuit(s) as indicated in Section 10.4.1.

10.5 Space and Access. Consistent with Section 9.4.1 and at Customer's sole expense, Customer shall provide sufficient space at its Facility to permit Provider to install Metering Equipment and reasonable access to such space to permit Provider to operate and maintain the Metering Equipment.

**ARTICLE 11
FORCE MAJEURE**

11.1 General. Neither Party shall be considered to be in Default with respect to any obligation hereunder, other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party shall be excused from whatever performance is affected only while a Force Majeure situation exists and while the Party attempts in good faith to alleviate such situation, except with respect to any labor disturbance.

11.2 Notice. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure event to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure event, the time and date when the Force Majeure event occurred, and when the Force Majeure event is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

11.3 Hardship. Economic hardship is not considered a Force Majeure event.

**ARTICLE 12
INFORMATION REPORTING**

Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Party 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.

ARTICLE 13
PAYMENTS AND BILLING PROCEDURES

13.1 Responsibility for Actual Costs. Customer shall be responsible for all costs that Provider actually incurs in performing any obligation pursuant to this Agreement.

13.2 Estimated Costs. Provider shall estimate the costs it expects to incur in providing oversight with respect to the design, construction, and installation of the Interconnection Facilities and Network Upgrades and in reviewing, inspecting, and accepting the Interconnection Facilities and Network Upgrades. Provider's initial cost estimate is provided in Appendix G. The provision by Provider to Customer of this or any other such cost estimate shall not diminish, change or affect Customer's responsibility and obligation to pay to Provider its actual costs in accordance with Section 13.1 of this Agreement. Provider shall revise such cost estimate from time to time as may be necessary.

13.3 Payment Schedule. Provider and Customer agree that Customer shall prepay the estimated costs Provider expects to incur in designing, reviewing, inspecting, and accepting the Interconnection Facilities and Network Upgrades on a quarterly basis pursuant to invoices issued by Provider in accordance with the Schedule of Payments attached to this Agreement as Appendix H. Unless the Parties agree otherwise, each invoice shall be correlated with the work to be performed by Provider in the subsequent three months pursuant to the corresponding Schedule, and unless agreed to in writing by the Parties, any change to the Schedule shall result in a corresponding change to the applicable Schedule of Payments. Notwithstanding the above, if in any six month period, the actual costs differ from the estimated costs by more than 20%, the next quarterly estimated payment shall be adjusted to true-up the difference between the estimated and actual costs.

13.4 Security. At Provider's request, Customer shall provide Provider with security for its obligations for non-prepaid expenses, if any, such as with respect to long lead-time items for which Provider may bear an expense outside the normal quarterly invoice schedule. Customer shall provide a cash or cash equivalent deposit or a standby letter of credit or guaranty backed by a creditworthy issuer acceptable to Provider in a form acceptable to Provider, or such other or different security acceptable to Provider. In the event Customer fails to make a required payment for a non-prepaid expense under this Agreement, Provider may deduct the amount of the payment from the security provided by Customer, in which event Customer shall replenish the security to the full value required under this Section 13.4.

13.5 Reconciliation. Following completion or cancellation of the construction of the Interconnection Facilities and Network Upgrades, Provider shall provide to Customer a final reconciliation setting forth the nature and amount of the costs and charges Provider actually incurred or made in performing its obligations under this Agreement. In the event that the total of such costs and charges Provider actually incurred or made exceeds the total payments made by Customer to Provider pursuant to the Schedule of Payments, Customer shall be responsible for and shall pay any such differential within thirty (30) days of the date of delivery to Customer of the final reconciliation. In the event that the total payments made by Customer to Provider pursuant to the Schedule of Payments exceed such costs Provider actually incurred or made, Provider shall refund to Customer, within thirty (30) days of the final reconciliation, any such overpayment.

13.6 Invoice and Payment for Non-Prepaid Expenses. Provider may prepare and deliver to Customer an invoice for non-prepaid costs and expenses, including penalties, which shall delineate the month in which the services were provided or cost incurred, shall fully

describe the services rendered or cost assessed, and shall be itemized to reflect the services performed or provided. The invoice shall be paid within twenty (20) 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.

13.7. Disputes. Disputed amounts shall be paid on or before the invoice payment due date. In the event the dispute is resolved in favor of the Party disputing payment, the Party required to pay back disputed amounts shall, within thirty (30) days of resolution of the dispute, make payment with interest as calculated in accordance with Section 13.9.

