

Operating Companies of the  
American Electric Power System  
FERC Electric Tariff, Revised Volume No. 6

First Revised Service Agreement No. 312  
Supercedes Original Service Agreement  
No. 312

## **Interconnection and Operation Agreement**

**Between**

**Kentucky Power Company**

**And**

**Kentucky Mountain Power, L.L.C.**

Issued by: William J. Lhota, Executive Vice President  
Issued on: July 2, 2001

Effective Date: August 31, 2001

INTERCONNECTION AND OPERATION AGREEMENT

between

Kentucky Power Company

and

Kentucky Mountain Power, LLC

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## INTERCONNECTION AND OPERATION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of May, 2001, by and between Kentucky Power Company ("Company") d/b/a American Electric Power, a wholly-owned subsidiary of American Electric Power Company, Inc. ("AEP"), and Kentucky Mountain Power, LLC ("Generating Company"), collectively referred to as the "Parties" or singularly as a "Party".

### WITNESSETH:

WHEREAS, Company owns and operates electric facilities and is engaged, among other things, in the transmission of electric power and energy in the Commonwealth of Kentucky, and, as a part of AEP, offers open access transmission service over the integrated Company Transmission System; and

WHEREAS, Generating Company will own and operate the EnviroPower Generating Station located in Hazard, Kentucky, for the generation of electric power (the "Facility"); and

WHEREAS, Generating Company has requested an interconnection agreement with Company to accomplish the interconnection of the Facility to the Company Transmission System at 138 kilovolts; and

WHEREAS, Company owns transmission facilities in Kentucky, some of which are located near the Facility Site, and Company is willing to interconnect the Company Transmission System with the Facility under the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein set forth the Parties hereto agree as follows:

## ARTICLE 1. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following meanings:

1.1 "Abnormal Condition" means any condition at the Facility or on the Company System or the transmission system of other utilities that is outside normal operating parameters such that facilities are operating outside their normal ratings or reasonable operating limits have been exceeded but which has not resulted in an Emergency. An Abnormal Condition may include, but is not limited to, high or low deviations in: voltage, frequency, power flow, equipment temperature, equipment pressures, and other equipment and operating parameters.

1.2 "AEP Operating Companies" shall mean Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, all of which are now doing business as AEP.

1.3 "Affected Systems" means transmission systems that are directly or indirectly interconnected with the Company Transmission System and that, due to the interconnected nature of electric power systems, are affected by Facility operations.

1.4 "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.

1.5 "Agreement" shall mean this Interconnection and Operation Agreement between Company and Generating Company, including all appendices, attachments and any amendments thereto.

1.6 "Applicable Laws and Regulations" shall mean all applicable federal, state and local laws, ordinances, rules and regulations, and all duly promulgated orders and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties and/or their respective facilities.

1.7 "Business Day" shall mean any day other than a Saturday, Sunday, or other day on which commercial banks in Ohio are authorized or required by law to be closed.

1.8 "Commercial Operation Date" shall mean the date specified by the mutual agreement of the Parties as the date that delivery of Electricity to the Interconnection shall commence for purposes other than testing and shall be the date set forth in Appendix F.

1.9 "Company Interconnection Facilities" shall mean all equipment and other facilities which are part of the Interconnection Facilities, including any modifications, additions, or upgrades made to such facilities, and which Company owns, operates and maintains, as such are so designated and described in Appendix A.



1.10 "Company System" shall mean the integrated system of electrical generation, transmission and distribution facilities, and all equipment and facilities ancillary thereto, owned and/or operated by Company as a part of the AEP system.

1.11 "Company Transmission System" shall mean the integrated system of electrical transmission facilities, and all equipment and facilities ancillary thereto, owned and/or operated by Company as a part of the AEP transmission system.

1.12 "Control Area" shall mean an electric system capable of regulating its generation in order to maintain and control its electric energy interchange schedule with other electric systems, contribute its frequency bias obligation to the interconnected system, and meet the generation operating reserve requirements set forth by ECAR, or any successor.

1.13 "Direct Assignment Facilities" shall mean: (a) the facilities necessary to physically and electrically interconnect the generating facility to the Company Transmission System and (b) the minimum necessary local and network upgrades that would not have been incurred but for such Generation Interconnection Requests, including (i) system upgrades necessary to remove overloads and to address voltage constraints and (ii) system upgrades necessary to remedy short-circuit or stability problems resulting from the connection of the generating facility to the network. All such facilities are described in Appendix A.

1.14 "ECAR" shall mean the East Central Area Reliability Council, one of the regional reliability councils of NERC formed to promote reliability and adequacy of bulk power supply of the electric utility systems in North America, or any successor thereto.

1.15 "ECAR Criteria" shall mean those policies or standards promulgated by ECAR, as in effect from time to time, relating to practices to be followed in the planning and operation of the interconnected systems of the member utilities of ECAR.

1.16 "Electricity" shall mean the capacity or energy produced by the Facility.

1.17 "Emergency" shall mean any circumstance or combination of circumstances or any condition on the Facility, the Interconnection Facilities, the Company System or the transmission system of other utilities which is likely to result in imminent disruption of service to consumers or is likely to endanger life or property necessitating immediate action to avert serious injury to persons or property, or impairment or degradation of transmission system reliability.

1.18 "Environmental Laws" shall mean all federal, state, and local laws (including common laws), regulations, rules, ordinances, codes, decrees, judgements, binding directives, or judicial or administrative orders relating to the protection, preservation or restoration of human health, the environment, or natural resources, including, without limitation, laws relating to the releases or threatened releases of Hazardous Substances into any media (including without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use treatment, storage, release, transport, and handling of Hazardous Substances.

1.19 "Event of Default" has the meaning set forth in Section 6.1.

1.20 "Facility" shall mean the generation facilities rated at approximately 500 MW (net) summer, and 500 MW (net) winter, to be constructed by Generating Company on the Facility Site, and which are planned for commercial operation on or about June 1, 2004.

1.21 "Facility Site" shall mean the tract of land located in Knott County, Kentucky upon which the Facility is to be constructed, and which is more fully described in Appendix B.

1.22 "FERC" shall mean the Federal Energy Regulatory Commission, or any successor thereto.

1.23 "Force Majeure" shall mean any cause beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, strike (including that by vendor personnel), flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, and, except as otherwise addressed by Section 13.17, action or inaction by any Governmental Authority which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

1.24 "Generating Company Interconnection Facilities" shall mean all equipment and other facilities which are part of the Interconnection Facilities, including any modifications, additions, or upgrades made to such facilities, and which Generating Company owns, operates and maintains, as such are so designated and described in Appendix A.

1.25 "Good Utility Practice(s)" shall mean any of the practices, methods and acts engaged in or approved by a significant portion 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 acceptable practices, methods, or acts generally accepted in the region. Good Utility Practice shall include, but not be limited to, compliance with Applicable Laws and Regulations, the criteria, rules, and standards promulgated by NERC and by ECAR, the National Electric Safety Code, and the National Electrical Code, as they may be amended from time to time, including the criteria, rules and standards of any successor organizations.

1.26 "Governmental Authority" shall mean any federal, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

1.27 "Hazardous Substances" shall mean:

(a) any petro-chemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation

and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls;

(b) any chemicals, materials, or substances commonly defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," or "pollutants," or words of similar meaning and regulatory effect; or

(c) any other chemical, material, or substance, exposure to which is prohibited, limited or regulated by applicable Environmental Laws.

1.28 "Interconnection" shall have the meaning set forth in Section 3.1.

1.29 "Interconnection Facilities" shall mean all equipment and facilities that are necessary or desirable under Good Utility Practice to safely and reliably interconnect the Facility to the Company System, including all connection, switching, Metering Equipment, transmission, distribution, safety, engineering, communication and Protective Equipment. Interconnection Facilities shall include the Company Interconnection Facilities and the Generating Company Interconnection Facilities collectively, which are more particularly described in Appendix A.

1.30 "Interconnection Point" shall mean the point, shown in Appendix A, where the Facility is interconnected with the Company System.

1.31 "Metering Equipment" shall mean those facilities specified in Appendix C.

1.32 "NERC" shall mean the North American Electric Reliability Council, including any successor thereto or any regional reliability council thereof.

1.33 "Open Access Transmission Tariff" or "OATT" shall mean the Open Access Transmission Tariff under which Company offers non-discriminatory open access transmission service over the Company Transmission System, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

1.34 "Operating Authority" shall mean the AEP System Control Center, the RTO, and any successor organizations.

1.35 "Party" shall mean a party to this Agreement named in the preamble above, its successors, or any permitted assignees.

1.36 "Person" shall mean any individual, Governmental Authority, corporation, limited liability company, partnership, limited partnership, trust, association or other entity.

1.37 "Project Financing" shall mean (a) one or more loans and/or debt issues, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Facility, any alteration, expansion or improvement to the Facility, the purchase and sale of the Facility or the operations at the Facility or

(b) a power purchase agreement pursuant to which Generating Company's obligations are secured by a mortgage or other lien on the Facility.

1.38 "Project Finance Holder" shall mean (a) any holder, trustee or agent for holders, of any component of the Project Financing or (b) any purchaser of power from the Facility to which Generating Company has granted a mortgage or other lien as security for some or all of Generating Company's obligations under the corresponding power purchase agreement.

1.39 "Protective Equipment" shall mean such protective relay systems, locks and seals, breakers, automatic synchronizers, associated communication equipment and other control schemes and protective apparatus as is reasonably necessary under Good Utility Practice, as approved by Company for the operation of the Facility in parallel with the Company Transmission System and to permit Company's facilities to operate economically, reliably and safely in their normal manner.

1.40 "RTO" shall mean the Alliance Regional Transmission Organization, or any successor or other FERC-approved regional transmission organization to which Company may transfer operational control of its transmission facilities, or a portion thereof.

1.41 "System Impact and Facility Studies" shall mean any studies conducted by the Company to investigate the impact of the Facility addition on the Company Transmission System and neighboring utilities and also to determine the design, specifications, and cost estimate for the Company Interconnection Facilities and System Upgrades necessitated to accommodate the interconnection of the Facility.

1.42 "System Upgrades" shall mean the minimum necessary local and network upgrades that would not have been required but for the Interconnection of the Facility to the Company Transmission System, including (i) system upgrades necessary to remove overloads and to address voltage constraints and (ii) system upgrades necessary to remedy short-circuit or stability problems resulting from the connection of the generating facility to the network, as such facilities are so designated and described in Appendix A.

