

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 27, 2004

To: Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER04-751-000

Re: Interconnection and Operating Agreement among Estill County Energy Partners,  
LLC, Midwest ISO, and Kentucky Utilities Company

Pursuant to authority delegated to the Director, Division of Tariffs and Market Development-Central, under 18 C.F.R. 375.307, your submittal in the above referenced docket is accepted for filing.

Under 18 C.F.R. 385.210, interventions are timely if made within the time prescribed by the Secretary. Under 18 C.F.R. 385.214, the filing of a timely motion to intervene makes the movant a party to the proceeding, if no answer in opposition is filed within fifteen days. The filing of a timely notice of intervention makes a State Commission a party to the proceeding.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. 385.713.

Sincerely,

Michael C. McLaughlin, Director  
Division of Tariffs and Market  
Development-Central

ORIGINAL

SALLY L. CLORE  
Contracts Administrator  
Direct Dial: 317-249-5716  
E-mail: sclore@midwestiso.org



MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

VIA FEDERAL EXPRESS

April 20, 2004

Secretary Magalie R. Salas  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: The Midwest Independent Transmission System Operator, Inc.  
FERC Docket No. ER04- 751 -000  
Filing of Interconnection and Operating Agreement

Dear Secretary Salas:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. §824d (2001), and Section 35.12 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. §35.12 (2003), the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") hereby respectfully submits an original and five (5) copies of an Interconnection and Operating Agreement ("Interconnection Agreement") among Estill County Energy Partners, LLC ("Generator"), the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") and Kentucky Utilities Company ("Transmission Owner").

#### I. OVERVIEW OF FILING

The Interconnection Agreement (attached hereto and located behind Tab 1) sets forth the terms and conditions of this Interconnection Agreement. The Midwest ISO has designated the Interconnection Agreement as Service Agreement No. 1371 under the Midwest ISO FERC Electric Tariff, Second Revised Vol. No. 1. This Interconnection Agreement provides for transmission credits in conformance with the Commission's policy as provided in Order Nos. 2003 and 2003-A.

FILED  
OFFICE OF THE  
SECRETARY  
2004 APR 21 A 11:16  
FEDERAL ENERGY  
REGULATORY COMMISSION

## **II. DOCUMENTS SUBMITTED IN THIS FILING**

The following documents are being submitted with this filing:

Tab 1 - Interconnection and Operating Agreement among Generator, the Midwest ISO and Transmission Owner.

Tab 2 - Pursuant to 18 C.F.R. §35.8(b) (2003), also included in this filing is Form of Notice suitable for publication in the Federal Register. A copy of the Form of Notice is also being provided on a separately marked diskette.

## **III. PROPOSED EFFECTIVE DATE**

The Midwest ISO respectfully requests that the Commission waive its sixty-(60) day notice requirement as required by Section 35.3(a) of the Commission's regulations, 18 C.F.R. 35.3(a) (2003) and make this Interconnection Agreement effective as of April 8, 2004. The Interconnection Agreement has been filed with the Commission within thirty (30) days of service commencing.

## **IV. NOTICE AND SERVICE**

Please place the following persons on the official service list in this proceeding:

Stephen G. Kozey  
Lori A. Spence \*  
Sally L. Clore \*  
Midwest Independent Transmission  
System Operator, Inc.  
701 City Center Drive  
Carmel, IN 46032  
Telephone (317) 249-5400

Project Manager  
Estill County Energy Partners, LLC  
6000 Sulphur Well Road  
Lexington, KY 40509

Director, System Transmission  
LG&E Energy Services Company  
119 North 3<sup>rd</sup> Street  
Louisville, KY 40202

\* Persons authorized to receive service

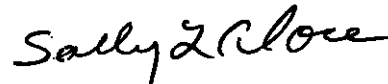
Secretary Magalie R. Salas  
April 20, 2004  
Page 3

The Midwest ISO has served a copy of this filing on the applicable parties by placing a copy of the same in the United States mail, first-class postage prepaid.

**V. CONCLUSION**

For all of the foregoing reasons, the Midwest ISO respectfully requests that the Commission accept for filing this Interconnection Agreement and grant the proposed effective date of April 8, 2004.

Respectfully Submitted,



Sally L. Clore  
Contracts Administrator

**Enclosures**

cc: Gerard B. Mack, Estill County Energy Partners, LLC  
Mark S. Johnson, LG&E Energy Services Company

Project G243 Queue 37384-01

**INTERCONNECTION AND OPERATING AGREEMENT**

entered into by the

**Midwest Independent Transmission System Operator, Inc.**

**Kentucky Utilities Company**

and

**Estill County Energy Partners, LLC**

**MISO Contract Designation No.: IC KU/ECEP.G243**

MISO Project G243 Queue Number 37384-01

INTERCONNECTION AND OPERATING AGREEMENT

entered into by the

Midwest Independent Transmission System Operator, Inc.,

Kentucky Utilities Company,

and

Estill County Energy Partners ,LLC

entered into on the 08 day of April, 2004

## INTERCONNECTION AND OPERATING AGREEMENT

**THIS AGREEMENT** is made and entered into this 08 day of April 2004 by and among **Estill County Energy Partners, LLC** existing under the laws of the State of Kentucky, sometimes hereinafter referred to as “Generator,” the **Midwest Independent Transmission System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware, sometimes hereinafter referred to as the “Transmission Provider,” and **Kentucky Utilities Company**, existing under the laws of the State of Kentucky, sometimes hereinafter referred to as “Transmission Owner.” Generator, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

### RECITALS

**WHEREAS**, Generator intends to own and operate the Facility identified in Appendix B; and,

**WHEREAS**, the Facility is located adjacent to the Transmission System owned by Transmission Owner and subject to functional control of the Transmission Provider; and,

**WHEREAS**, Generator has requested, and the Transmission Provider and Transmission Owner have agreed to enter into this Interconnection and Operating Agreement with Generator for the purposes of interconnecting the Facility with the Transmission System;

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

### ARTICLE 1 DEFINITIONS

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

- 1.1 “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, their respective facilities and/or the respective services they provide.
- 1.2 “Applicable Reliability Council” shall mean any of the regional reliability councils of NERC in which the Facility is located.

- 1.3** “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Section 17.1.
- 1.4** “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- 1.5** “Confidential Information” shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as Confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, and shall include, without limitation, all information relating to a Party’s technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement. Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, whether provided electronically or in hard copy, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.
- 1.6** “Default” shall mean the failure of a Party in Breach of this Agreement to cure such Breach in accordance with the provisions of Article 17.
- 1.7** “Effective Date” shall mean the date on which this Agreement becomes effective in accordance with Section 2.1.
- 1.8** “Emergency Condition” shall mean a condition or situation (i) that in the judgment of any Party is imminently likely to endanger life or property; or (ii) that in the judgment of the Transmission Provider or Transmission Owner is imminently likely to cause a material adverse effect on the security of, or damage to the Transmission System or the electrical or transmission systems of others to which the Transmission System is directly or indirectly connected; or (iii) that in the judgment of Generator is imminently likely to cause damage to the Facility. System restoration and black start shall be considered Emergency Conditions. Any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not constitute an Emergency Condition, unless one of the enumerated conditions or situations identified in this definition also exists.
- 1.9** “Facility” shall mean Generator’s electric generating facility identified in the “as built” drawings provided to the Transmission Provider in accordance with Section 9.3 and in Appendix B, but shall not include Generator Interconnection Facilities.
- 1.10** “FERC” shall mean the Federal Energy Regulatory Commission, or its successor.



- 1.11** “Force Majeure” shall mean any cause beyond the control of the Party affected, including but not restricted to. acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome. No Party shall be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time. Nothing contained in this Agreement shall be construed to require a Party to settle any strike or labor dispute. Mere economic hardship of a Party does not constitute Force Majeure. A Force Majeure event does not include an act of negligence or intentional wrongdoing.
- 1.12** “Generator Interconnection Facilities” shall mean all facilities and equipment owned and/or controlled, operated and maintained by Generator on Generator’s side of the Point of Interconnection as identified in Appendix B, including any modifications, additions, or upgrades made to such facilities and equipment, that are necessary to physically and electrically interconnect the Facility to the Transmission System.
- 1.13** “Good Utility Practice” shall have the same meaning as assigned to such term in the Transmission Provider OATT.
- 1.14** “Governmental Authority” means any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, arbitrating body, or other governmental authority having jurisdiction over either Party.
- 1.15** “Hazardous Substances” shall mean any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law. For purposes of this Agreement, the term “Environmental Law” shall mean Federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety.