13.8. Waiver. Payment of an invoice shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement, nor shall such payment constitute a waiver of any claims arising hereunder. An error or omission in any invoice shall not constitute a waiver of a Party's right to claim payment for services rendered.

13.9. Interest. Interest on any unpaid amounts, including disputed amounts, shall be calculated in accordance with 18 C.F.R. § 35.19(a)(2)(iii)(A). Interest on unpaid amounts shall be calculated from the due date of the invoice to the date of payment. When payments are made by mail, invoices shall be considered as having been paid on the date of receipt by the other Party.

13.10. Payment During Dispute. In the event of a billing dispute between Provider and Customer, each Party shall continue to provide services and pay all invoices.

13.11. Collection Expenses. Neither Party shall be responsible for the other Party's costs of collecting amounts due under this Agreement, including attorney fees and expenses and the expenses of arbitration.

ARTICLE 14 ASSIGNMENT

This Agreement may be assigned by either Party only with the written consent of the other; provided that: (1) either Party may assign this Agreement without the consent of the other Party 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; (2) Provider shall have the right to assign and grant a security interest in this Agreement without the consent of Customer; and (3) Customer shall have the right to assign this Agreement, without the consent of Provider, for collateral security purposes to aid in providing financing for the Facility, provided that Customer will require any secured party, trustee or mortgagee to notify Provider of any such assignment. Any financing arrangement entered into by Customer pursuant to this Article 14 will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article 14 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 15 INSURANCE

15.1 Customer to Obtain and Maintain Insurance. Not later than thirty (30) days prior to the date the Facility is interconnected with the Transmission System, Customer, at its own expense, shall have in place, and thereafter maintain in effect at all times during the term of this

Agreement, in accordance with standards prevailing in the electric power industry for assets of similar size and nature, insurance coverage for the Facility and any Interconnection Facilities and Metering Equipment to be owned by Customer, for all risks of direct physical loss or damage to such property, equipment, facilities, and appurtenances (including property and boiler and machinery coverages), to protect and insure against third party liability for bodily injury and property damage, and such other insurance as Customer deems necessary, with reasonable limits and subject to appropriate exclusions and deductibles/retentions. In addition to and not in any way limiting the forgoing or any obligations or liabilities under this Agreement, Customer shall have in place and maintain insurance coverage of the type and in the minimum amounts as follows:

15.1.1 Workers compensation insurance that will pay the benefits required of Customer in accordance with all applicable state, federal, and maritime laws. This policy shall include employers liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident; \$1,000,000 policy limit and \$1,000,000 each employee for bodily injury by disease.

15.1.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification), products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available, and punitive damages to the extent normally available, and a cross-liability endorsement, with bodily injury and property damage combined single limit of \$25,000,000 each occurrence and aggregate.

15.1.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury, including death, and property damage.

15.1.4 Excess Public Liability Insurance over and above the Employers' Liability, Commercial General Liability, and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of \$20,000,000 per occurrence and aggregate.

15.1.5 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and Excess Public Liability Insurance policies shall name Provider and its directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

15.1.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered.

15.1.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and Excess Public Liability Insurance policies shall be written on an occurrence basis.

15.1.8 The requirements contained herein as to the types and limits of all insurance to be maintained by Customer are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by Customer under this Agreement.

15.1.9 Not later than twenty (20) days prior to the date the Facility is interconnected with the Transmission System, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Customer shall provide certification of all insurance required in this Agreement, executed by each insurer or by an authorized representative of each insurer.

15.2 Waiver. Customer hereby waives all its rights and any subrogation rights of its insurers against Provider for any loss, damage, or liability insured against under the property and liability insurance provided for in this Article 15. The policies shall be endorsed to allow pre-loss waivers of subrogation as to Provider in this Agreement. To the extent not prohibited by law, Customer also agrees, but only as to Provider, not to use the sole and exclusive remedy doctrine of workers compensation as a defense to preclude enforcement of the indemnification provided Provider in Article 16 of this Agreement.

15.3 Combined Coverage and Self Insurance Rights. Nothing in this Agreement shall prohibit Customer from combining the coverage required by this Agreement with coverage outside the scope of that required by this Agreement as long as such combining of coverage in no way adversely affects the coverage required hereunder. Customer, at its option, may elect amounts of self insurance, retentions, and/or deductibles not to exceed \$1,000,000 per

occurrence. Customer's self insurance, retention, and/or deductible amounts are the responsibility of and shall be borne by Customer.