## ARTICLE 2. TERM AND TERMINATION OF AGREEMENT

### 2.1 Term

This Agreement shall become effective as of the date first above written or such other date as shall be specified by the FERC. This Agreement shall continue in force and effect for a period of thirty (30) years from the date this Agreement is made effective, or until retirement of the Facility, whichever is shorter. Notwithstanding the above, this Agreement may be terminated earlier if earlier termination is permitted under this Agreement or mutually agreed to by the Parties. Any termination hereunder shall not take effect until the FERC either authorizes any request by a Party seeking termination of this Agreement in accordance with its terms or accepts a written notice of termination.

## 2.2 Effect of Expiration or Termination of Agreement on Liabilities and Obligations

Expiration or termination of this Agreement shall not relieve Generating Company or Company of any liabilities or obligations arising hereunder prior to the date expiration or termination becomes effective. The applicable provisions of this Agreement will continue in effect after expiration, cancellation, or early termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

## 2.3 Regulatory Approvals

Generating Company agrees that it shall use its best efforts to obtain in a timely manner any federal, state, or other regulatory consents, approvals, certifications, filings or orders that may be required for Generating Company's execution, delivery or performance of this Agreement and any amendments hereto that have been executed by both Parties.

Company agrees that it shall use its best efforts to obtain in a timely manner any federal, state, or other regulatory consents, approvals, certifications, filings or orders that may be required for Company's execution, delivery or performance of this Agreement and any amendments hereto that have been executed by both Parties.

Company shall file this Agreement with the FERC. Generating Company agrees to assist Company and use all reasonable efforts in obtaining such approvals or making such filings as promptly as practicable.

Each Party shall use its best efforts to obtain all necessary regulatory approvals and acceptances of this Agreement. Each Party shall support the Agreement before the FERC and any other regulatory agency having jurisdiction, and shall not protest or contest the Agreement or any part of it before any such agency.

Pursuant to Section 13.2, all amendments to this Agreement must be by written instrument and duly executed by each of the Parties. Promptly upon execution of any amendment to this Agreement, the Company shall, if necessary, file such amendment with the FERC. Each Party shall support an executed amendment before the FERC and any other regulatory agency having jurisdiction, and shall not protest or contest the filing of the duly executed amendment or any part of it before any such agency.

## **ARTICLE 3. FACILITY INTERCONNECTION**

### 3.1 Establishment of Interconnection

This Agreement provides for the interconnection of the Facility to the Company Transmission System and the provision of such service as is necessary to ensure the delivery of the Electricity to the Interconnection Point and its acceptance into the Company Transmission System and to physically enable the Facility to receive any energy and capacity necessary to satisfy its operational requirements. The Parties agree that the Facility to be constructed by the Generating

Company shall be interconnected to the Company Transmission System at Beaver Creek, Hazard, and Harbert Stations, such interconnection being further described in Appendix A, and herein referred to as the "Interconnection". Appendix A may be revised by written mutual agreement of the Parties. Pursuant to this Agreement, the Parties shall, during the term of this Agreement, continue in service the existing transmission lines and essential terminal equipment, to the extent required to establish and maintain a reliable Interconnection.

### 3.2 Conditions of Interconnection

(a) Generating Company agrees that it will not interconnect or operate any part of its system connected to Company Transmission System in synchronization with any other electric system without coordinating with and the approval of Company, such approval not to be unreasonably withheld, whether such other electric system is supplied with Electricity by Generating Company, a third party, or from another point of connection with Company System, provided that nothing herein precludes coordination of Facility operations with those of a control area other than the Company's control area for purposes of dynamic scheduling of the Facility with such other control area or a second interconnection directly with a second transmission provider. However, a second interconnection would require a joint system study, between AEP and the other utility. Generating Company will be responsible for all expenses associated with such a study and will also be responsible for all expenses related to system upgrades, if required. This Agreement provides only for interconnection of the Facility with the Company Transmission System. Nothing in this Agreement shall be read as a request by Generating Company or a commitment by Company to install any facilities other than those necessary to interconnect the Facility with Company Transmission System and ensure the acceptance of the Facility's Electricity into the Company Transmission System, at the point of interconnection.

(b) Generating Company acknowledges and agrees that from time to time during the term of this Agreement other Persons may develop, construct and operate or acquire and operate generation facilities in Company's service territory, and construction or acquisition and operation of any such facilities, and reservations by any such other Persons of transmission service under the OATT may affect the availability of transmission service for the Facility's net electric output. Generating Company acknowledges and agrees that Company has no obligation to disclose to Generating Company any information with respect to such Persons or the facilities, including the identity or existence of any such Person or other facilities except as provided for in the OATT, or unless the Company's response to such Person's activities could reasonably be expected to have an adverse impact on the operation of the Facility or the Interconnection Facilities in which case Company shall disclose only such information as is agreed to by such person or is necessary to address such adverse impact on the Facility or the Interconnection Facilities, and that the Company makes no guarantees with respect to transmission service that is available under the OATT.

(c) This Agreement does not obligate either Party to provide, or entitle either Party to receive, any transmission or other service not expressly provided for herein. Each Party is responsible for making the arrangements necessary for it to receive any other service that it may desire from the other Party or any third party. Any transmission or ancillary service obtained from the Company necessary to transmit power or Electricity from the Facility shall be governed by the provisions of the OATT. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm

transmission rights, capacity rights, or transmission credits, that the Generating Company, or one or more of its customers, may be entitled to, now or in the future, as a result of, or otherwise associated with, the transmission capacity, if any, created by the System Upgrades. In the event that Generating Company, or one or more of its customers, requests and purchases transmission service from the Company to transmit Electricity from the Facility, credits or other adjustments, as provided for in Section 3.7(f) may be appropriate in light of the charges paid by Generating Company under this Agreement. Any such transmission credits, including the credit described in Section 3.7(f) of this filing, will be provided to the Generating Company and not to its customers.

(d) Generating Company shall install, at its own expense, the necessary equipment, such as power system stabilizers on its generators, to provide satisfactory stability performance under all credible system conditions as may be necessary in accordance with Good Utility Practice.

(e) This Agreement does not provide for the sale or purchase of power or energy from Generating Company's Facility. Construction, backup and startup power at the Facility Site will be provided by the appropriate supplier under the appropriate tariff(s).

### 3.3 Interconnection Design, Operation And Maintenance

(a) The Parties agree to cause their respective Interconnection Facilities to be constructed in accordance with specifications at least equal to those provided by the National Electric Safety Code and approved by the American National Standards Institute. The Parties agree to comply with service quality, reliability and power quality standards included in the IEEE Standard 519, and other industry standards addressing such issues. The Parties further agree that their respective Interconnection Facilities shall be designed, constructed and installed in accordance with Good Utility Practice.

(b) In accordance with Section 3.7, each Party shall, at Generating Company's expense, operate, maintain, repair, and inspect its respective Interconnection Facilities that it now or hereafter may own or control unless otherwise specified in this Agreement. Maintenance by either Party that will cause a deviation from normal power and Energy flow at the Interconnection Point will be scheduled at a mutually agreed time. No changes will be made in the normal operation of the Interconnection Point without the mutual agreement of the Parties except as otherwise provided herein or in the OATT. The Parties will coordinate the construction, operation and maintenance of their Protective Equipment.

### 3.4 Generating Company Facility and Interconnection Facilities

Unless otherwise agreed and except as provided in Section 3.6 (a), Generating Company shall be responsible for the design, construction, installation, ownership, operation and maintenance of the Facility and Generating Company Interconnection Facilities described in Appendix A, Paragraphs 8 and 9. After installation, Company will have operational control of and will maintain the in-line facilities in Generating Company's station(s), if any, and charge Generating Company for such maintenance under the FERC approved formula, shown in Appendix G. Generating Company Interconnection Facilities located in Company's substation, if any, must be designed, engineered, installed, tested and commissioned per Company's specifications. Protective Equipment to be installed by Generating Company shall be set forth in Appendix D.

### 3.5 Company Interconnection Facilities and System Upgrades

(a) Company shall be responsible for the design, procurement, construction, installation, ownership, operation and maintenance of all the Company Interconnection Facilities and System Upgrades described in Appendix A, Paragraph 10. Company shall also be responsible for the ownership, operation and maintenance of certain Generating Company Interconnection Facilities, described in Appendix A, Paragraph 9, that will be constructed by Generating Company pursuant to Section 3.6 (b). Protective Equipment to be installed, owned, and operated by Company is set forth in Appendix D. The Company shall also be responsible for the ownership, operation and maintenance of certain Generating Company Interconnection Facilities, described in Appendix A, Paragraph 9, that will be constructed by the Generating Company, pursuant to Section 3.6 (b). The estimated cost of the Company Interconnection Facilities and the Company's Protective Equipment are set forth in Appendix E. The contemplated schedule for the Company's performance of its obligations hereunder is set forth in Appendix F.

(b) The Company Interconnection Facilities shall not be used for any purpose which conflicts with the operation of the Facility.

### 3.6 Installation of Generating Company Interconnection Facilities

(a) The Generating Company Interconnection Facilities, described in Appendix A, Paragraphs 8 and 9, will be constructed by Generating Company or, at Generating Company's option, a third party contractor to be selected by Generating Company. Notwithstanding the foregoing, Generating Company understands and agrees that Company shall complete the connection of the Company and Generating Company Interconnection Facilities and will manage all construction work relating to the Generating Company Interconnection Facilities that are directly interconnected with the Company Transmission System.