- 1.16** “Interconnection Facilities” shall mean the Transmission Owner Interconnection Facilities and the Generator Interconnection Facilities identified in Appendices A and B.
- 1.17** “Interconnection Guidelines” shall mean the technical guidelines identified in Appendix D.
- 1.18** “Interconnection Request” shall mean the information and other requirements prescribed by Attachment R-1 of the Transmission Provider OATT.
- 1.19** “Interconnection Service” shall mean the interconnection component of transmission service under the Transmission Provider OATT and the services provided by the Transmission Provider to interconnect the Facility with the Transmission System pursuant to the terms of this Agreement. Interconnection Service does not include the right to obtain the delivery component of transmission service on the Transmission System, which service shall be obtained in accordance with the provisions of the Transmission Provider OATT.
- 1.20** “Interconnection System Upgrades” shall mean the minimum necessary upgrades to the Transmission System that would not have been required but for an Interconnection Request, including (i) upgrades necessary to remove overloads and voltage criteria violations, and (ii) upgrades necessary to remedy short-circuit and/or stability problems resulting from the connection of the Facility to the Transmission System. Interconnection System Upgrades shall not include upgrades to the Transmission System that may be required to move power from the Point of Interconnection to load and shall not include Transmission Owner Interconnection Facilities. Interconnection System Upgrades are identified in Appendix A.
- 1.21** “Metering Equipment” shall mean all metering equipment installed at the metering points designated in Appendix A.
- 1.22** “NERC” shall mean the North American Electric Reliability Council, or its successor agency assuming or charged with similar responsibilities related to the operation and reliability of the North American electric interconnected transmission grid.
- 1.23** “Non-Breaching Party” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.24** “Operation Date” shall mean the day commencing at 00:01 hours on the day following the day during which all necessary Interconnection Facilities, any necessary Interconnection System Upgrades, and the Facility have been completed as required by this Agreement and energized in parallel operation with Transmission System as confirmed in a writing substantially in the form shown in Appendix C.

- 1.25** “Operating Guidelines” shall mean the operating guidelines identified in Appendix E.
- 1.26** “Point of Interconnection” shall mean the point or points, shown in Appendix A, where the Generator Interconnection Facilities interconnect with the Transmission Owner Interconnection Facilities.
- 1.27** “Prior Generator” shall mean any person or persons, other than Generator, who has entered into (i) an Interconnection and Operating Agreement with the Transmission Provider on or after the date on which the Transmission Provider commences to provide transmission service or (ii) a similar agreement with a Transmission Owner prior to the date on which the Transmission Provider commences to provide transmission service.
- 1.28** “Reasonable Efforts” shall mean, with respect to any action required to be made, attempted, or taken by a Party under this Agreement in the exercise of “Reasonable Efforts,” such efforts as are timely and consistent with Good Utility Practices that would be undertaken for the protection of its own interests under the conditions affecting such action, including but not limited to the amount of notice of the need to take such action and the duration and type of such action.
- 1.29** “Secondary Systems” shall mean control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers.
- 1.30** “Subsequent Generator” shall mean any person or persons, other than Generator, that enters into an Interconnection and Operating Agreement with the Transmission Provider on or after the date of this Agreement.
- 1.31** “Switching and Tagging Rules” shall mean the switching and tagging procedures of Transmission Owners and Generator, as set forth in Appendix E, and as they may be amended from time to time.
- 1.32** “System Protection Facilities” shall mean the equipment required to protect (i) the Transmission System, other delivery systems and/or other generating systems connected to the Transmission System from faults or other electrical disturbance occurring at the Facility, and (ii) the Facility from faults or other electrical system disturbance occurring on the Transmission System or on other delivery systems and/or other generating systems to which the Transmission System is directly or indirectly connected. System Protection Facilities shall include such protective and regulating devices as are identified in the Interconnection Guidelines or that are required by Applicable Law and Regulations or as are otherwise necessary to protect personnel and equipment and to minimize deleterious effects to the Transmission System arising from the Facility.

- 1.33** “Transmission Owner” shall have the same meaning as assigned to such term in the Transmission Provider OATT.
- 1.34** “Transmission Owner Interconnection Facilities” shall mean all facilities and equipment owned and/or controlled, operated and maintained by the Transmission Owner on the Transmission Owner’s side of the Point of Interconnection as identified in Appendix A, including any modifications, additions or upgrades made to such facilities and equipment, that are necessary to physically and electrically interconnect the Facility to the Transmission System. Transmission Owner Interconnection Facilities do not include Interconnection System Upgrades, which are separately identified in Appendix A.
- 1.35** “Transmission Provider OATT” shall mean the open access transmission tariff of the Transmission Provider, on file with FERC and in effect, as amended or superseded from time to time, under which transmission service is provided on the Transmission System.
- 1.36** “Transmission System” shall mean the facilities controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Transmission Provider OATT. The Transmission System includes facilities, the operational control of which has been transferred to the Transmission Provider subject to Commission approval under Section 203 of the Federal Power Act.

## **ARTICLE 2 TERM OF AGREEMENT**

- 2.1** **Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.
- 2.2** **Term.**
- 2.2.1** **General.** This Agreement shall become effective as provided in Section 2.1 and shall continue in full force and effect until (i) the Parties agree to mutually terminate this Agreement; (ii) the date on which the Facility permanently ceases commercial operations; (iii) earlier termination is permitted or provided for under this Agreement; or (iv) Generator terminates this Agreement after providing the Transmission Provider with written notice at least sixty (60) days prior to the proposed termination date, provided that Generator has no outstanding contractual obligations to the Transmission Provider or Transmission Owner under this Agreement. No termination of this

Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

**2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 17 and 18; provided, however, if an event described in part (c) of Section 17.1 has not occurred, and the Default does not pose a threat to the reliability of the Transmission System, neither the Transmission Provider nor the Transmission Owner may terminate this Agreement if Generator is the Breaching Party and Generator (i) has undertaken, in accordance with Section 17.3, to cure the Breach that lead to the Default and has failed to cure the Breach for reasons other than Generator's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) days allowed by Section 17.3, and (ii) compensates the Transmission Provider or the Transmission Owner within thirty (30) days for the amount of damage billed to Generator by the Transmission Provider or the Transmission Owner for any damages incurred by the Transmission Provider or the Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Section 17.1, and providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

**2.2.3 Material Adverse Change.** In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and the Transmission Provider shall file such amendments with FERC. If, within sixty (60) days after the occurrence of any event described in this Section 2.2.3, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 22 to resolve any disputes related thereto; and, the Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Generator shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is

unable to fully perform this Agreement due to the occurrence of an event described in this Section 2.2.3 and such inability is not based on economic reasons, such Party shall not be deemed to be in default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 22 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Section 2.2.3.

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

### **ARTICLE 3 INTERCONNECTION SERVICE**

- 3.1 Service.** Under this Agreement, the Transmission Provider shall provide Generator with Interconnection Service for the Facility for the term of this Agreement.
- 3.2 Scope of Service.** The Transmission Provider shall provide Interconnection Service for the Facility at the Point of Interconnection. In the event of an increase in the output of the Facility or other material change or modification to the configuration and/or operation of the Facility, the Parties shall negotiate appropriate revisions to this Agreement, including as necessary the specifications

or requirements set forth in the Appendices to this Agreement, necessary to permit the Transmission Provider to provide Interconnection Service to the Facility under this Agreement in a secure and reliable manner.

**3.2.1 Limitations on Scope.** Except as otherwise provided under this Agreement, neither Transmission Owner nor the Transmission Provider shall have any obligation under this Agreement (i) to pay Generator any wheeling or other charges for electric power and/or energy transferred through the Facility and/or the Generator Interconnection Facilities or for power or ancillary services provided by Generator; (ii) to make arrangements or pay under applicable tariffs for transmission and ancillary services associated with the delivery of electricity and ancillary electrical products produced by the Facility; (iii) to procure electricity and ancillary electrical products to satisfy Generator's station service or other requirements; or (iv) to make arrangements under applicable tariffs for transmission, losses, and ancillary services associated with the use of the Transmission System for the delivery of electricity and ancillary electrical products to the Facility.

**3.2.2 No Transmission Service.** Neither the Transmission Provider nor Transmission Owner make any representations to Generator regarding the availability of transmission service on the Transmission System, and Generator agrees that the availability of transmission service on the Transmission System may not be inferred or implied from the Transmission Provider's or Transmission Owner's execution of this Agreement. If Generator wishes to obtain transmission service on the Transmission System, Generator must request such service in accordance with the provisions of the Transmission Provider OATT.

**3.3 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 11.

**3.4 Third-Party Actions.** Generator 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 generating facilities located in the Control Areas of the Transmission Provider, and construction or acquisition and operation of any such facilities, and reservations by any such other persons of transmission service under the Transmission Provider OATT may adversely affect the availability of the delivery component of transmission service for the Facility's electric output.