ARTICLE 16 INDEMNITY

16.1 Indemnification. Except as limited by Section 16.2, a Party ("Indemnifying Party") shall at all times indemnify, defend, and hold the other Party ("Indemnified Party") harmless from, 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 Indemnifying Party's negligence or breach of its obligations under this Agreement, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

16.1.1 Indemnified Party. If the Indemnified Party is entitled to indemnification under this Article 16 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 16.1, 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.

16.1.2 Indemnifying Party. If the Indemnifying Party is obligated to indemnify and hold the Indemnified Party harmless under this Article 16, 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.

16.1.3 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 16.1 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 Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it 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 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: (1) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party; and (2) 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.

16.2 **LIMITATION ON LIABILITY**

NEITHER PARTY SHALL IN ANY EVENT BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOST PROFITS, REVENUE OR GOODWILL, INTEREST, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION OF EQUIPMENT OR MACHINERY, INCREASED EXPENSE OF OPERATION OF EQUIPMENT OR MACHINERY, COSTS OF PURCHASED OR REPLACEMENT POWER OR SERVICES, OR CLAIMS BY CUSTOMERS FOR ANY SUCH SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER SUCH LOSS IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE.

**ARTICLE 17
BREACH, CURE AND DEFAULT**

17.1 **General.** A breach of this Agreement (“Breach”) shall occur upon the, failure by a Party to perform or observe any material term or condition of this Agreement. A default of this Agreement (“Default”) shall occur upon the failure of a Party in Breach of this Agreement to cure such Breach in accordance with the provisions of Section 17.4.

17.2 **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: (1) becomes insolvent; (2) 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; (3) makes a general assignment for the benefit of its creditors; or (4) 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 either Party to provide such access rights, or a Party's attempt to revoke or terminate such access rights, as provided under this Agreement;

(f) Failure of either Party to provide information or data to the other 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; or

(g) Customer fails to establish and maintain security for its payment obligations as required by this Agreement.

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

17.4 Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach (hereinafter the “Non-Breaching Party”), when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party (the “Breaching Party”) and to any other person a Party to this Agreement identifies in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have thirty (30) days to cure such Breach. If the Breach is such that it cannot be cured within thirty (30) days, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such thirty (30) day time period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within thirty (30) days of becoming aware of the Breach, the Breaching Party will be in Default of the Agreement.

17.5 Disputes. Party shall not be considered in breach of this agreement with respect to any matter submitted to resolution pursuant to Article 22; provided, however, each Party may take any action it deems necessary to protect its respective facilities.

17.6 Right to Compel Performance. Notwithstanding the foregoing, and subject only to the dispute resolution process in Article 22 of this Agreement, upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (1) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; and (2) exercise such other rights and remedies as it may have in equity or at law.

ARTICLE 18
TERMINATION OF INTERCONNECTION SERVICE

18.1 Expiration of Term. Except as otherwise specified in this Article 18, Interconnection Service for the Facility terminates at the conclusion of the Term of this Agreement stated in Article 2 of this Agreement.

18.2 Termination. A Party may terminate this Agreement upon Default of the other Party. Subject to the limitations set forth in Section 18.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of:

- (a) Its giving of written notice of termination to the other Party; and
- (b) To the extent required, the filing at FERC, the KPSC, or the RUS of a notice of termination for the Agreement, which filing must be approved or accepted for filing by FERC, the KPSC, or RUS, as applicable.

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

ARTICLE 19
SUBCONTRACTOR

19.1 General. Nothing in this Agreement shall prevent a Party from utilizing the services of such 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 Party for the performance of such subcontractor.

19.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. Each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any 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.

19.3 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.

19.4 No Limitation by Insurance. The obligations under this Article 18 will not be limited in any way by any limitation of subcontractors' insurance.

ARTICLE 20 CONFIDENTIALITY

20.1 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 20, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

20.2 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 third party, who, to the knowledge of the receiving Party, after due inquiry, was under no obligation to the other 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 Section 20.7 of this Agreement, to be disclosed by any federal or state government or agency 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 other Party that it no longer is confidential.

20.3 Release of Confidential Information. Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants or to parties who may be or considering providing financing to or equity participation with 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 20 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 20.

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

20.5 No Warranties. By providing Confidential Information, neither Party makes any warranties or, representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or

Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

20.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as that it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination.