(b) With respect to the Talcum 138 kV switching station ("Talcum Station") and the three 138 kV line exits identified in Appendix A, Paragraph 9 as a Generating Company Interconnection Facility, the Parties agree as follows:

- i. Talcum Station shall be constructed at a location on the Facility Site selected by Generating Company and acceptable to Company, such acceptance not to be unreasonably withheld;
- ii. Generating Company shall enter into an Engineering, Procurement and Construction Contract (the "EPC Contract") with a general contractor selected by Generating Company for the engineering, procurement and construction of Talcum Station and the three 138 kV line exits. Such contract shall require such EPC activities to be performed in accordance with technical specifications, which will be provided by Company to Generating Company. Company shall have the right, at Generating Company's expense, to audit and/or inspect such EPC activities to the extent necessary to assure that Company's technical specifications are met;



- iii. Company shall design, install and own 138 kV metering for the Facility, all line potential and carrier relaying equipment for the three (3) 138 kV line exits, as well as panels, data acquisition and fault recording equipment inside the Talcum Station control house provided by the Generating Company. Generating Company shall design and install all other equipment including circuit breakers, control house, steel structures etc. in accordance with technical specifications, which will be provided by Company to Generating Company.
- iv. Upon the issuance of the notice of substantial completion, or such similar notice, pursuant to the EPC Contract, Company shall be entitled to inspect Talcum Station and the three 138 kV line exits with Generating Company in accordance with Section 3.10 of this Agreement and to confirm that Talcum Station and the three 138 kV line exits have been constructed in accordance with specifications set forth in the EPC Contract, such confirmation not to be unreasonably withheld or delayed;
- v. Upon issuance of the confirmation by Company as provided for in Section 3.6(b)(iii), and at no cost to Company, Generating Company shall promptly convey by deed, grant an easement, or lease to Company that portion of the Facility site on which Talcum Station is located and ownership of the Talcum Station, subject to the access rights set forth in Section 3.12; ownership of the facilities that comprise Talcum Station and the three 138 kV line exits (portions of the lines constructed between Talcum Station and Beaver Creek, Harbert, and Hazrad stations) shall pass on the effective date of the deed, easement, or lease, and no other action by the Parties shall be necessary to transfer ownership of the facilities that comprise Talcum Station;
- vi. Upon issuance of the confirmation by Company as provided for in Section 3.6(b)(iv), and at no cost to Company, Generating Company shall promptly convey by deed, grant an easement, or lease to Company the ownership of the three Talcum 138 kV line exits, subject to the access rights set forth in Section 3.12; ownership of the three 138 kV line exits shall pass on the effective date of the deed, easement, or lease, and no other action by the Parties shall be necessary to transfer ownership of the Talcum 138 kV line exits;
- vii. The "Defined Event" shall be the first closing of the switch (or switches) that causes energy from the Company Transmission System to flow over any part of Talcum Station; in no event shall the Defined Event occur prior to the transfer of ownership of Talcum Station and the Talcum 138 kV line exits from Generating Company to Company;
- viii. Company shall be a named third-party beneficiary of the EPC Contract for purposes of all warranties made by the general contractor in the EPC Contract; Generating Company makes no representation or warranties, express or implied, regarding Talcum Station and the Talcum 138 kV line exits, and expressly disclaims any and all warranties, express or implied, regarding Talcum Station and the Talcum 138 kV line exits; and

- ix. in the event Federal or state income taxes are imposed upon Company with respect to the transfer of the ownership of Talcum Station and the Talcum 138 kV line exits, Generating Company agrees to reimburse Company for the effect of such taxes, including any appropriate gross up for income tax and any penalty.

(c) Upon the transfer of the ownership of Talcum Station and the Talcum 138 kV line exits, for purposes of this Agreement, (i) Talcum Station shall cease to be a Generating Company Interconnection Facility and shall become a Company Interconnection Facility and (ii) Generating Company shall be responsible for the costs of operation, maintenance and repair/replacement of Talcum Station and the Talcum 138 kV line exits in accordance with Section 3.7. Generating Company shall be responsible for the tax consequences, if any, of such transfer in accordance with Section 5.2. Upon the transfer of the ownership of the Talcum Station and the Talcum 138 kV line exits, the Interconnection Point shall be defined as the disconnect switches where the 138 kV lines from the Facility terminate in Talcum Station.

### 3.7 Installation of Company Interconnection Facilities and System Upgrades

(a) Company shall design, construct, own, operate, maintain and repair or replace Company Interconnection Facilities as specified in Paragraph 10 in Appendix A. Generating Company shall pay Company a contribution to capital covering the full cost of installing Company Interconnection Facilities, including any tax consequences as provided in Section 5.2, resulting from the contribution to capital, required as a result of the connection of Generating Company's Facility to Company Transmission System. After installation, Company will maintain and repair/replace Company Interconnection Facilities and charge Generating Company for such maintenance and repair/replacement under the FERC-approved formula, shown in Appendix G. Company estimates that normal maintenance charges for Company's Interconnection Facilities will be approximately \$ 32,000 (based on 2001\$) on an annual average basis.

(b) Company shall design, construct, own, operate, maintain and repair or replace System Upgrades as specified in Paragraph 10 in Appendix A. Generating Company shall pay Company a contribution to capital covering the full cost of any System Upgrades, including any tax consequences as provided in Section 5.2, resulting from the contribution to capital, required as a result of the connection of Generating Company's Facility to Company Transmission System. After installation, Company will maintain and repair/replace System Upgrades at its own expense.

(c) The Company Interconnection Facilities and the System Upgrades must be designed, constructed, and installed in accordance with applicable System Impact and Facilities Studies and Good Utility Practice, and must be sufficient, as built and designed, to deliver the full energy output of the Facility to the Company Transmission System, to ensure the acceptance of the full energy output of the Facility into the Company Transmission System at the point of interconnection during normal system conditions consistent with the reliability of the transmission system in the area, and to enable the Facility to receive energy and capacity necessary to satisfy its operational requirements.

(d) As soon as practicable after receiving from Generating Company the first payment shown in Appendix E, and a form of security pursuant to Section 5.1 (a), below, Company will

commence construction of its Interconnection Facilities and System Upgrades. Generating Company reserves the right, upon written notice to Company, to suspend at any time all work by Company associated with the construction and installation of its Interconnection Facilities or System Upgrades, or both. In such event, Generating Company shall be responsible for the costs which Company (i) has incurred prior to the suspension to the extent such costs previously were authorized by Generating Company and (ii) reasonably incurs in winding up such work, including without limitation, the costs reasonably incurred to ensure the safety of persons and property and the integrity of the Company Transmission System and the costs reasonably incurred in connection with the cancellation of material and labor contracts. Company will invoice Generating Company pursuant to Section 5.1(f) and agrees to use its best efforts to minimize its costs.

(e) Company shall inform Generating Company on a monthly basis, and at such other times as Generating Company reasonably requests, of the status of the construction and installation of the Company Interconnection Facilities and System Upgrades, including, but not limited to, the following information: progress to date; a description of scheduled activities for the next period; the delivery status of all equipment ordered; and the identification of any event which Company reasonably expects may delay construction of, or increase the cost of, Company Interconnection Facilities and/or System Upgrades.

(f) Pursuant to an OATT amendment proposed by Company in FERC Docket No. ER00-2413-000, Generating Company will be entitled to a credit, equal to the total amount paid to Company for certain System Upgrades, and not refunded to Generating Company pursuant to this Section 3.7 (f), against the cost of transmission service subsequently reserved under the OATT for delivery of electricity from the Facility. If the crediting procedure contained in the OATT amendment is modified by the FERC, the Parties will conform this agreement to the modified provision. In connection with the filing of this Agreement at the FERC, Company shall include sufficient information for the FERC to determine 1) the reasonableness of any costs associated with the Agreement, 2) that any direct assignment of costs is appropriate, and 3) the basis for assigning or not assigning any transmission credits for any System Upgrades to be constructed.

Generating Company, Generating Company's Marketing agent, or Generating Company's power purchaser(s) will be responsible for arranging transmission service necessary for deliveries from the Facility across the Company's Transmission System. For all revenue that Company receives under the OATT for transmission service with the Facility designated as the source, or for each kW produced from the Facility and delivered onto the Company's Transmission System under a transmission service agreement under the OATT, Company shall credit Generating Company in an amount equal to the transmission service rate, on a dollar for dollar basis applied to Generating Company's total monthly bill for service, until such time as the cost of eligible portion of the System Upgrades (those to remove overloads) on Company System, has been offset in full, after which time this credit shall no longer apply. The System Upgrades are identified in Appendix A. Total estimated costs of System Upgrades that qualify for credits are identified in Appendix E. Any such credit shall be separately identified by Company and applied monthly against charges due Company for transmission service from the Facility. Generating Company may, at its option, transfer the credit for cost of the System Upgrades to Generating Company's marketing agent or Generating Company's power purchaser(s) for use in offsetting transmission service charges incurred in transmitting Generating Company's energy to the purchaser of such energy from the Facility across the Company Transmission System.

(g) Good Utility Practice requires Company to share its studies relating to the Interconnection with interconnected systems which may be Affected Systems. Subject to the jurisdiction, policy, and review of FERC, Generating Company shall be responsible for entering into such arrangements with Affected Systems as are necessary to address any effects of the Interconnection on Affected Systems.

Generating Company also agrees to indemnify and hold harmless Company, its directors, officers, agents, representatives and employees against and from any charges or assessments by Affected Systems against Company for the actual, reasonable costs incurred for system modifications or upgrades required by Good Utility Practice as a result of the Interconnection or the operation of the Facility or the Interconnection Facilities; provided however, no such payment or indemnification shall be required unless FERC determines that such costs are caused by Generating Company as a result of the Interconnection or the operation of the Facility or the Interconnection Facilities, and that such payment or indemnification is consistent with FERC policy.

### 3.8 Safety

(a) Subject to the provisions of Section 8.2, the Parties agree to be solely responsible for and assume all liability for the safety and supervision of their own employees, agents, representatives, and subcontractors.

(b) The Parties agree that all work (including switching, tagging, grounding, and isolation) performed by either Party which could be expected to affect the operations of the other Party will be performed in accordance with all applicable laws, rules and regulations pertaining to the safety of persons or property, including without limitation, compliance with the safety regulations and standards adopted under the Occupational and Safety Health Act (OSHA) of 1970, as amended from time to time, the National Electrical Safety Code, as amended from time to time, and Good Utility Practice.

### 3.9 Subcontractors

(a) Nothing in this Agreement will prevent either Party from utilizing the services of subcontractors as it deems appropriate; provided, however, that all such subcontractors agree to and comply with the terms and conditions of this Agreement.

(b) The creation of any subcontract relationship shall not relieve the retaining 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 obligation imposed by this Agreement upon either Party, where applicable, shall be equally binding upon and construed as having application to any subcontractor.

(c) Each Party will be liable for, indemnify, and hold harmless the other Party, its affiliates, and their officers, directors, employees, agents, and assigns from and against any and all claims, demands, or actions from its own subcontractors; and will be responsible for all costs,

expenses, and legal fees associated therewith and all judgments, decrees, and awards rendered therein.

(d) No subcontractor is intended to be or will be deemed a third party beneficiary of this Agreement.

(e) The obligations under this Section 3.9 are not limited in any way by any limitation on subcontractor's insurance.

### 3.10 Review and Inspection of Generating Company Interconnection Facilities

(a) Company, upon advance written notice to Generating Company, reserves the right to review and inspect all aspects of the design and construction of Generating Company's Protective Equipment and Generating Company Interconnection Facilities that reasonably could have a direct effect on Company's service to Company's other customers or the safety of Company personnel. Such review may include review of the specifications for Generating Company's Protective Equipment and Generating Company Interconnection Facilities, including without limitation, any material improvements, additions, modifications, replacements or other material changes to equipment, electrical drawings and one-line diagrams. Generating Company may be required to provide Company with as-built drawings which will be of good engineering quality and which may include: (i) one line diagram showing the connections between the Facility and the Company System; (ii) three line diagrams showing current and potential circuits for protective relays; (iii) relay tripping and control schematic diagrams; and (iv) instruction books for system protection elements.