Generator acknowledges and agrees that the Transmission Provider and Transmission Owner have no obligation under this Agreement to disclose to Generator any information with respect to third-party developments or circumstances, including the identity or existence of any such person or other facilities, except as otherwise provided under Article 4 and elsewhere in this Agreement. Generator, Transmission Owner, and the Transmission Provider make no guarantees to each other under this Agreement with respect to transmission service that is available under the Transmission Provider OATT or any other tariff under which transmission service may be available in the region.

- 3.5 Ancillary Services.** Until the existence of a suitable ancillary services market approved by FERC for use by the Transmission Provider, Generator is obligated to provide ancillary services, within its manufacturer's design limitations, to the Transmission Provider at rates, terms and conditions established by FERC; provided, however, that the failure to have any such rates shall not be a basis for Generator to refuse to provide such services. The Transmission Provider will select ancillary services from generators in a comparable manner so as to not unduly burden any one generator. This will apply on a case-by-case basis for each ancillary service. During the existence of an ancillary services market approved by FERC for use by the Transmission Provider, Generator specifically reserves unto itself, its successors and assigns, the right and option, but not the obligation, to provide ancillary services into an ancillary services market, whether or not such ancillary services are addressed in this Agreement. Ancillary services required to satisfy OATT requirements, either directly via contract or indirectly to satisfy self-provision requirements, shall be provided by Generator at the direction of the Transmission Provider.
- 3.6 Cost Sharing with Subsequent Generators.** Within the twelve (12)-month period after the date of this Agreement, the Transmission Provider shall notify Generator of any Interconnection and Operating Agreement entered into by the Transmission Provider after the date of this Agreement with a Subsequent Generator providing for Interconnection Service that, in the judgment of the Transmission Provider, may benefit from the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades installed and operation and maintenance expenses incurred pursuant to this Agreement. Within twenty-four (24) months after the date of this Agreement, but in no event later than twelve (12) months after termination of this Agreement, Generator may request the Transmission Provider to conduct a study, at Generator's expense, to determine whether the Subsequent Generator should share costs with Generator for the Transmission Owner Interconnection Facilities and/or Interconnection System Upgrades required to be installed pursuant to this Agreement, including Generator's obligation to reimburse Transmission Owner for actual operation and maintenance costs pursuant to Section 4.10, that are beneficial, or may be beneficial, to provide Interconnection Service to the Subsequent Generator. Cost sharing between Generator and the Subsequent Generator shall not be authorized under this Section 3.6 unless this Agreement and the Interconnection and



Operating Agreement of the Subsequent Generator were executed within one (1) year of one another. The Transmission Owner Interconnection Facilities and Interconnection System Upgrades, including Generator's obligation to reimburse Transmission Owner for actual operation and maintenance costs pursuant to Section 4.10, shall be considered beneficial to the provision of Interconnection Service to Generator as required by this Agreement and the Subsequent Generator when the provision of Interconnection Service to the Facility and each of the generating facilities of the Subsequent Generator, independent of the other, would have required the installation of the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades to receive Interconnection Service. If the study finds that the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades installed pursuant to this Agreement, including Generator's obligation to reimburse Transmission Owner for actual operation and maintenance costs pursuant to Section 4.10, are beneficial to the Interconnection Service provided to the Subsequent Generator, Generator shall be responsible for negotiating with the Subsequent Generator to arrive at an agreement between Generator and the Subsequent Generator that, unless otherwise agreed by Generator and the Subsequent Generator, provides for the sharing of costs in proportion to the maximum capability of the Facility and the generating facilities of the Subsequent Generator. The Transmission Provider and Transmission Owner shall not be parties to such agreement and shall not be responsible for the negotiation of such agreement. Nothing in such agreement shall be deemed to relieve Generator of any obligations under this Agreement or Subsequent Generator of any obligation under its Interconnection and Operating Agreement or similar agreement including, but not limited to, payment to the Transmission Owner for the cost of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades and reimbursement to Transmission Owner for actual operation and maintenance costs associated with the Transmission Owner Interconnection Facilities.

- 3.7 Cost Sharing with Prior Generators.** Generator acknowledges that a Prior Generator may have the right to request the Transmission Provider to conduct a study, at the Prior Generator's expense, to determine whether Generator should share costs with the Prior Generator for the Transmission Owner Interconnection Facilities and/or Interconnection System Upgrades installed or required to be installed pursuant to the Interconnection and Operating Agreement or similar agreement of the Prior Generator, including Prior Generator's obligation to reimburse Transmission Owners for actual operation and maintenance costs associated with the Transmission Owners Interconnection Facilities, that are beneficial, or may be beneficial, to provide Interconnection Service to Generator under this Agreement. Cost sharing shall not be required under this Section 3.7 unless this Agreement and the Interconnection and Operating Agreement or similar agreement of the Prior Generator were executed within one (1) year of one another. The Transmission Owner Interconnection Facilities and Interconnection System Upgrades and Prior Generator's operation and maintenance cost reimbursement obligation shall be considered beneficial to the provision of

Interconnection Service to Generator and the Prior Generator when the provision of Interconnection Service to the Facility and each of the generating facilities of the Prior Generator, independent of the other, would have required the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades to receive Interconnection Service. If the study finds that the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades installed or required to be installed pursuant to the Interconnection and Operating Agreement or similar agreement of the Prior Generator are beneficial to the Interconnection Service provided to Generator under this Agreement, Generator shall negotiate in good faith with the Prior Generator to arrive at an agreement between Generator and the Prior Generator that, unless otherwise agreed by Generator and the Prior Generator, provides for the sharing of costs in proportion to the maximum capability of the Facility and the generating facilities of the Prior Generator. The Transmission Provider and Transmission Owner shall not be parties to such agreement and shall not be responsible for the negotiation of such agreement. Nothing in such agreement shall be deemed to relieve Generator of any obligations under this Agreement or Prior Generator of any obligations under its Interconnection and Operating Agreement or similar agreement including, but not limited to, payment to the Transmission Owner for the cost of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades and reimbursement to Transmission Owner for actual operation and maintenance costs associated with the Transmission Owner Interconnection Facilities.

#### **ARTICLE 4 OPERATIONS**

- 4.1 General.** The respective performances of the Transmission Provider, Transmission Owner, and Generator under this Agreement shall comply with the Interconnection Guidelines attached hereto in Appendix D and the requirements, directions, manuals, standards, and guidelines of NERC, the Applicable Reliability Council and the Control Area in which the Facility is electrically located. To the extent that this Agreement does not specifically address or provide the mechanisms necessary to comply with such Interconnection Guidelines and NERC, the Applicable Reliability Council and Control Area requirements, directions, manuals, standards, or guidelines, each Party shall provide to the other Party all such information available or reasonably obtainable as may reasonably be required to comply with such requirements, directions, manuals, standards, or guidelines and shall operate, or cause to be operated, their respective facilities in accordance with such requirements, directions, manuals, standards, or guidelines. To the extent that the Transmission Provider or the Transmission Owner is assessed any penalties or other costs by NERC, the Applicable Reliability Council or such Control Area and such penalties or other costs are due to Generator's action or inaction, Generator shall reimburse the Transmission Provider and/or Transmission Owner for such penalties or other costs.

- 4.2 Coordination Contact.** The Parties shall each identify one representative to serve as a “Coordination Contact” to be the initial point of contact and coordinate the communication between the Parties in implementing this Agreement. Each Party shall notify the other Parties in writing of the personnel that it has appointed as its Coordination Contact.
- 4.3 Transmission Provider and Transmission Owner Obligations.** The Transmission Provider and the Transmission Owner shall cause the Transmission System and the Transmission Owner Interconnection Facilities to be operated, maintained and controlled (i) in a safe and reliable manner; (ii) in accordance with Good Utility Practice; (iii) in accordance with the Interconnection Guidelines, applicable operational and/or reliability criteria, protocols, and directives, including those of the Applicable Reliability Council; (iv) in accordance with Applicable Laws and Regulations; and (v) in accordance with the provisions of this Agreement. The Transmission Provider shall have the responsibility to provide functional control and direction of the Transmission System, and the Transmission Owner shall have direct control of the Transmission System. This responsibility and control will require that, from time to time, the Transmission Provider or Transmission Owner will provide operating instructions to Generator consistent with this Agreement, Good Utility Practice, applicable operational and/or reliability criteria, protocols, and directives, including those of the NERC, the Applicable Reliability Council and Applicable Laws and Regulations. Normal operating procedures and protocols to be observed by the Transmission Provider, the Transmission Owner, and the Generator shall be established in advance. Generator shall inform the Transmission Provider and Transmission Owner of any consequential, negative impacts on Generator of the direction provided by the Transmission Provider or Transmission Owner to Generator. The Transmission Provider and Transmission Owner shall factor these impacts into the direction it then provides to Generator. Any direction provided to Generator shall follow Good Utility Practice, applicable operational and/or reliability criteria, protocols, and directives, including those of NERC, the Applicable Reliability Council and Applicable Laws and Regulations, and shall consider the machine limitations of the Facility and will be consistent with this Agreement. To the extent that the direction ultimately provided to Generator by the Transmission Provider or Transmission Owner has a consequential, negative impact or impacts on Generator, the Transmission Provider or Transmission Owner shall compensate Generator in accordance with Generator's FERC tariff then in effect or rates negotiated in advance with the Transmission Provider, as applicable, except that if such direction is required due to non-compliance, Default or Breach by the Generator under this Agreement, no compensation shall be paid by the Transmission Provider or Transmission Owner.
- 4.4 Generator Obligations.** Generator shall operate and control the Facility and the Generator Interconnection Facilities (i) in a safe and reliable manner; (ii) in accordance with Good Utility Practice; (iii) in accordance with the