20.7 Order of Disclosure. If a Court or a government agency or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other 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 effort to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

20.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten days of receipt of a written request from the other Party, use reasonable efforts to destroy, erase, or delete (with such destruction, erasure and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

20.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's breach of its obligations under this Article 20. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of

injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article 19, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this Article 19, 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 20.

ARTICLE 21 AUDIT RIGHTS

21.1 Information Access. Each Party shall make available to the other Party information that is in its possession of and is necessary in order for the other Party to: (1) verify the costs incurred by the disclosing Party for which the other Party is responsible under this Agreement; and (2) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Article 21.1 and to enforce their rights under this Agreement.

21.2 Reporting of Non-Force Majeure Events. Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or

information provided under this Article 21 shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this Agreement.

21.3 Audit Rights. Subject to the requirements of confidentiality under Article 20 of the Agreement, either Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit each other's accounts and records pertaining to either Party's performance and/or satisfaction of obligations arising under this Agreement. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, Provider's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency. Said audit 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.

21.4 Audit Rights Periods. Accounts and records related to either Party's performance or satisfaction of all obligations under this Agreement shall be subject to audit as follows: (1) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (2) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

21.5 Audit Results. If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

ARTICLE 22 DISPUTES

22.1 Submission. Any claim or dispute, which either Party may have against the other, arising out of the Agreement shall be submitted in writing to the other Party not later than the latter of sixty (60) days after the circumstances which gave rise to the claim or dispute have taken place or sixty (60) days of discovery of such circumstances. The submission of any claim or dispute shall include a concise statement of the question or issue in dispute, together with relevant facts and documentation to fully support the claim.

22.2 Alternative Dispute Resolution. If any such claim or dispute arises, the Parties shall use their best efforts to resolve the claim or dispute, initially through good faith negotiations or upon the failure of such negotiations, through mutually agreed to Alternative Dispute Resolution (“ADR”) techniques, which may include arbitration conducted in Henderson, Kentucky, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All negotiations pursuant to these procedures for the resolution of disputes will be confidential, and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Kentucky Rules of Evidence.

22.3 ADR Termination. Notwithstanding the provisions of Section 22.2, either Party may terminate its participation in ADR during any stage of ADR prior to commencement of arbitration under this Article 22 and proceed to submit such claim or dispute for decision by a court or regulatory authority of competent jurisdiction. If the Parties mutually agree to submit the dispute to arbitration, arbitration shall be the exclusive means of resolving the dispute. Arbitration may only be terminated by the agreement of the Parties.

**ARTICLE 23
NOTICES**

Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

To Provider:

Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420
Attention: President and CEO

To Customer:

Thoroughbred Generating Company, LLC
701 Market Street, Suite 781
St. Louis, MO 63101-1826
Attention: Dianna Tickner, President

**ARTICLE 24
COORDINATING COMMITTEE**

24.1. Establishment and Representatives. The Parties shall establish a coordinating committee ("Coordinating Committee") composed of one representative designated in writing by each Party. Each Party will also designate in writing an alternate who may act in place of the representative at the option of that Party. Any Party may at any time change its representative or alternate by notifying the other Parties in writing.

24.2 Meetings. The Coordinating Committee shall meet periodically during the term of this Agreement for the purpose of coordinating the Parties' respective work under this Agreement, at intervals agreed upon by the Parties not to exceed one year. Promptly following

each meeting, a representative of the Coordinating Committee shall prepare and circulate minutes of the meeting to the participants. Provider's representative will prepare and circulate the minutes of the meetings.

24.3 Duties. The Coordinating Committee shall be responsible for the following functions:

24.3.1 Coordination of development and construction activities for the Interconnection Facilities and Network Upgrades.

24.3.2 Address and resolve accounting and billing issues.

24.3.3 Make recommendations to the Parties as to operational procedures.

24.4.4 Make recommendations to the Parties with respect to installation and maintenance of meters and associated equipment.

ARTICLE 25 MISCELLANEOUS

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

25.2 Governing Law. The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the applicable laws of the Commonwealth of Kentucky without regard to the conflicts of law provisions.

25.3 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.

25.4 Amendments. This Agreement may be amended by and only by a written instrument duly executed by both of the Parties.

25.5 Entire Agreement. This Agreement, including all appendices, attachments, and exhibits, which are incorporated into this Agreement and made a part hereof, constitutes the entire agreement between the Parties.

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

25.7 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.

25.8 Rules of Interpretation. This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) The singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this Agreement or such Appendix to this Agreement, as the case may be; (6) "hereunder",