(b) Company reserves the right to approve the proposed settings for relays specified by Generating Company. If requested by Generating Company, Company will provide system data needed to determine the relay settings and assist Generating Company in coordinating such relay settings with the Company System. Company's design review and approval of Generating Company's proposed settings is limited to the purpose of ensuring the protection and control of the Company System and shall not be construed as confirming or endorsing the design of Generating Company's Protective Equipment, Generating Company Interconnection Facilities or the Facility, or as a warranty of any type, including safety, durability or reliability thereof.

### 3.11 Review and Inspection of Company Interconnection Facilities and Company System

Generating Company, upon advance written notice to Company, has the right, but not the obligation, to inspect or observe the operation and maintenance activities, equipment tests, installation, construction, or other modifications to the Company Interconnection Facilities or Company System that reasonably could be expected to affect Generating Company's operations.

### 3.12 Right of Access

Generating Company agrees to furnish at no cost to Company the rights-of-way upon, over, under, and across the Facility Site reasonably necessary for the construction and operation of the Company Interconnection Facilities. At Company's request, a satisfactory site selected by mutual agreement of the Parties and located on the Facility Site shall be provided by and at Generating Company's expense for installation of Metering Equipment as identified in Appendix C, which may

be revised from time to time by written mutual agreement of the Parties. Generating Company grants to Company at all reasonable times the right of free ingress and egress to the Facility Site in accordance with Section 3.13 for the sole purpose of (i) testing, reading, or inspecting any of the Company's Metering Equipment, (ii) installing, altering, removing or repairing Company's Metering Equipment located on the Facility Site, or (iii) disconnecting Company's Metering Equipment from the Generating Company's Interconnection Facilities as permitted under this Agreement.

### 3.13 Access to Interconnection Facilities

Upon request, with as much advance notice as is appropriate in the circumstances, each Party agrees to grant to the other Party and its agents and subcontractors such access to its property and facilities as is necessary or appropriate for the other Party to construct, install, test, operate and maintain the Interconnection Facilities and the Facility in accordance with the terms and provisions of this Agreement and to exercise any other of its rights and carry out any other of its obligations under this Agreement; provided, however, that such access will not unreasonably disrupt or interfere with the normal operations of its business and that the Party provided access adheres to the safety rules and procedures established by the Party providing access. Each Party will execute such documents as the other Party may require to enable it to establish record evidence of such access rights. Such access rights will remain in effect for so long as this Agreement is in effect.

Any Party or its subcontractors performing construction, or other work, on the property of the other Party shall be responsible for proper housekeeping during the period the work is being performed and proper clean-up of the property in a timely fashion after the work is completed.

### 3.14 System Impact and Facilities Studies

System Impact and Facility Studies were completed by Company prior to the execution of this Agreement. These studies collectively have determined what Company Protective Equipment, Generating Company Protective Equipment, other Interconnection Facilities, and System Upgrades are necessary to connect the Company Transmission System with the Generating Company's Facility, and have determined estimates of the costs and construction schedules associated therewith. The Parties agree that the System Impact and Facilities studies do not determine what improvements, to the Company Transmission System, are necessary to transmit power from the Facility to specific points of receipt, but do establish the improvements needed to permit the Generating Company to operate the Facility, safely and reliably, on a firm basis during all hours of the year consistent with the reliability of transmission system in the area.

The Generating Company agrees to curtail the output of the Facility, if required, to mitigate both thermal and stability concerns. Actual level of curtailment would depend on final impedance values of the system and the generating unit and step-up transformer test data.

### 3.15 Testing of Facilities

(a) Prior to the interconnection and operation of the Facility with Company Transmission System, the Interconnection Facilities must be tested to ensure their safe and reliable operation in accordance with Good Utility Practice, any applicable Company, RTO, NERC and ECAR criteria and requirements and any applicable federal, state, and local laws, regulations, and requirements

("Pre-Commercial Testing"). Each Party shall provide the other Party with reasonable advance notice of such testing and of the opportunity to be present and witness such tests. The cost of all such testing shall be borne by Generating Company.

(b) Based upon the Pre-Commercial Testing, Generating Company is responsible for making any modifications necessary to ensure the Generating Company Interconnection Facilities' safe and reliable operation in accordance with Good Utility Practice, any applicable Company, RTO and ECAR criteria and requirements, and all applicable federal, state, and local laws, regulations, and requirements. Company is responsible for making any modifications necessary to ensure the safe and reliable operation of the Company Interconnection Facilities and System Upgrades in accordance with Good Utility Practice and all applicable RTO, NERC and ECAR criteria and requirements, and all applicable federal, state, and local laws, regulations, and requirements. Prior to the Commercial Operation Date, the reasonable costs of all such modifications are to be borne by Generating Company, except to the extent the modifications are required as a result of Company's negligence or willful misconduct.

(c) After the Interconnection has been permanently energized and commercial operation of the Facility has commenced, each Party shall test its facilities, at its own expense, in accordance with Good Utility Practice, including all applicable Company, RTO, and ECAR criteria and requirements. Each Party shall have the right, upon advance written notice, to require additional special testing of the other Party's facilities, if it reasonably believes that the other Party's facilities are adversely impacting the operation of the Company Transmission System or the Facility, or as may be otherwise prudent in accordance with Good Utility Practice, and shall have the right to be present and witness such tests. Such tests shall be at the requesting Party's expense, unless necessitated by deficiencies in data previously provided by the other Party or unless such tests reasonably show that the other Party's facilities are adversely impacting the operation of the Company System or the Facility, as applicable.

### 3.16 Timely Completion

(a) Generating Company agrees to use its best efforts to procure, construct, install, and test the Generating Company Interconnection Facilities in accordance with the schedule set forth in Appendix F, which schedule may be revised from time to time by written mutual agreement of the Parties.

(b) Company agrees to use its best efforts to procure, construct, install, and test the Company Interconnection Facilities and System Upgrades in accordance with the schedule set forth in Appendix F, which schedule may be revised from time to time by written mutual agreement of the Parties.

(c) Unless otherwise consistent with Good Utility Practice and agreed to by the Company, such agreement not to be unreasonably withheld, Generating Company agrees that the Interconnection will not be closed until all System Upgrades have been completed.

### 3.17 Generating Company Modeling Data and Verification

(a) Generating Company shall notify Company when the commissioning tests of the

Facility (by the Generating Company) are scheduled. The Company personnel needed to verify relevant portions of the commissioning tests may elect to be present at such tests, at Generating Company's expense.

(b) Generating Company shall provide Company with such final modeling data of the Facility and Interconnection Facilities that reflect final Facility data and settings of the generation protection and control equipment as is reasonably requested by Company and is necessary for reliable operation of the Company System, including but not limited to i) the turbine speed/load controls including the governor; ii) the excitation system including the automatic voltage regulator, power system stabilizer, over excitation controls and limits, and other controls and limits derived through the Facility commissioning tests.

(c) Company shall, if needed, conduct a follow-up stability study with the final modeling data if there is any material deviation from the modeling data previously supplied, at Generating Company's expense, to verify the satisfactory stability performance.

### 3.18 Environmental Compliance and Procedures

The Parties agree to comply with (i) all applicable Environmental Laws which affect the ability of the Parties to meet their obligations under this Agreement; and (ii) all local notification and response procedures required for all applicable environmental and safety matters which affect the ability of the Parties to meet their respective obligations under this Agreement.

### 3.19 Modifications to the Company Interconnection Facilities and Company System

Company, in its reasonable discretion and at its sole cost and expense, may undertake additions, modifications, or replacements of the Company Interconnection Facilities or the Company System so long as such additions, modifications, or replacements are consistent with Good Utility Practice. If such additions, modifications, or replacements might reasonably be expected to adversely affect Generating Company's operation of the Facility, Company will, except in cases of Emergency, provide ninety (90) calendar days' written notice or other such notice as is reasonable under the circumstances to Generating Company prior to undertaking such additions, modifications, or replacements. In the written notice, Company must advise Generating Company when such additions, modifications or replacements are expected to be made, how long such additions, modifications or replacements are expected to take, how such additions, modifications or replacements are expected to adversely affect Generating Company's operation of the Facility or operation of the Interconnection Facilities, and whether such additions, modifications or replacements are expected to interrupt the flow of Electricity from the Facility. If such additions, modifications or replacements are expected to interrupt the flow of Electricity from the Facility, the Parties shall endeavor to mutually agree in advance upon a schedule for such additions, modifications or replacements, and such agreement shall not be unreasonably withheld. Further, Company shall use reasonable efforts, in accordance with Good Utility Practice, to minimize the interrupt of flow of Electricity from the Facility.

### 3.20 Use of Interconnection Facilities by Third Parties

(a) Except as may be required by law, or as otherwise agreed to among the Parties, the



Interconnection Facilities shall be dedicated to the sole purpose of interconnecting the Facility to the Company Transmission System and shall be used for no other purpose.

(b) If required by law or if the Parties mutually agree to allow one or more third parties to use the Interconnection Facilities, or any part thereof, and such use decreases the capacity of the Interconnection Facilities available to the Facility, or otherwise causes any detriment to the Facility or to Generating Company, or benefits any party (including Company) other than Generating Company, then Generating Company and such third party user(s) and Company, if applicable, shall negotiate in good faith to determine the appropriate compensation, including the tax consequences thereof to Generating Company, due to Generating Company as a result of such third party use and to determine the appropriate allocation of the annual carrying charges. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to the FERC for resolution.

(c) If one or more third parties are to use the Interconnection Facilities in accordance with this Section 3.20 and Company determines that, as a result, Good Utility Practice requires that modifications be made to the Interconnection Facilities, Company must comply with notification and scheduling provisions of Section 3.19. In no event shall Generating Company be responsible for the costs of any such modifications.

#### ARTICLE 4. SYSTEM OPERATION

##### 4.1 Requirements For Operation

(a) Each Party shall operate in accordance with NERC Operating Standards, ECAR Criteria and any applicable directives of NERC and ECAR, as well as OSHA's transmission and distribution switching procedures for personnel as established in OSHA's Standard 29 CFR part 1910, if applicable.

(b) In accordance with Good Utility Practice, each Party agrees to design, install, maintain and operate their respective Interconnection Facilities so as to reasonably minimize the likelihood that a disturbance originating in its system would affect or impair the Company Transmission System or the Facility.