Interconnection Guidelines, applicable operational and/or reliability criteria, protocols, and directives, including those of the Applicable Reliability Council, the Transmission Provider, and Transmission Owner; (iv) in accordance with Applicable Laws and Regulations; and (v) in accordance with the provisions of this Agreement. Nothing in this Agreement should be construed as creating any obligation that Generator operate the Facility and the Generator Interconnection Facilities as part of any Control Area operated by a Transmission Owner or the Transmission Provider. The Generator shall operate the Facility and the Generator Interconnection Facilities in accordance with the requirements of the Control Area of which it is part and in accordance with all directives of its Control Area operator and security coordinator, provided that such requirements and directives are not inconsistent with this Agreement, the Transmission Provider OATT, Good Utility Practice and NERC policies and standards and the directives of the Transmission Provider in accordance therewith.

- 4.5 Access Rights.** Consistent with the provisions of Sections 6.3 and 9.1.7, the Parties shall provide each other with access rights as permissible to the property of the providing party as may be necessary for a Party's performance of their respective operational obligations under this Agreement; provided that, notwithstanding anything stated herein, a Party performing operational work within the boundaries of the other Party's facilities must abide by the rules applicable to that site.
- 4.6 Switching and Tagging Rules.** The Parties shall abide by their respective Switching and Tagging Rules for obtaining clearances for work or for switching operations on equipment. Such Switching and Tagging Rules shall be developed in accordance with OSHA standards codified at 29 CFR Part 1910, or successor standards.
- 4.7 Reactive Power.**
- 4.7.1 Obligation to Supply Reactive Power.** Generator shall supply reactive power to the Transmission System in accordance with Good Utility Practice, applicable operational and/or reliability criteria, protocols, and directives, including those of NERC, the Applicable Reliability Council, Applicable Laws and Regulations and this Agreement. Generator shall respond to requests from the Transmission Provider to increase or decrease generator reactive power output in a manner consistent with Generator's obligation to operate and control the Facility as set forth in Section 4.4. The Transmission Provider shall exercise Reasonable Efforts under current operating circumstances to provide Generator with such schedules or levels at least one (1) day in advance, provided the Transmission Provider shall have the right to make changes to such schedule or levels in a manner consistent with the second sentence of this Section 4.7.1. The Facility shall generate such reactive power from the Facility's equipment connected to, and operating in parallel with, the

Transmission System and within the manufacturer's design limitations of the Facility, provided that a schedule shall be provided to Generator in advance. Such limitation shall be in accordance with Section 4.7.2. If Generator supplies any reactive power or voltage control service to the Transmission System, the Transmission Provider shall arrange for payment to Generator in accordance with Generator's FERC tariff in effect at such time until a Transmission Provider rate becomes effective.

**4.7.2 Reactive Power Standards.** The Facility power factor design limitation minimum requirement shall be a reactive power capability sufficient to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor between 0.95 leading and 0.90 lagging. Under normal operating conditions, Generator shall operate the Facility to maintain a voltage schedule at the Point of Interconnection as prescribed by the Transmission Provider and within the manufacturer's power factor design limitations for the Facility. In the event that the voltage schedule at the Point of Interconnection cannot be or is not maintained within this requirement, the Transmission Provider may request Generator to operate the Facility (within the manufacturer's design limitation of the equipment in service that is physically available for operation at the time) to produce increased or decreased, as appropriate, available reactive power output (measured in MVAR) in order to achieve the prescribed voltage schedule, provided that the Transmission Provider has requested other generating facilities and other reactive compensation resources in the affected area to produce increased available reactive power output (measured in MVAR) in order to achieve the prescribed voltage schedule. Generator shall promptly comply with such requests made by the Transmission Provider. In the event that under normal Transmission System operating conditions the Facility is unable to consistently maintain a voltage schedule, a reactive schedule or power factor schedule, whichever is applicable, at the Point of Interconnection as specified in the Interconnection Guidelines, Generator shall take such steps as are appropriate, within Generator's judgment and the manufacturer's design limitations of the Facility, to reconfigure and/or operate the Facility to meet the standards specified by this Section 4.7.2, provided Generator is compensated for such action pursuant to a FERC tariff then in effect. Records of requests made by the Transmission Provider, and records indicating actual responses to these requests, shall be maintained by the Transmission Provider and subject to a third-party independent audit at Generator's request and expense. Any such request for an audit shall be presented to the Transmission Provider by Generator no later than twenty-four (24) months following a request by the Transmission Provider request for reactive power in accordance with this Section 4.7.2. For purposes of this Section 4.7.2, physical availability of equipment or the Facility shall not be based on economic considerations.

- 4.8 Scheduling.** Generator shall submit schedules, either directly or through an agent, to the Transmission Provider in accordance with the Transmission Provider OATT.
- 4.9 Redispatch for Congestion Management.** Generator shall comply with the FERC-authorized congestion management policies and procedures of Transmission Provider.
- 4.10 Operating Expenses.** Generator shall be responsible for all expenses associated with operating the Facility and the Generator Interconnection Facilities. Generator shall reimburse the Transmission Owner for the actual cost of operating and maintaining the Transmission Owner Interconnection Facilities incurred by the Transmission Owner, including, but not limited to, the cost of ordinary and extraordinary replacements of equipment, taxes, insurance and applicable administrative and general overheads. Such "Operating Expenses" shall be the type of expenses that would be classified to the following accounts in the FERC's Uniform System of Accounts, 18 CFR Part 101:

**Transmission Expenses - Operation**

FERC Accounts	Description
560	Operation supervision and engineering
561	Load dispatching
562	Station expenses
563	Overhead line expenses
564	Underground line expenses
565	Transmission of electricity by others
566	Miscellaneous transmission expenses
567	Rents
567.1	Operation supplies and expenses

**Transmission Expenses - Maintenance**

FERC Accounts	Description
568	Maintenance supervision and engineering
569	Maintenance of structures
570	Maintenance of station equipment
571	Maintenance of overhead lines
572	Maintenance of underground line expenses
573	Maintenance of miscellaneous transmission plant
574	Maintenance of transmission plant

In addition, an allocation of applicable Administrative and General Expenses FERC Accounts 920 through 935 would apply.

**4.11 Protection and System Quality.** Generator shall, at its expense, install, maintain, and operate System Protection Facilities as a part of the Facility and the Generator Interconnection Facilities. Any System Protection Facilities that may be required on the Transmission Owner Interconnection Facilities or the Transmission System in connection with the operation of the Facility shall be installed by the Transmission Owner at Generator's expense.

**4.11.1 Requirements for Protection.** In compliance with applicable Interconnection Guidelines, and NERC and Applicable Reliability Council requirements, Generator shall provide, install, own, and maintain relays, circuit breakers, and all other devices necessary to promptly remove any fault contribution of the Facility to any short circuit occurring on the Transmission System not otherwise isolated by the Transmission Owner equipment. Such protective equipment shall include, without limitation, a disconnecting device or switch with load interrupting capability to be located between the Facility and the Transmission System at an accessible, protected, and satisfactory site selected upon mutual agreement of the Parties. Generator shall be responsible for protection of the Facility and Generator's other equipment from such conditions as negative sequence currents, over-or under-frequency, sudden load rejection, over-or under-voltage, and generator loss-of-field. Generator shall be solely responsible for provisions to disconnect the Facility and Generator's other equipment when conditions on the Transmission System could adversely affect the Facility.

**4.11.2 System Quality.** The design and operation of the Facility shall not cause excessive voltage excursions nor cause the voltage to drop below or rise above the range specified in the planning criteria defined in the Interconnection Guidelines and consistent with Generator's obligation to meet the voltage schedule specified by the Transmission Provider. The Facility and Generator Interconnection Facilities shall not cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard including the Interconnection Guidelines. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard and the Interconnection Guidelines, ANSI Standard C84.1-1989 or the applicable superseding electric industry standard, shall control.

**4.11.3 Transmission Provider and Transmission Owner Right to Inspect.** The Transmission Provider and Transmission Owner shall have the

right, but shall have no obligation or responsibility to (i) observe Generator's tests and/or inspection of any of Generator's System Protection Facilities and other protective equipment; (ii) review the settings of Generator's System Protection Facilities and other protective equipment; and (iii) review Generator's maintenance records relative to the Facility, Generator Interconnection Facilities and/or Generator's System Protection Facilities and other protective equipment. The foregoing rights may be exercised by the Transmission Provider and/or Transmission Owner from time to time as deemed necessary by the Transmission Provider and/or Transmission Owner upon reasonable notice to Generator. However, the exercise or non-exercise by the Transmission Provider or Transmission Owner of any of the foregoing rights of observation, review or inspection shall be construed neither as an endorsement or confirmation of any aspect, feature, element, or condition of the Facility, the Generator Interconnection Facilities or Generator's System Protection Facilities or other protective equipment or the operation thereof, nor as a warranty as to the fitness, safety, desirability, or reliability of same. Any information obtained by the Transmission Provider or Transmission Owner through the exercise of any of its rights under this Section 4.11.3 shall be deemed to be Confidential Information.

**4.11.4 Generator Right to Inspect.** Generator shall have the right, but shall have no obligation or responsibility to (i) observe Transmission Owner's tests and/or inspection of any of Transmission Owner Interconnection Facilities and associated protective equipment; (ii) review the settings of such Transmission Owner's protective equipment; and (iii) review Transmission Owner's maintenance records relative to the Transmission Owner Interconnection Facilities and associated protective equipment. The foregoing rights may be exercised by Generator from time to time as deemed necessary by the Generator upon reasonable notice to Transmission Owner. However, the exercise or non-exercise by Generator of any of the foregoing rights of observation, review or inspection shall be construed neither as an endorsement or confirmation of any aspect, feature, element, or condition of the Transmission Owner Interconnection Facilities and associated protective equipment or the operation thereof, nor as a warranty as to the fitness, safety, desirability, or reliability of same.

**4.12 Nuclear Regulatory Commission.** To the extent required by Applicable Law and Regulations, the Transmission Provider shall abide by all Nuclear Regulatory Commission regulations associated with operating and scheduling transmission facilities associated with nuclear generating units to ensure the safety and reliability of such facilities. These requirements shall be documented in Appendix E.



#### **4.13 Outages, Interruptions, and Disconnection.**

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

**4.13.2 Outage Planning.** Generator shall submit its planned generating unit maintenance schedules to the Transmission Provider and Transmission Owner for a minimum of a rolling twelve (12)-month period. The planned maintenance schedules shall be updated as necessary.

**4.13.2.1 Voluntary Changes.** If Generator voluntarily accepts a change to the maintenance schedule submitted to the Transmission Provider to support a Transmission Provider request, Generator shall be compensated for any unavoidable costs of rescheduling such maintenance. To the extent practicable, these costs shall be determined by negotiation between the Transmission Provider and Generator prior to implementation of the voluntary change in maintenance schedules and shall not reflect costs recovered in accordance with Section 7.6.1.

**4.13.3 Nuclear Generating Facilities.** The Transmission Provider shall enter into written agreements with operators of nuclear generating facilities which define planned transmission and generating unit maintenance scheduling criteria, limitations and restrictions based on Nuclear Regulatory Commission requirements and necessary to ensure the safety and reliability of the nuclear generating facility operations.

#### **4.13.4 Outage Restoration.**

**4.13.4.1 Unplanned Outage.** In the event of an unplanned outage of a Party's facility that adversely affects the other Party's facilities, the Party that owns or controls the facility out of service shall use Reasonable Efforts to promptly restore that facility to service.

**4.13.4.2 Planned Outage.** In the event of a planned outage of a Party's facility that adversely affects the other Party's facilities, the Party that owns or controls the facility out of

service shall use Reasonable Efforts to promptly restore that facility to service, in accordance with the notice given pursuant to Section 4.13.1.

**4.13.5 Disconnection.**

**4.13.5.1 Disconnection after Agreement Terminates.** Upon termination of this Agreement by its terms, the Transmission Owner may disconnect the Facility from the Transmission System in accordance with a plan for disconnection upon which the Parties agree.

**4.13.5.2 Disconnection after Under-Frequency Load Shed Event.** In the event of an under-frequency system disturbance, the Transmission System is designed to automatically activate a load shed program as described in the Interconnection Guidelines. To ensure “ridethrough” capability of the Transmission System, Generator shall implement an under-frequency relay set point for the Facility as described in the Interconnection Guidelines.

**4.14 Continuity of Service.** Subject to the provisions of this Section 4.14, if required by Good Utility Practice to do so, the Transmission Provider may require Generator to curtail, interrupt or reduce deliveries of electricity if such delivery of electricity adversely affects the Transmission Provider’s or Transmission Owner’s ability to perform such activities as are necessary to safely and reliably operate the Transmission System or interconnected sub-transmission or distribution system. The following provisions shall apply to any curtailment, interruption or reduction permitted under this Section 4.14:

- (a) The curtailment, interruption, or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;
- (b) Any such curtailment, interruption, or reduction shall be made on an equitable, non-discriminatory basis with respect to all generators directly connected to the Transmission System;
- (c) When the curtailment, interruption, or reduction must be made under circumstances which do not allow for advance notice, the Transmission Provider shall notify Generator by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;
- (d) Except during the existence of an Emergency Condition, when the curtailment, interruption, or reduction can be scheduled, the Transmission Provider shall notify Generator in advance regarding the timing of such

scheduling and further notify Generator of the expected duration. The Transmission Provider shall use Good Utility Practices to schedule the curtailment or interruption to coincide with the scheduled outages of the Facility, and if not possible, the Transmission Provider shall use Good Utility Practice to schedule the curtailment or interruption during non-peak load periods;

- (e) The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice; and
- (f) Notwithstanding any other provision of this Agreement, neither the Transmission Provider nor Transmission Owner shall be obligated to accept, and the Transmission Provider or Transmission Owner may require Generator to curtail, interrupt or reduce, deliveries of energy if such delivery of energy impairs the ability of the Transmission Owner to construct, install, repair, replace or remove any of its equipment or any part of its system or if the Transmission Provider or Transmission Owner determine that curtailment, interruption or reduction is necessary because of an Emergency Condition, forced outages, operating conditions on its system, or any reason otherwise required by Applicable Laws and Regulations. Prior to any such curtailment, interruption or reduction, the Transmission Provider or Transmission Owner shall exercise good faith efforts under the circumstances to provide Generator with reasonable notice thereof.

## **ARTICLE 5 GENERATOR IMBALANCE SERVICE**

- 5.1 General.** Generator shall comply with the generation imbalance service provisions of the Transmission Provider OATT.

## **ARTICLE 6 MAINTENANCE**

- 6.1 Transmission Owner Obligations.** Transmission Owner shall maintain the Transmission Owner Interconnection Facilities and Interconnection System Upgrades to the extent they might reasonably be expected to have an impact on the operation of the Facility and Generator Interconnection Facilities (i) in a safe and reliable manner; (ii) in accordance with Good Utility Practice; (iii) in accordance with the Interconnection Guidelines, applicable operational and/or reliability criteria, protocols, and directives, including those of the Applicable Reliability Council; (iv) in accordance with Applicable Laws and Regulations; and (v) in accordance with the provisions of this Agreement.