(c) The Generating Company is responsible for making any modifications necessary to ensure the Generating Company Interconnection Facilities' safe and reliable operation in accordance with Good Utility Practice, all applicable RTO, NERC and ECAR criteria and requirements, and all applicable federal, state, and local laws, regulations, and requirements. Company is responsible for making any modifications necessary to ensure the Company Interconnection Facilities' safe and reliable operation in accordance with Good Utility Practice and all applicable RTO, NERC and ECAR criteria and requirements, Company's usual criteria and requirements for such facilities, and all applicable federal, state, and local laws, regulations, and requirements. The costs of all such modifications are to be borne by the Party owning the facilities to be modified, except to the extent the modifications are required as a result of the other Party's actions or inactions.

#### 4.2 Synchronization

The Generating Company shall assume all responsibility for properly synchronizing the Facility for operation with the Company Transmission System. Synchronization of the Facility to the Company Transmission System may, at Company's discretion, be coordinated with the Company System Control Center.

#### 4.3 Net Demonstrated Real and Reactive Capabilities

The net demonstrated real and reactive capability shall be periodically demonstrated in accordance with ECAR Document No. 4 and NERC Planning Standards. In addition, individual generators in the generating Facility must be capable of providing the steady-state over- and under-excited reactive capability given by the manufacturer's generator capability curve at any MW dispatch level.

Tests that demonstrate these capabilities must be conducted and documented in accordance with ECAR Document No. 4. Such documentation shall be provided to Company. Company reserves the right to witness these tests.

#### 4.4 Voltage Schedule/Power Factor/Reactive Power

(a) As noted in Section 4.14 below, Company does not presently anticipate the need to require Generating Company to provide significant amounts of interconnected operation services, including reactive power supply and voltage control services from the Facility. As a general matter, however, Company does require that Generating Company operate its Facility in such a manner as to avoid adverse impacts on Company System voltage. Generating Company will generally be able to comply with this requirement by operating its generation within +2% to -2% of unity power factor at the Interconnection Point, but Company reserves the right to specify the voltage schedule to be maintained by Generation Company. Consistent with this requirement and ECAR Document No.10 Generating Company shall install, operate and maintain an automatic voltage regulator to maintain the assigned scheduled voltage. A steady-state deviation from this schedule between +0.5% to -0.5% of the assigned schedule voltage will be permissible.

(b) In certain unusual situations where a voltage schedule is inappropriate, Company may substitute adherence to a specified voltage schedule with a requirement to maintain a specified power factor or reactive power output schedule. When the Facility is operating, Generating Company shall comply with any such requirement, provided such requirement is consistent with Good Utility Practice, within the Facility operating limits, and in accordance with ECAR Document No.10. A steady state deviation from this requirement within +2% to -2% will be permissible.

#### 4.5 Voltage Range

The Facility must be capable of continuous non-interrupted operation within a steady-state voltage range of 92% to 105% of the nominal transmission voltage during system normal and single facility outage conditions. Company Transmission System nominal voltages are 765, 500, 345, 230, 161, 138, 88, 69, 46, 40, 34.5, and 23 kV. During Emergency and/or transient system conditions when voltage may temporarily be outside the 92% to 105% range, all reasonable measures should

be taken by each Party to avoid tripping of the Facility due to high or low voltage.

#### 4.6 Frequency Range

The Facility must be capable of continuous, non-interrupted operation in the frequency range of 59.5 to 60.5 Hz. Limited time, non-interrupted operation is also expected outside this frequency range in accordance with the manufacturer's specifications and warranties.

#### 4.7 Other Applicable Operating Requirements

In order to assure the continued reliability of the Company Transmission System, the Generating Company may be requested to adhere to other operating requirements and/or encouraged to adopt common operating practices. These include the coordination of maintenance scheduling, operating procedures during system emergencies, participation in control area operating reserves, provisions for backup fuel supply or storage, and provisions for emergency availability, including must-run operation.

All data reportable to ECAR and/or NERC shall be made available to Company if reasonably related to ensuring the safety and reliability of Company System. Generating Company shall provide Company with load flow and dynamic data as may be required by ECAR or NERC or as necessary for Company to comply with applicable ECAR and NERC requirements. All such data shall be identified in a manner enabling Generating Company to reasonably collect it and deliver it to Company in the format requested.

Prior to the Commercial Operation Date, the Parties shall establish communication protocols to promote coordinated and reliable operation of their facilities. These protocols shall include, but not be limited to, names and phone numbers of responsible personnel for normal operations and names and phone numbers of responsible personnel for emergency operating conditions. As part of routine communications, Parties shall timely communicate any unusual or unscheduled status of equipment or operation that may impact the safe and reliable operation of their facilities.

#### 4.8 Make-Before-Break Transfer

Make-before-break transfer is only permitted between two live sources that are in, or close to, synchronization. A transfer switch designed for automatic make-before-break transition shall be equipped with logic to prevent a transfer if the specifications for either the Generating Company or the Company Transmission System source fall outside of the synchronizing requirements recommended by the manufacturer for the generating units at the Facility. Switch transfers made when the synchronizing requirements cannot be met shall be of the break-before-make type of transfer. The time that the Generating Company's generation is permitted to operate in parallel with the Company Transmission System during a make-before-break transfer shall be no greater than 100 milliseconds (6 cycles).

#### 4.9 Continuity of Service

(a) Subject to Section 4.9(b) below, if required by Good Utility Practice to do so, Company may require Generating Company to curtail, interrupt or reduce deliveries of Electricity

if such delivery of Electricity adversely affects Company's ability to perform such activities as are necessary to safely and reliably operate the Company Interconnection Facilities or any part of the Company System.

(b) With respect to any curtailment, interruption or reduction permitted under Section 4.9(a), Company agrees that:

- (1) the Company will use its best efforts to first notify the ECAR/MET Security Coordinator, or successor;
- (2) the curtailment, interruption, or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;
- (3) any such curtailment, interruption, or reduction shall be made on an equitable, non-discriminatory basis with respect to all users of the transmission system considering the actions necessary to remedy the problem at hand;
- (4) when the curtailment, interruption, or reduction must be made under circumstances which do not allow for advance notice, Company will notify the Generating Company by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction and, if known, its expected duration. Telephone notification will be followed by written notification by the close of the next Business Day;
- (5) when the curtailment, interruption, or reduction can be scheduled, Company will consult in advance with Generating Company regarding the timing of such scheduling and further notify Generating Company of the expected duration. Company agrees to use its best efforts to schedule the curtailment or interruption to coincide with the scheduled outages of the Facility, and if not possible, Company agrees to use its best efforts to schedule the curtailment or interruption during non-peak load periods.

(c) The Parties agree to cooperate and coordinate with each other to the extent necessary in order to restore the Facility, Interconnection Facilities, and the Company System to their normal operating state, consistent with system conditions and Good Utility Practice.

#### 4.10 Emergency

(a) If Company determines that curtailment, interruption, or reduction is necessary because of an Emergency for which output from the Facility is contributing to such Emergency, the Company shall specify the corrective action to be taken. In the event Company requires Generating Company to curtail, interrupt, or reduce deliveries pursuant to this Section 4.10, Company shall (a) use its best efforts to mitigate the extent and duration of the curtailment, interruption or reduction and (b) provide any information reasonably requested by Generating Company to analyze the event. If any request or action by the Company hereunder does not stabilize or mitigate the Emergency, then Company shall use Good Utility Practice to allow the Facility to resume operating levels as

existed prior to such request as promptly as possible.

(b) Company will provide Generating Company with prompt oral notification by telephone of any Emergency regarding the Company System or Interconnection Facilities which may reasonably be expected to affect Generating Company's operation of its facilities, and Generating Company will provide Company with prompt oral notification by telephone of any Emergency regarding the Facility or the Interconnection Facilities which may reasonably be expected to affect Company's operations. Said notification shall indicate the reasons for the Emergency, the Emergency's expected effect on the operation of Generating Company's or Company's facilities and operations, the Emergency's expected duration, and the corrective action to be taken. In any circumstance where the Emergency results in an outage or interruption of the Facility or its ability to deliver Electricity, the prior telephone notification will be followed by written confirmation as soon as reasonably practicable.

(c) If a Party determines in its good faith judgment that an Emergency exists which endangers or could endanger life or property, such Party shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury and danger to, or loss of, life or property.

(d) Neither Party shall be liable to the other for any action it takes in responding to an Emergency so long as such action is made in good faith and consistent with Good Utility Practice.

(e) Generating Company reserves the right, in its sole discretion, to isolate or disconnect its Facility from the Company Transmission System if it believes an Emergency may cause damage to its Facility. Generating Company will provide Company with prompt oral notification or such other notice as is reasonable under the circumstances.

#### 4.11 Abnormal Condition

To the extent Company is aware of any Abnormal Condition, Company will provide Generating Company with reasonably prompt oral notification of such Abnormal Condition if it may reasonably be expected to affect Generating Company's Facility or operations. To the extent that Generating Company is aware of any Abnormal Condition, Generating Company will provide Company with reasonably prompt oral notification of such Abnormal Condition if it may reasonably be expected to affect the operations of the Company's facilities. To the extent known, any such oral notification provided hereunder shall include a description of the Abnormal Condition, the Abnormal Condition's expected effect on the operation of Generating Company's or Company's facilities, its anticipated duration, and the corrective action taken and/or to be taken with respect to the notifying Party's facilities. Each Party shall cooperate and coordinate with the other Party in taking whatever corrective measures on its facilities as are reasonably necessary to mitigate or eliminate the Abnormal Condition, including, to the extent necessary, adjusting the operation of equipment to within its rated operating parameters; provided, however, that such measures are consistent with Good Utility Practice and do not require operation of any of the Parties' facilities outside their operating limits. Generating Company reserves the right, in its sole discretion, to isolate or disconnect its Facility from the Company System if it believes an Abnormal Condition may cause damage to its Facility.

#### 4.12 Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy between Generating Company's Facility and Company's Transmission System. Generating Company must either purchase this service from Company or make arrangements with the appropriate customer(s) (e.g., its power marketer(s) or customers(s)), for the assumption of responsibility for this service. Charges for Energy Imbalance Service are calculated pursuant to Company's OATT, unless otherwise specified in an attachment hereto.