- 6.2 Generator Obligations.** Generator shall maintain the Facility and the Generator Interconnection Facilities, to the extent they might reasonably be expected to have a material adverse impact on the operation of the Transmission System and other systems and generating facilities directly or indirectly interconnected to the Transmission System (i) in a safe and reliable manner; (ii) in accordance with Good Utility Practice; (iii) in accordance with Interconnection Guidelines, applicable operational and/or reliability criteria, protocols, and directives, including those of the Applicable Reliability Council; (iv) in accordance with Applicable Laws and Regulations; and (v) in accordance with the provisions of this Agreement.
- 6.3 Access Rights.** Consistent with the provisions of Sections 4.5 and 9.1.7, the Parties shall provide each other such easements and/or access rights as permissible to the property of the providing party as may be necessary for a Party's performance of their respective maintenance obligations under this Agreement; provided that notwithstanding anything stated herein, a Party performing maintenance work within the boundaries of the other Party's facilities must abide by the rules applicable to that site.
- 6.4 Maintenance Expenses.** Generator shall be responsible for all expenses associated with maintaining the Facility and the Generator Interconnection Facilities. The expense incurred by the Transmission Owner in maintaining the Transmission Owner Interconnection Facilities shall be included in the actual cost of operation and maintenance reimbursed to Transmission Owner as set forth in to Section 4.10.
- 6.5 Coordination.** The Parties agree to confer regularly to coordinate the planning and scheduling of preventative and corrective maintenance. Each Party shall conduct preventive and corrective maintenance activities as planned and scheduled in accordance with this Section.
- 6.6 Inspections and Testing.** Each Party shall perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Facility with the Transmission System in a safe and reliable manner.
- 6.7 Right to Observe Testing.** Each Party shall, at its own expense, have the right to observe the testing of any of the other Party's Interconnection Facilities whose performance may reasonably be expected to affect the reliability of the observing Party's facilities and equipment. Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities, and the other Party may have a representative attend and be present during such testing.
- 6.8 Cooperation.** Each Party agrees to cooperate with the other in the inspection, maintenance, and testing of those Secondary Systems directly affecting the operation of a Party's facilities and equipment which may reasonably be expected

to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work in these areas, especially in electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

- 6.9 Observation of Deficiencies.** If a Party observes any deficiencies or defects on, or becomes aware of a lack of scheduled maintenance and testing with respect to, the other Party's facilities and equipment that might reasonably be expected to adversely affect the observing Party's facilities and equipment, the observing Party shall provide notice to the other Party that is prompt under the circumstance, and the other Party shall make any corrections required in accordance with Good Utility Practice. Any Party's review, inspection, and approval related to the other Party's facilities and equipment shall be limited to the purpose of assessing the safety, reliability, protection and control of the Transmission System and shall not be construed as confirming or endorsing the design of such facilities and equipment, or as a warranty of any type, including safety, durability or reliability thereof. Notwithstanding the foregoing, the inspecting Party shall have no liability whatsoever for failure to give a deficiency notice to the other Party and the Party owning the Interconnection Facilities shall remain fully liable for its failure to determine and correct deficiencies and defects in its facilities and equipment.

## **ARTICLE 7 EMERGENCIES**

- 7.1 Obligations.** Each Party agrees to comply with the Emergency Condition procedures of NERC, the Applicable Reliability Council, the Transmission Provider, Transmission Owner, and of Generator.
- 7.2 Notice.** The Transmission Provider shall provide Generator with prompt notification of an Emergency Condition regarding the Transmission Owner Interconnection Facilities and/or the Transmission System that may reasonably be expected to affect Generator's operation of the Facility, to the extent the Transmission Provider is aware of the Emergency Condition. Generator shall provide the Transmission Provider with prompt notification of an Emergency Condition regarding the Facility and/or the Generator Interconnection Facilities which may reasonably be expected to affect the Transmission System or the Transmission Owner Interconnection Facilities, to the extent Generator is aware of the Emergency Condition. To the extent the Party becoming aware of an Emergency Condition is aware of the facts of the Emergency Condition, such notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Generator's or the Transmission Owner's facilities and operations, its anticipated duration, and the corrective action taken and/or to be taken, and shall be followed as soon as practicable with written notice.

- 7.3 Immediate Action.** In the event of an Emergency Condition, the Party becoming aware of the Emergency Condition may, in accordance with Good Utility Practice and using its reasonable judgment, take such action as is reasonable and necessary to prevent, avoid, or mitigate injury and danger to, or loss of, life or property. In the event Generator has identified an Emergency Condition involving the Transmission System, Generator shall obtain the consent of the Transmission Owner personnel prior to performing any manual switching operations at the Facility unless, in Generator's reasonable judgment, immediate action is required.
- 7.4 Transmission Provider and Transmission Owner Authority.** The Transmission Provider or Transmission Owner may, consistent with Good Utility Practice, take whatever actions or inactions with regard to the Transmission System it deems necessary during an Emergency Condition in order to (i) preserve public health and safety; (ii) preserve the reliability of the Transmission System and interconnected sub-transmission and distribution system; (iii) limit or prevent damage; and (iv) expedite restoration of service. The Transmission Provider and Transmission Owner shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Facility. An Emergency Condition may be declared on a day ahead basis by the Transmission Provider to ensure a secure and reliable Transmission System under expected normal operating and first contingency conditions. Notwithstanding any other provision of this Agreement, the Facility may be called upon by the Transmission Provider or Transmission Owner during a potential or an actual Emergency Condition to mitigate such Emergency Condition by, but not limited to, requesting Generator to start-up, shut-down, and increase or decrease the real or reactive power output of the Facility consistent with the provisions of Sections 7.6 and 7.6.1. As requested by the Transmission Provider or Transmission Owner, Generator shall assist the Transmission Provider or Transmission Owner with any black start or restoration efforts of the Transmission System resulting from an Emergency Condition with compensation to be paid in accordance with Section 7.6.1, provided that such assistance does not require the installation of any equipment.
- 7.5 Generator Authority.** Generator may, consistent with Good Utility Practice, take whatever actions or inactions with regard to the Facility it deems necessary during an Emergency Condition in order to (i) preserve public health and safety; (ii) preserve the reliability of the Facility; (iii) limit or prevent damage; and (iv) expedite restoration of service. Generator shall use Reasonable Efforts to minimize the effect of such actions or inaction on the Transmission System. The Transmission Provider and Transmission Owner shall use Reasonable Efforts to assist Generator in such actions.
- 7.6 Changes in Real Power and Reactive Power Production.** During an Emergency Condition as declared by the Transmission Provider on the Transmission System or on an adjacent transmission system, the Transmission Provider, in order to maintain Transmission System security consistent with the provisions of this Article 7, shall have the authority to direct Generator to increase

or decrease real power production (measured in MW) and/or reactive power production (measured in MVAR), within the manufacturer's design and operational limitations of the Facility's equipment in service in accordance with Good Utility Practice, provided that the Facility is physically available for operation at the time. In the event of such a declaration of an Emergency Condition, determinations (i) that Transmission System security is in jeopardy, and (ii) that there is a need to increase or decrease reactive power production, even if real power production is adversely affected, shall be made solely by the Transmission Provider or its designated representative in accordance with Good Utility Practice on a non-discriminatory basis. Generator shall honor all of the Transmission Provider's orders and directives concerning Facility real power and/or reactive power output within the manufacturer's design limitations of the Facility's equipment in service and physically available for operation at the time, such that the security of the Transmission System is maintained. If the Transmission Provider determines that the operation of the Facility in accordance with its directive is not necessary to alleviate the Emergency Condition, Generator shall be permitted to resume prior operating levels if consistent with Good Utility Practice. The Transmission Provider shall restore Transmission System conditions to normal as quickly as possible to alleviate any such Emergency Condition. The Transmission Provider shall take all reasonable steps to equitably allocate among all generating units and other reactive compensation resources the responsibility to provide reactive power support to the Transmission System. The Transmission Provider's efforts to allocate such responsibility among all generators and other reactive compensation resources capable of such support shall be subject to the audit provisions of Section 7.9. Additionally, to the extent practical, the Transmission Provider has the right to request unit commitment and decommitment, and alteration of unit outage schedules. For purposes of this Section 7.6, physical availability of equipment or the Facility shall not be based on economic considerations.

**7.6.1 Generator Compensation for Emergency Condition.** Generator shall be compensated for its provision of real and reactive power, and any unavoidable costs related to changes in maintenance and outage schedules directed by Transmission Provider or Transmission Owner for Emergency Condition purposes and other Emergency Condition services needed to support the Transmission System during an Emergency Condition in accordance with Generator's FERC rate schedule then in effect and specifically applicable to an Emergency Condition under this Agreement, provided, however, that the failure to have any such rates shall not be a basis for Generator to refuse or deny such control to the Transmission Provider or designated representative.

**7.7 Interruption for Emergency Condition.** If at any time, in the Transmission Provider's reasonable judgment exercised in accordance with Good Utility Practice, the continued operation of the Facility would cause an Emergency Condition, the Transmission Provider may curtail, interrupt, or reduce energy

delivered from the Facility to the Transmission System subject to Section 4.14 until the condition which would cause the Emergency Condition is corrected and, where practicable, allow suitable time for Generator to remove or remedy such condition before any such curtailment, interruption, or reduction commences.