#### 4.13 Compliance with NERC and ECAR Standards

The Parties agree that the implementation of this Agreement shall comply with all material requirements of the manuals, standards, criteria and guidelines of NERC and ECAR, or any successor agency assuming or charged with similar responsibilities related to the operation and reliability of the North American electric interconnected transmission grid, and to operate, or cause to be operated, their respective facilities in accordance with such manuals, standards, criteria or guidelines. To the extent that this Agreement does not specifically address or provide the mechanisms necessary to comply with such NERC or ECAR manuals, standards, criteria or guidelines, the Parties hereby agree that each Parties shall provide to the other Party all such information as may reasonably be required for the other Party to comply with such manuals, standards, criteria or guidelines

#### 4.14 Interconnected Operation Services

Company has developed its system to be capable of providing the interconnected operation services required in the AEP Control Area under reasonably anticipated operating conditions, including the capability to provide the Ancillary Services as defined in the OATT, that Company, as a Transmission Provider, is required to provide under its OATT. If Company requests interconnected operation services from Generating Company, which services include but are not limited to the provision or curtailment of real or reactive power, VAR support, and other Ancillary Services. Company will compensate Generating Company pursuant to mutually agreed terms, or pursuant to any applicable FERC-approved tariff filed by Generating Company.

#### 4.15 Voltage Level and Location of Interconnection

All Electricity delivered by the Facility to Company shall be delivered at the Interconnection Point specified in Appendix A, at a nominal voltage of 138 kilovolts.

#### 4.16 Metering

(a) Electricity supplied and delivered under this Agreement shall be measured by suitable Metering Equipment provided, owned, and maintained by the Company at the metering point(s) as set forth in Appendix C, consisting of a minimum of a primary metering system and a duplicate, back-up metering system.

(b) Suitable metering and telemetering equipment at the metering point, as provided under subsection (a) above, shall include potential and current sources, electric meters, and such

other equipment as may be needed to provide records in the agreed upon engineering units, for each direction of flow, in accordance with the following specifications:

- (i) A continuous, accumulating record of wathours and varhours shall be provided by means of the registers on the meters;
  - (ii) A continuous signal of analog watts and vars shall be telemetered;
  - (iii) An accumulating record of the wathours for each clock hour shall be telemetered. All metered values provided to the Parties shall originate from common metering equipment. The wathour pulse value shall be sufficient to resolve full generator output and minimum in-flows of auxiliary power. An hourly freeze pulse shall be provided by Company;
  - (iv) The timing of the digital telemetry freeze pulse, and of the calendar-clock in the data recorder where used, shall be synchronized to within 1/2 second of Universal Coordinated Time;
  - (v) Metering at locations different from the Interconnection Point shall be compensated for losses to the Interconnection Point if requested by either Party;
  - (vi) For the purpose of checking the performance of the Metering Equipment installed by any Party, the other Party may install check metering equipment. Check metering equipment shall be owned and maintained by the Party requesting the equipment;
  - (vii) Upon termination of this Agreement, the Party owning Metering Equipment on the other Party's property shall remove, within one year, the Metering Equipment from the premises of the other Party; and
  - (viii) Company shall specify reasonable communications protocols for the telemetry; Generating Company shall have the same right to all meter and telemetry data as the Company, at Generating Company's cost, on a contemporaneous basis.
- (c) The Metering Equipment shall be tested at least once every two (2) years by the Company, unless the Parties agree to test more often. Either Party may request a special test of meters, but such party shall bear the cost of such testing unless an inaccuracy shall be disclosed exceeding two percent (2%), in which case Company shall be responsible for the costs of special testing. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any reading, testing, adjustment, or calibration of the meters.
- (i) The meters, test switches and wiring termination equipment shall be sealed, and the seals shall be broken only when the meters are to be tested or adjusted.
  - (ii) If, at any test of Metering Equipment, an inaccuracy shall be disclosed exceeding two percent (2%), the account between the Parties for service theretofore delivered shall be adjusted to correct for the inaccuracy disclosed

over the shorter of the following two periods: (1) for the prior thirty (30) calendar days immediately preceding the day of the test, or (2) for the period that such inaccuracy may reasonably be determined to have existed. Before being placed back in service, the Metering Equipment shall be recalibrated such that the accuracy is within +/- three tenths of one percent (0.3%) to conform to ANSI Standard Requirements for Revenue Metering Equipment.

(iii) Should the metering equipment, as provided for under (b) above, at any time fail to register, the Electricity delivered shall be determined from the best available data including check metering.

(d) Unless otherwise agreed to by the Parties, the accuracy of the Metering Equipment shall be +/- three tenths of one percent (0.3%) or better to conform to ANSI Standard Requirements for Revenue Metering Equipment.

(e) Generating Company will electronically provide the real time status of station switching equipment (i.e., circuit breakers, motor operated air break switches, etc.) and real time analog measurements of electrical parameters including individual generator watt and var output, bus voltages and line/transformer watt and var flows to Company's control center or successor in function. Company shall specify reasonable communications protocol for this telemetry.

#### 4.17 Voltage and Current Unbalance

All three-phase generation by Generating Company's Facility shall produce balanced 60 Hz voltages. Voltage unbalance attributable to the Generating Company's Facility shall not exceed 1.0% measured at the Interconnection Point. Voltage unbalance is defined as the maximum phase deviation from average as specified in ANSI C84.1, "American National Standard for Electric Power Systems and Equipment – Voltage Ratings, 60 Hertz." Similarly, phase current unbalance attributable to the Generating Company's Facility shall not exceed that which would exist with balanced equipment in service, measured at the Interconnection Point.

### ARTICLE 5. INTERCONNECTION COSTS AND BILLING

#### 5.1 Interconnection Construction Completion and Cost

(a) At the time Generating Company executes and returns this Agreement to Company, Generating Company shall also provide Company with a letter of credit, from a reasonably bank acceptable to Company, or other form of security reasonably acceptable to Company that (i) names Company as beneficiary and (ii) is in an amount equivalent to the estimated costs determined by Company of the new Interconnection Facilities and System Upgrades which Company is required to install, less the amount of any construction deposits provided by Generating Company in accordance with Section 3.7(d). Such credit support shall specify a reasonable expiration date, and



the maximum amount available to be drawn under any letter of credit shall reduce on a monthly basis in accordance with the monthly payment schedule set forth in Appendix E

(b) If any event occurs that will materially affect the time for completion of the Interconnection Facilities or System Upgrades, or the ability to complete them, the Company shall promptly notify Generating Company. In such circumstances, the Company shall within ten (10) Business Days of notifying the Generating Company of such delays, convene a technical meeting with the Generating Company to evaluate the alternatives available to the Generating Company.

The Company also shall make available to the Generating Company studies and work papers related to the delay, including all information that is in the possession of the Company that is reasonably needed by the Generating Company to evaluate any alternatives.

(c) While the Company agrees to provide Generating Company with its best estimate of the cost of Company's Direct Assignment Facilities described in Appendix A, such estimate shall not be binding. Generating Company will retain the right to approve any significant deviation in the scope of the work shown in Appendix A if such deviations would result in an estimated aggregate increase of ten percent (10 %) over the cost shown in Appendix E. The actual cost of the Direct Assignment Facilities shall be incurred in accordance with Good Utility Practice.

(d) Generating Company shall have the right to receive such cost information as is reasonably necessary to verify the cost of the Company Interconnection Facilities and System Upgrades and that such cost was incurred in accordance with Good Utility Practice. Generating Company shall have the right to audit the Company's accounts and records pertaining to this Agreement, at the offices where such accounts and records are maintained, provided proper notice is given prior to any audit, and provided further that the audit will be limited to those portions of such accounts and records that relate to services provided under this Agreement.

(e) Within a timely manner after completion of the construction of the Company Interconnection Facilities and System Upgrades, Company shall provide an invoice of the final cost of the Company Interconnection Facilities and System Upgrades and the net amount due from Generating Company allowing for the monthly payments made by Generating Company pursuant to Section 5.3(a). Within twenty (20) Business Days after receipt of such invoice, Generating Company shall reimburse Company for the amount of such invoice. To the extent that the estimated costs already paid by Generating Company exceed the final, actual costs that Generating Company is obligated to pay hereunder, the Company shall refund to Generating Company an amount equal to the difference within thirty (30) calendar days of the issuance of the invoice of the final cost.

(f) If Generating Company suspends the performance of the work by the Company pursuant to Section 3.7(d), Generating Company agrees to pay Company carrying charges accrued daily at the then current prime interest rate (the base corporate loan interest rate) published in the Money and Investing section of the Wall Street Journal on the day Generating Company gives notice of the suspension, or, if no longer so published, in any mutually agreeable publication, plus 2% per annum on all unreimbursed expenditures irrevocably committed to or actually made by Company related to the performance of the work up to the time the suspension was requested. In the event Generating Company suspends such work and has not requested Company to recommence such work required hereunder on or before the 365th day after such requested suspension, this Agreement shall be deemed terminated. If this Agreement is deemed terminated as provided herein, the Generating

Company shall be responsible only for costs in accordance with Section 3.7(d). Any non-returnable equipment that has not already been installed by Company shall become the property of Generating Company "as is" upon payment of Company's costs as provided for in Section 3.7(d).

(g) In accordance with Sections 3.7 and 3.15, Generating Company shall be responsible for the costs reasonably incurred by Company to establish the Interconnection, to test the Facility and Interconnection Facilities, maintain the Interconnection Facilities, and to perform switching which is beyond the routine switching performed for the mutual benefit of the Parties.

(h) The Parties agree that Generating Company Interconnection Facilities were not jointly planned with the Company System and that Generating Company Interconnection Facilities are not integrated into the planning or operations of Company System to serve Company's customers or those customers of any other AEP Operating Company.

## 5.2 Generating Company Reimbursement for Taxes

(a) The Parties intend that all costs paid by Generating Company pursuant to Section 3.7 (a) and (b) hereof ("Company Construction Costs") shall be non-taxable contributions to capital under Section 118(a) of the Internal Revenue Code of 1986 as amended (the "Code") and the principles of Notice 88-129, and shall not be taxable as contributions in aid of construction under Section 118(b) of the Code.

(b) Notwithstanding Section 5.2(a), in the event Federal or state income taxes are imposed upon Company with respect to any Company Construction Costs, Generating Company agrees to reimburse Company for the effect of such taxes, including any appropriate gross up for income tax plus any penalty imposed as a result of the treatment of the costs paid by Generating company as specified in Section 5.2 (a), computed in accordance with the method set forth in Ozark Gas Transmission Corp., 56 FERC ¶ 61,349 (1991), using a discount rate equal to 9.33%, except where such penalty was accrued due to non-payment of taxes by Company where Generating Company timely reimbursed Company for the taxes so incurred, plus any interest charged to Company by the IRS or a state, as a result of the treatment of the costs paid by Generating Company as specified in Section 5.2(a). Generating Company shall not reimburse Company for penalties imposed due to tax reporting positions unrelated to Company Construction Costs, even if the amount of the penalty is affected by the tax reporting position described in Section 5.2(a).

(c) Generating Company shall have the right to seek, at its own expense and on behalf of Company, a Private Letter Ruling (including, if applicable, a Technical Advice Memorandum) from the Internal Revenue Service as to whether any of the sums paid by the Generating Company to Company under the terms of this Agreement are subject to federal income taxation. To the extent any such Private Letter Ruling concludes that such sums are not taxable to Company, Company shall immediately refund to Generating Company all amounts that Generating Company may have previously advanced to Company for such taxes, penalties, and interest under this Section 5.2 plus interest from the date of payment by Generating Company through the date of refund by Company. The interest due to Generating Company for the period of time after the date that funds are advanced to Company shall be computed using the interest

rates in effect for the appropriate periods as determined under Section 6621(a)(1) of the Code and shall be payable regardless of whether Company received interest from the Internal Revenue Service upon resolution of the tax issue involving the treatment of the costs paid by Generating Company as specified in Section 5.2(a). The principles of this Section 5.2(c) shall also apply if the tax issue involving the treatment of the costs paid by Generating Company as specified in Section 5.2(a) is resolved by litigation or other administrative proceeding.

(d) Generating Company has the right to require Company, at Generating Company's expense, to contest, appeal, or seek abatement of any taxes asserted or assessed against Company for which Generating Company may be required to reimburse Company under this Agreement. Company will promptly notify Generating Company, in writing, of any assertion of or proposal to assess such taxes. No payment shall be payable by Generating Company to Company for such taxes until such taxes are assessed by a final, non-appealable order by a court or agency of competent jurisdiction, unless such payment is a prerequisite to an appeal or abatement. Generating Company shall be entitled to participate in any appeal or abatement process contemplated by this Section 5.2(c) so long as and to the extent that Generating Company's involvement in said process does not unduly hinder or prejudice Company's ability to effectively appeal or seek abatement of such taxes; provided, however, that Generating Company shall not be entitled to obtain any tax return information of the Company other than that pertaining to payments received by the Company from the Generating Company pursuant to this Agreement, and any company tax return information Generating Company may obtain shall be regarded as confidential. Generating Company shall be responsible for any interest and, in accordance with Section 5.2(b), penalty charged to Company by the IRS or a state, as a result of the treatment of the costs paid by Generating Company as specified in Section 5.2(a).

(f) In the event a written claim for Federal or state income taxes is made to Company with respect to any Company Construction Costs because these were deemed taxable, the Company shall provide Generating Company written notice of the amount of the claim for taxes as soon as practicable (but in no event more than ten (10) calendar days) after its receipt, and shall furnish Generating Company with copies of such claim for Company Construction Cost taxes and all other writings received from the Federal or state taxing authority to the extent relating to such claim. Company shall not pay such claim for Company Construction Cost taxes until at least thirty (30) calendar days after providing Generating Company such written notice unless Company is required to do so by law or regulation and in the written notice described herein, the Company has notified Generating Company of such requirement.

### 5.3 Invoices and Payments

(a) Company shall render to Generating Company monthly statements by regular mail, facsimile or other acceptable means conforming to the provisions of Article 7. Such statement shall set forth in reasonable detail any costs incurred by Company or other charges or amounts payable by Generating Company under the terms of this Agreement for the period covered thereby in connection with the completion of the Company Interconnection Facilities and System Upgrades.

Generating Company shall make payment of the amount shown to be due to Company by wire transfer to an account specified by Company not later than the twentieth (20th) calendar day after receipt of the statement, unless such day is not a Business Day, in which case Generating Company

shall make payment on the next Business Day. All such payments shall be deemed to be made when said wire transfer is received by Company. Overdue payments shall accrue interest daily at the then current prime interest rate (the base corporate loan interest rate) published in the Money and Investing section of the Wall Street Journal as of the due date, or, if no longer so published, in any mutually agreeable publication, plus 2% per annum, from the due date of such unpaid amount until the date paid.

(b) In the event the Generating Company fails, for any reason other than a billing dispute as described below, to make payment to the Company on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Company notifies the Generating Company to cure such failure, an Event of Default by the Generating Company shall be deemed to exist. In the event of a billing dispute between the Company and the Generating Company, the Company will proceed to perform its responsibilities under this Agreement as long as the Generating Company (i) continues to make all payments not in dispute, (ii) has in effect a Letter of Credit to cover construction work for Company Interconnection and System upgrades pursuant to Appendix A or (iii) upon request of Company, pays into an independent escrow account the portion of any invoice for post-operation services in dispute, pending resolution of such dispute.

#### 5.4 Adjustments

In the event adjustments or corrections to monthly statements are required as a result of errors in computation or billing, Company shall promptly recompute amounts due hereunder and correct any errors in such statements. If the total amount, as recomputed, due from Generating Company is less than the total amount due as previously computed, and payment of the previously computed amount has been made, the difference shall be paid to Generating Company within twenty (20) calendar days after correction of the erroneous invoice(s), together with interest calculated in accordance with the methodology specified in Section 5.3; if the total amount, as recomputed, due from Generating Company is more than the total amount due as previously computed, and payment of the previously computed amount has been made, the difference shall be invoiced to Generating Company according the terms of Section 5.3; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of two (2) years from the rendition thereof; and provided further that this Article 5 will survive any termination of the Agreement for a period of two (2) years from the date of such termination for the purpose of such statement and payment objections.

#### 5.5 Payment Not a Waiver

Payment of invoices by Generating Company will not constitute a waiver of any right or claims Generating Company may have under this Agreement or under law.

### ARTICLE 6. DEFAULTS AND REMEDIES

#### 6.1 Events of Default and Termination

It shall be an "Event of Default" in respect of a Party under this Agreement, if a Party shall fail in any material respect to comply with, observe or perform, or default in the performance of, any material covenant or obligation under this Agreement or if any representation or warranty made herein by a Party shall fail to be true and correct in all material respects, and after receipt of written notice (including written notice to Project Finance Holder, in the event of a Generating Company failure or default), such failure shall continue for a period of thirty (30) calendar days, provided, however, if such failure is not capable of cure within thirty (30) calendar days, the Party in default shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within one hundred twenty (120) calendar days of receipt of such notice. The Project Finance Holder will have the right, but not the obligation, to cure any default by Generating Company.

If an Event of Default shall occur and continue for more than one hundred twenty (120) calendar days from the date the notice of default is received, the non-defaulting Party may, by notice and subject to FERC approval, terminate this Agreement as of the date such later notice is received.

If the non-defaulting Party is Company, Company may at its election, upon receiving final FERC approval of the termination of this Agreement, open Generating Company's Interconnection with the Company Transmission System at the Interconnection Point. In addition to the rights and remedies described in this Agreement, the non-defaulting Party may exercise, at its election, any right or remedy it may have at law or in equity, including but not limited to compensation for monetary damages, injunctive relief and specific performance.

## ARTICLE 7. NOTICES AND REPRESENTATIVES OF THE PARTIES

### 7.1 Notices

Any notice, demand or request required or authorized by this Agreement to be given by one Party to the other Party shall be in writing. It shall either be personally delivered, transmitted by electronic mail, telecopy or facsimile equipment (with receipt verbally and electronically confirmed), sent by overnight courier or mailed, postage prepaid, return receipt requested, to the other Party at the address designated pursuant to Article 7. Any such notice, demand or request so delivered or mailed shall be deemed to be given when so delivered or three (3) Business Days after mailed.

### 7.2 Addresses of the Parties

(a) Notices and other communications by Generating Company to Company shall be addressed to:

Vice President, Transmission Asset Management  
American Electric Power Service Corporation  
825 Tech Center Drive  
Gahanna, OH 43230  
Telephone: 614-552-1700  
Facsimile: 614-552-2602

and,

Director, Transmission & Interconnection Services  
American Electric Power Service Corporation  
1 Riverside Plaza  
Columbus, OH 43215  
Telephone: 614-223-2764  
Facsimile: 614-223-1555

(b) Notices and other communications by Company to Generating Company shall be addressed to:

Director Project Management  
Kentucky Mountain Power, LLC  
2810 Lexington Financial Center  
250 West Main Street  
Lexington, KY 40507

and,

Arthur Thomas  
Kentucky Mountain Power, LLC  
2810 Lexington Financial Center  
250 West Main Street  
Lexington, KY 40507

(c) Either Party may change its address by written notice to the other in accordance with this Article 7.

(d) Upon written request by Generating Company, Company shall provide to Generating Company's designated Project Finance Holders, in the same manner provided by Company to Generating Company under Article 7.1, copies of any and all written notices, demands or requests required or authorized by this Agreement to be given by Company to Generating Company.

## **ARTICLE 8. INSURANCE, INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **8.1 Insurance**

(a) During the term of this Agreement, each Party shall procure, pay premiums for and maintain in full force and effect, with it as named insured and the other Party and its employees, agents and Affiliates as additional insureds, comprehensive general liability insurance, including coverage for (1) products and completed operations, (2) broad form contractual liability, and (3) explosion, collapse and underground damage exclusion deletion, all with limits of not less than One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate, for bodily injury and property damage. Each Party shall maintain builder's risk or such other insurance

to cover the loss of all or a portion of the Company Interconnection Facilities or Generating Company Interconnection Facilities, as applicable, during the construction of the same in an amount equal to the replacement value of said Facilities. Each Party shall also be responsible for ensuring applicable worker's compensation insurance, as required by the Commonwealth of Kentucky, is in place for all of their respective employees, agents and others performing work set forth in this Agreement.

(b) Each insurance policy provided by a Party, except worker's compensation, shall include the following:

- (i) At least thirty (30) calendar days prior written notice of cancellation, termination, or material change to the other Party, except for non-payment of premium which shall be ten (10) calendar days advanced written notice; and
- (ii) A waiver of subrogation in favor of the other Party, its Affiliates and their officers, directors, agents, subcontractors and employees.

(c) Evidence of insurance for all coverages specified herein shall be provided to the other Party prior to the commencement of construction of any Company Interconnection Facilities and System Upgrades. During the term of the Agreement, each Party agrees to provide the other, upon request, with certificates of the insurance evidencing the coverage described in this Article 8. All insurance coverage required under this Agreement shall be provided by insurance companies mutually agreed upon by the Parties.

(d) The insurance coverages described above shall be primary with respect to any coverage available to the other Party and shall not be deemed to limit the insured Party's liability under this Agreement.

(e) Either Party may provide adequate self-insurance in lieu of the requirements set forth in this Section 8.1, subject to the approval of the other party, such approval not to be unreasonably withheld.