- 7.8 Disconnection in Event of Emergency Condition.** Subject to the provisions of Section 7.7, the Transmission Provider, Transmission Owner, or Generator shall have the right to disconnect the Facility without notice if, in the Transmission Provider's, Transmission Owner's or Generator's judgment, an Emergency Condition exists and immediate disconnection is necessary to protect persons or property from damage or interference caused by Generator's interconnection or lack of proper or properly operating System Protection Facilities. All Parties to this Agreement shall be notified of such disconnection. For purposes of this Section 7.8, System Protection Facilities may be deemed by the Transmission Provider to be not properly operating if the Transmission Provider's review under Article 6 discloses irregular or otherwise insufficient maintenance on the System Protection Facilities or that maintenance records do not exist or are otherwise insufficient to demonstrate that adequate maintenance has been and is being performed. If such maintenance records do not exist or are otherwise insufficient to demonstrate that adequate maintenance has been and is being performed, Generator shall have a reasonable opportunity to demonstrate to the Transmission Provider that the System Protection Facilities are operating properly through alternative documentation or by physical demonstration, provided that such alternative documentation or physical demonstration shall be subject to acceptance by the Transmission Provider in the exercise of its reasonable judgment.
- 7.9 Audit Rights.** Each Party shall keep and maintain record of actions taken during an Emergency Condition that may reasonably be expected to impact the other Party's facilities and make such records available for audit in accordance with Section 21.2.
- 7.10 Limited Liability.** No Party shall be liable to any other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and consistent with Good Utility Practice.

## **ARTICLE 8 SAFETY**

- 8.1 General.** All work performed by either Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Applicable Laws and Regulations pertaining to the safety of persons or property. A Party performing work within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site.



- 8.2 Environmental Releases.** Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities, related to the Facility, the Interconnection Facilities, each of which may reasonably be expected to affect the other Parties. The notifying Party shall (i) provide the notice as soon as possible; (ii) make a good faith effort to provide the notice within twenty-four (24) hours after the Party becomes aware of the occurrence; and (iii) promptly furnish to the other Parties copies of any publicly available reports filed with any governmental agencies addressing such events.

**ARTICLE 9  
CONSTRUCTION AND MODIFICATION OF  
INTERCONNECTION FACILITIES AND INTERCONNECTION SYSTEM UPGRADES**

**9.1 Construction.**

- 9.1.1 Generator Obligations.** Generator shall, at its expense, design, procure, construct, and install the Facility and the Generator Interconnection Facilities in accordance with the Interconnection Evaluation Study, the Interconnection Facilities Study and Good Utility Practice. The Generator Interconnection Facilities shall satisfy all requirements of applicable safety and/or engineering codes, including the Transmission Owner's, and further, shall satisfy Applicable Laws and Regulations.
- 9.1.2 Generator Specifications.** Generator shall submit all final specifications for Generator Interconnection Facilities, including System Protection Facilities, to the Transmission Provider and Transmission Owner for review at least ninety (90) days prior to interconnecting Generator Interconnection Facilities with the Transmission System in order to insure that such interconnection is consistent with operational control, reliability and/or safety standards or requirements of the Transmission Provider and Transmission Owner. The Transmission Provider and Transmission Owner shall review and comment on such specifications within thirty (30) days.
- 9.1.3 Transmission Provider and Transmission Owner Review.** The Transmission Provider's and Transmission Owner's review of Generator's specifications shall be construed neither as confirming nor as endorsing the design, nor as any warranty as to fitness, safety, durability or reliability of the Generator Interconnection Facilities. Neither Transmission Owner nor the Transmission Provider shall, by reason of such review or failure to review, be responsible for strength, details of design, adequacy or capacity of Generator Interconnection Facilities, nor shall the Transmission Provider's or Transmission Owner's acceptance be deemed to be an endorsement of all or any part

of the Generator Interconnection Facilities. Generator shall make changes to the Generator Interconnection Facilities as may be required by the Transmission Provider or Transmission Owner in accordance with Good Utility Practice. The cost of such changes shall be borne in accordance with Section 9.5.3.

**9.1.4 Transmission Owner Obligations.** The Transmission Owner shall design, procure, construct and install, and Generator shall pay, consistent with Section 9.2, the cost of, all Transmission Owner Interconnection Facilities and Interconnection System Upgrades identified in Appendix A. All Transmission Owner Interconnection Facilities and Interconnection System Upgrades designed, procured, constructed, installed and maintained by the Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those of the Transmission Owner, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

**9.1.5 Suspension of Work.**

**9.1.5.1 Right to Suspend.** Generator reserves the right, upon written notice to the Transmission Provider, to suspend, at any time, all work by the Transmission Owner associated with the construction and installation of the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades. In such event, Generator shall be responsible for the costs which the Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, and (ii) in suspending such work, including any costs incurred in order to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which the Transmission Owner cannot reasonably avoid; provided, however, that, prior to canceling any such contracts or orders, the Transmission Owner shall obtain Generator's authorization. The Transmission Owner shall invoice Generator pursuant to Article 13 and use Reasonable Efforts to minimize its costs.

**9.1.5.2 Recommencing of Work.** If Generator requests the Transmission Owner to recommence such work, the Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Generator to suspend the work. In such event, Generator shall be responsible for any costs incurred in recommencing

the work. Once work has been recommenced, if Generator attempts to suspend the work a second time, this Agreement shall terminate.

**9.1.5.3 Termination.** In the event Generator suspends the performance of work by the Transmission Owner pursuant to this Section 9.1.5 and has not requested resumption of such work required hereunder by written request to the Transmission Provider on or before the three hundred and sixty-fifth (365th) day after such requested suspension, this Agreement shall be deemed terminated.

**9.1.5.4 Right to Suspend Due to Default.** Transmission Owner reserves the right, upon written notice to Generator, to suspend, at any time, work by the Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Transmission Owner Interconnection Facilities and/or the Interconnection System Upgrades upon the occurrence of either a Breach that Generator is unable to cure pursuant to Article 17 or an Event of Default pursuant to Article 17. Any form of suspension by Transmission Owner shall not be barred by Section 2.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 18. In such events, Generator shall be responsible for costs which the Transmission Owner incurs as set forth in Section 9.1.5.1.

**9.1.6 Construction Status.** The Transmission Owner shall inform Generator on a regular basis, and at such other times as Generator reasonably requests, of the status of the construction and installation of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades, including, but not limited to, the following information: (i) progress to date; (ii) a description of scheduled activities for the next period; (iii) the delivery status of all equipment ordered; and (iv) the identification of any event which the Transmission Owner reasonably expects may delay construction of, or may increase the cost by ten percent (10%) or more of, the Transmission Owner Interconnection Facilities and/or Interconnection System Upgrades.

**9.1.7 Land Rights.** Upon reasonable notice and supervision by a Party, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any necessary access for ingress and egress across lands owned or controlled by the Granting Party and/or its affiliates for the construction, operation and maintenance of necessary lines, substations, and other equipment to accomplish and operate interconnection of the Facility with the Transmission System under this

Agreement and shall, at all reasonable times, give the Access Party, or its agents, free access for ingress and egress to such lines, substations, and equipment, for the purpose of implementing the provisions of this Agreement, and subject to the following provisions of this Section 9.1.7 and Subsections 9.1.7.1 and 9.1.7.2; provided, however, that, in exercising such access rights, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business, shall act in a manner consistent with Good Utility Practice, and adhere to the safety rules and procedures established by the Granting Party. An accessible, protected and satisfactory site selected upon mutual agreement by the Parties and located on Generator's premises shall be provided by and at Generator's expense for installation of metering devices, unless the Transmission Owner elects to install meters on poles or other locations controlled by it. Generator grants to the Transmission Owner at all reasonable times and with reasonable supervision, the right of free ingress and egress to Generator's premises for the purpose of installing, testing, reading, inspecting, repairing, operating, altering or removing any of the Transmission Owner's property located on Generator's premises.

**9.1.7.1 Other Property Owners.** If any part of the Transmission Owner Interconnection Facilities are to be installed on property owned by someone other than Generator, Generator shall procure from the owners thereof any necessary rights of use, licenses, rights of way and easements, in a form reasonably satisfactory to the Transmission Owner, for the construction, operation, maintenance and replacement of the Transmission Owner Interconnection Facilities upon such property. In the event Generator is unable to secure them (i) by condemnation proceedings or (ii) by other means, the Transmission Provider, indirectly through the Transmission Owner, or Transmission Owner directly, may make Reasonable Efforts to secure them to the extent permitted by Applicable Laws and Regulations, and provided that Generator shall reimburse the Transmission Provider or Transmission Owner, for all reasonable and documented costs incurred by the Transmission Provider or Transmission Owner in securing such rights.

**9.1.7.2 Safety.** In connection with the Access Party's exercise of rights under Section 9.1.7, while on the Granting Party's premises, the Access Party's personnel and agents shall comply with all applicable safety rules or regulations of the Granting Party that are communicated by the Granting Party to the Access Party. Further, the Access Party shall indemnify and hold harmless the Granting Party in

accordance with the provisions of Article 16 from and against any claims or damages resulting from such access.

### **9.1.8 Timely Completion.**

**9.1.8.1 Generator Obligations.** Generator shall use Reasonable Efforts to design, procure, construct, install, and test the Generator Interconnection Facilities in accordance with the schedule set forth in Appendix A which schedule may be revised from time to time by mutual agreement of the Parties. As specified in Appendix A, the Transmission Owner, at its discretion, may permit Generator to design, procure and/or install all or a portion of the Transmission Owner Interconnection Facilities.