## 8.2 Indemnification

(a) Generating Company hereby agrees to indemnify and hold harmless Company, its directors, officers, agents, representatives, and employees against and from any and all claims, demands, causes of action, losses and liabilities (including any cost and expense of litigation and reasonable attorneys fees incurred by Company in defending any action, suit or proceeding, provided that Company afforded Generating Company a reasonable opportunity in such action, suit or proceeding to conduct Company's defense and to approve any settlement agreements) for or on account of bodily injury to, or the death of, persons, or for damage to, or destruction of, property belonging to Company or others, to the extent that such injury or harm is caused by or arises from negligent acts or willful misconduct of Generating Company associated with (i) facilities, property and equipment owned or controlled by Generating Company, or Generating Company's operation and maintenance thereof; (ii) the delivery of electricity to the Interconnection Point by Generating Company or by any entity to whom Generating Company sells Electricity from the Facility; (iii) the use or presence of electricity on Generating Company's side of the Interconnection Point, unless such

electricity originated from Company; or (iv) Company's exercise of its rights under Section 6.1 of this Agreement; provided however, the provisions of this section shall not apply to the extent that such claims, demands, causes of action, losses and liabilities are attributable to the negligence, fault, or willful misconduct of Company or its Affiliates, and their directors, officers, employees, agents, or representatives.

(b) Company hereby agrees to indemnify and hold harmless Generating Company, its officers, directors, Affiliates, agents, representatives, and employees against and from any and all claims, demands, causes of action, losses and liabilities (including any cost and expense of litigation and reasonable attorneys fees incurred by Generating Company in defending any action, suit or proceeding, provided that Generating Company afforded Company a reasonable opportunity in such action, suit or proceeding to conduct Generating Company's defense and to approve any settlement agreements) for or on account of bodily injury to, or the death of, persons, or for damage to, or destruction of, property belonging to Generating Company or others, to the extent that such injury or harm is caused by or arises from negligent acts or willful misconduct of Company associated with (i) facilities, property and equipment owned or controlled by Company, or Company's operation and maintenance thereof; (ii) the transmission and delivery of electricity from the Interconnection Point by Company; (iii) the use, or presence of electricity on Company's side of the Interconnection Point, unless such electricity originated from Generating Company; or (iv) Generating Company's exercise of its rights under Article 6.1 of this Agreement; provided however, the provisions of this section shall not apply to the extent that such claims, demands, causes of action, losses and liabilities are attributable to the negligence, fault, or willful misconduct of Generating Company or its Affiliates, and their directors, officers, employees, agents, or representatives.

(c) Except to the extent required by Sections 8.2(a) and 8.2(b) of this Agreement, in no event shall either Party, its parent corporation, subsidiaries or affiliates, partners in Generating Company, their officers, directors, and their affiliates, with respect to any claim arising out of this agreement, whether based on contract, tort (including the negligence of such party, whether sole or joint and concurrent with the negligence of other Party or others, gross negligence, willful misconduct, and strict liability) or otherwise, be liable for any indirect, special, incidental, punitive, exemplary, or consequential damages.

## ARTICLE 9. FORCE MAJEURE

### 9.1 Effect of Force Majeure

(a) Except for the obligation to make any payments under this Agreement, the Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that (i) the non-performing Party, as promptly as practicable after its knowledge of the occurrence of the Force Majeure, but in no event later than fourteen (14) days thereafter, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; (iii) the non-performing Party uses all reasonable efforts to remedy its inability to perform; (iv) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it gives prompt



written notification thereof to the other Party; and (v) neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such dispute.

(b) In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

## **ARTICLE 10. COMPLIANCE WITH LAW; PERMITS; APPROVALS**

### **10.1 Applicable Laws and Regulations**

This Agreement and all rights, obligations, and performances of the Parties hereunder are subject to Applicable Laws and Regulations. Notwithstanding the foregoing, each Party shall have the right at its sole expense to contest the application of any Applicable Laws and Regulations to such Party before the appropriate authorities.

### **10.2 Approvals, Permits, Etc.**

Each Party shall give all required notices, and shall use its best efforts to procure and maintain all necessary governmental approvals, permits, licenses and inspections necessary for its performance of this Agreement, and shall pay all charges and fees in connection therewith.

## **ARTICLE 11. DISPUTE RESOLUTION**

### **11.1 Internal Dispute Resolution Procedures**

Each Party shall appoint a representative who shall be responsible for administering this Agreement on behalf of such Party and for representing the Party's interests in disagreements. Any dispute that is not resolved between the Parties' representatives within ten (10) Business Days of when the disagreement is first raised by written notice by either Party to the other Party shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within ten (10) Business Days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to Section 11.1 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 State Rules of Evidence.

### **11.2 Continued Performance**

The Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute including a dispute regarding the effectiveness or the purported termination of this Agreement.

### 11.3 Equitable Remedies

Nothing herein shall prevent either Party from pursuing or seeking any equitable remedy available to it under applicable law, at any time, in any court of competent jurisdiction.

### 11.4 Arbitration

(a) If any claim or dispute arising hereunder is not resolved within sixty (60) calendar days after notice thereof to the other Party, either Party may demand in writing the submission of the dispute to binding arbitration in Cincinnati, Ohio or some other mutually agreed upon location and shall be heard by one mutually agreed-to neutral arbitrator under the American Arbitration Association's Commercial Arbitration Rules ("Arbitration Rules"); provided, however, that, in the event of a conflict between the Arbitration Rules and the terms and provisions of this Article 11, the terms and provisions of this Article 11 shall govern. If the Parties fail to agree upon a single arbitrator, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel.

The two arbitrators so chosen shall select a third arbitrator to chair the arbitration panel. Each Party shall be responsible for its own costs incurred during the arbitration process and for one half the costs of the single arbitrator jointly chosen by the Parties, or in the alternative the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen.

(b) Unless otherwise agreed, the arbitration process shall be expeditiously concluded no later than four (4) months after the date that it is initiated and the award of the arbitrator shall be accompanied by a reasoned opinion if requested by either Party. The arbitrator(s) shall have no authority to award punitive or treble damages or any damages inconsistent with the terms of this Agreement. The arbitrator(s) shall have the authority only to interpret and apply the terms and conditions of this Agreement and shall have no power to modify or change any term or condition.

The arbitrator(s) shall be required to follow all applicable laws and regulations. The arbitration shall be conducted as a common law arbitration and the decision of the arbitrator(s) rendered in such a proceeding shall be final; provided, however, that such decision may be challenged solely on grounds that the conduct of the arbitrator(s) or the decision itself violates the standards set forth in the Federal Arbitration Act. Either Party may file for a judgment on the arbitration decision in any court having jurisdiction. The decision must also be filed at the FERC if it affects FERC-jurisdictional rates, terms, and conditions of service or facilities.

### 11.5 Procedures

(a) Subject to Section 13.16, the procedures for the resolution of disputes set forth in this Agreement shall be the sole and exclusive procedures for the resolution of disputes; provided, however, that a Party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties will continue to participate in good faith in the procedures specified herein. All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified herein are pending. The Parties will take such action, if any, required to effectuate such tolling. Each Party is required to continue to perform its undisputed obligations under this Agreement pending final resolution of a dispute.

(b) Either Party may file a petition or complaint with the FERC with respect to any claim or dispute over which the FERC has jurisdiction; provided, however, that a Party may not file a petition or complaint with the FERC with respect to an issue that it has submitted to binding arbitration pursuant to this Article 11. A Party may file a petition or complaint with FERC with respect to, or related or to, an issue that the other Party has submitted to binding arbitration no later than ten (10) calendar days after the issue has been submitted to arbitration and all Parties have received notice of the arbitration, in which case the arbitration shall be terminated or held in abeyance until such time as FERC acts. Nothing herein precludes the Party that sought arbitration from urging FERC to dismiss that matter on the grounds that it is more appropriately resolved through arbitration.

#### 11.6 Confidentiality

The existence, contents, or results of any arbitration proceeding conducted under this Article 11 may not be disclosed without the prior written consent of both Parties; provided, however, that either Party may (a) make such disclosures as may be necessary to (1) satisfy regulatory obligations to any regulatory authority having jurisdiction, or (2) seek or obtain from a court of competent jurisdiction judgment on, confirmation, or vacation of an arbitration award; (b) inform its lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality; and (c) consult with experts as required in connection with the arbitration proceeding under pledge of confidentiality.

If either Party seeks a preliminary injunctive relief from any court to preserve the status quo or avoid irreparable harm pending arbitration, the Parties agree to use commercially reasonable efforts to keep the court proceedings confidential, to the maximum extent permitted by law.

### ARTICLE 12. REPRESENTATIONS AND WARRANTIES

#### 12.1 Generating Company's Representations and Warranties

Generating Company makes the following representations and warranties:

(a) Generating Company is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the requisite power and authority to own its properties, to carry on its business as now being conducted, and to enter into this Agreement and the transactions contemplated herein and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and is duly authorized to execute and deliver this Agreement and consummate the transactions contemplated herein.

(b) Generating Company is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of, and compliance with, the provisions of this Agreement will not conflict with, or constitute a breach of, or a default under, or require any consent, license or approval that has not been obtained pursuant to, any of the terms, conditions or provisions of any Applicable Laws and Regulations (as of the time it is required to be obtained to permit timely performance), any order, judgment, writ, injunction, decree, determination, award or

other instrument or legal requirement of any Governmental Authority, the certificate of formation of Generating Company or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Generating Company is a party or by which it or any of its property is bound.

(c) Generating Company has taken all such actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby.

(d) This Agreement is a legal, valid and binding obligation of Generating Company enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

## 12.2 Company's Representations and Warranties

Company makes the following representation and warranties:

(a) Company is a corporation duly organized, validly existing under the laws of the Commonwealth of Kentucky, is in good standing under its certificate of incorporation and the laws of the Commonwealth of Kentucky and has the requisite power and authority to own its properties, to carry on its business as now being conducted, and to enter into this Agreement and the transactions contemplated herein and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and is duly authorized to execute and deliver this Agreement and consummate the transactions contemplated herein.

(b) Company is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of, and compliance with, the provisions of this Agreement will not conflict with, or constitute a breach of, or a default under, or, except as set forth in Section 2.3 above, require any consent, license or approval that has not been obtained pursuant, to any of the terms, conditions or provisions of any Applicable Laws and Regulations, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any Governmental Authority, the certificate of incorporation and by-laws of Company or any contractual limitation, corporate restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Company is a party or by which it or any of its property is bound.

(c) Company has taken all such corporate actions as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby.

(d) This Agreement is a legal, valid and binding obligation of Company enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.