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

**9.1.9 Limited Operation.** If any of the Interconnection System Upgrades are not reasonably expected to be completed prior to the commercial operation date of the Facility, Generator may, at its option, have operating studies performed at its expense to determine the maximum allowable output of the Facility and, subject to Applicable Laws and

Regulations and applicable Transmission Provider, Transmission Owner, and NERC criteria and requirements, Generator shall be permitted to operate the Facility, provided such limited operation of the Facility does not adversely affect the safety and reliability of the Transmission System.

- 9.1.10 Outage Costs.** If an outage of any part of the Transmission System is necessary to complete the process of constructing and installing the Interconnection Facilities or Interconnection System Upgrades, Generator shall be responsible for any costs or penalties associated with any redispatch or market-related costs arising from such an outage. The estimated cost, including penalties of such redispatch or market-related costs arising from such outage is set forth in Appendix A.
- 9.1.11 Pre-Commercial Testing.** Prior to the interconnection and operation of the Facility in parallel with the Transmission System, the Interconnection Facilities and Interconnection System Upgrades shall be tested to ensure their safe and reliable operation in accordance with Good Utility Practice, any applicable Transmission Provider, Transmission Owner, NERC and Applicable Reliability Council criteria and requirements and any Applicable Laws and Regulations (“Pre-Commercial Testing”). Similar testing may be required after initial operation as required by the above-mentioned organizations. The cost of all such testing shall be borne by Generator. In generating test energy, Generator shall be responsible for complying with all Transmission Provider OATT provisions as well as any applicable generator imbalance provisions.
- 9.1.12 Modifications after Pre-Commercial Testing.** Based upon the Pre-Commercial Testing, Generator shall be responsible for making any modifications necessary to ensure the safe and reliable operation of the Facility and Generator Interconnection Facilities in accordance with Good Utility Practice, all applicable Transmission Provider, Transmission Owner, NERC and Applicable Reliability Council criteria and requirements, and all Applicable Laws and Regulations, and the Transmission Owner is responsible for making any modifications necessary to ensure the safe and reliable operation of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades in accordance with Good Utility Practice and all applicable Transmission Provider, Transmission Owner, NERC and Applicable Reliability Council criteria and requirements, and all Applicable Laws and Regulations. The costs of all such modifications are to be borne by Generator.

## **9.2 Interconnection Costs and Credits.**

- 9.2.1 Costs.** In addition to Operating Expenses under Section 4.10 and other expenses covered by this Agreement, Generator shall pay to the Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades (“Construction Expenditures”), as identified in Appendix A, in accordance with any cost recovery method that the Transmission Owner files and the FERC accepts as applicable under the Transmission Provider OATT.
- 9.2.2 Credits.** Credits to Generator (or a third-party designated by Generator), if any, for amounts previously paid by Generator under Section 9.2.1, will be provided in accordance with any cost recovery method that the Transmission Owner files and the FERC accepts as applicable under the Transmission Provider OATT.
- 9.3 Drawings.** Subject to the requirements of Article 20, upon completion of any construction or modification to the Facility and/or the Generator Interconnection Facilities that may reasonably be expected to affect the Transmission System, but not later than ninety (90) days thereafter, Generator shall issue "as built" drawings to the Transmission Provider and Transmission Owner, unless the Parties reasonably agree that such drawings are not necessary.
- 9.4 Taxes.**
- 9.4.1 Indemnification for Contributions in Aid of Construction.** The Parties intend that all payments made by Generator to Transmission Owner for the installation of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Generator for the installation of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades. Notwithstanding the foregoing provisions of this Section 9.3.1, to the extent that the receipt of such payments by the Transmission Owner is determined by any Governmental Authority to constitute income by a Transmission Owner subject to taxation, Generator shall protect, indemnify and hold harmless Transmission Owner and its affiliated and associated companies, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Generator with written notification

within thirty (30) days of such determination and notification. Transmission Owner, upon the timely written request by Generator and at Generator's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Generator regarding the conduct of such contest. Generator shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Generator shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Generator has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Generator any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 13, Generator shall provide Transmission Owner with credit assurances sufficient to meet Generator's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 9.4.1. Such estimated liability shall be stated in Appendix A.

**9.4.2 Private Letter Ruling.** The Transmission Owner shall, at Generator's request and expense, file with the Internal Revenue Service a request for a Private Letter Ruling as to whether any of the sums paid, or to be paid, by Generator to Transmission Owner under the terms of this Agreement are subject to federal income taxation. Transmission Owner and Generator shall cooperate in good faith with respect to such request for a Private Letter Ruling and all costs associated with obtaining a Private Letter Ruling under this Agreement shall be the responsibility of Generator. If the Private Letter Ruling issued to Transmission Owner concludes that such sums are not subject to federal income taxation, Generator's obligations under Article 13 shall be reduced accordingly.

**9.4.3 Other Taxes.** The Transmission Provider and Generator shall cooperate in good faith to appeal, protest, seek abatement of, or otherwise contest



any tax (other than federal income tax) asserted or assessed against the Transmission Provider for which Generator may be required to reimburse the Transmission Provider under the terms of this Agreement.

## **9.5 Modifications.**

- 9.5.1 General.** Either Party may undertake modifications to its facilities. In the event a Party plans to undertake a modification that reasonably may be expected to impact the other Party's facilities, that Party, in accordance with Good Utility Practice, shall provide the other Party with sufficient information regarding such modification, so that the other Party may evaluate the potential impact of such modification prior to commencement of the work, including information regarding when such additions, modifications or replacements are expected to be made; how long such additions, modifications or replacements are expected to take; whether such additions, modifications or replacements are expected to interrupt the flow of electricity from the Facility; and any other information that will enable the other Party to evaluate the impact of the proposed additions, modifications, or replacements on its facilities and/or operations prior to the commencement of work. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) days in advance of the beginning of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld or delayed.
- 9.5.2 Standards.** Any additions, modifications, or replacements made to a Party's facilities shall be constructed and operated in accordance with this Agreement, Good Utility Practice, Applicable Laws and Regulations, NERC and Applicable Reliability Council guidelines, and Transmission Provider and Transmission Owner guidelines.
- 9.5.3 Modification Costs.** Unless required by Applicable Laws and Regulations or this Agreement, Generator shall not be responsible for the costs of any additions, modifications, or replacements made to the Transmission Owner Interconnection Facilities or the Transmission System by the Transmission Owner in its discretion or in order to facilitate the interconnection of a third-party to the Transmission Owner Interconnection Facilities or the Transmission System, or the provision of the delivery component transmission service under the Transmission Provider OATT for such third-party. Generator shall, however, be responsible for the costs of (i) any additions, modifications, or replacements made to the Transmission Owner Interconnection Facilities or the Transmission System as a result of any additions, modifications, or replacements made by Generator to the Facility or (ii) additions, modifications, or replacements reasonably necessary to maintain or update the Generator Interconnection Facilities for reliability and

safety purposes to the extent required by Good Utility Practice or to comply with changes in Applicable Laws and Regulations.

## **ARTICLE 10 METERING**

- 10.1 General.** Unless otherwise agreed by the Parties, the Transmission Owner shall provide, install, operate, maintain, own and/or control suitable Metering Equipment at the Point of Interconnection prior to any operation of the Facility. Power flows to and from the Facility shall be measured at or, at the Transmission Owner's option, compensated to the Point of Interconnection. Metering quantities, in analog and/or digital form, shall be provided to Generator upon request. All costs associated with the administration of Metering Equipment and the provision of metering data to Generator shall be born by Generator. The costs of administration and of providing metering data shall be separately itemized on the Transmission Owner's invoice to Generator. All reasonable costs associated with either the initial installation of metering or any changes to Metering Equipment, shall be borne by Generator. Generator shall be responsible for making all appropriate arrangements for station service requirements, including the delivery component of transmission service, if applicable. If Generator supplies its station service, the station service loads shall be netted against Generator's output.
- 10.2 Standards.** Revenue quality Metering Equipment shall be installed, calibrated, and tested in accordance with applicable ANSI standards. To the extent this Article 10 conflicts with the manuals, standards or guidelines of the Applicable Reliability Council regarding interchange metering and transactions, the manuals, standards and guidelines of such Applicable Reliability Council shall control.
- 10.3 Testing of Metering Equipment.** The Transmission Owner shall, at Generator's expense, inspect and test all Transmission Owner-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Generator, the Transmission Owner shall inspect or test Metering Equipment more frequently than every two (2) years, at the expense of Generator. The Transmission Owner shall give reasonable notice of the time when any inspection or test shall take place, and Generator may have representatives present at the test or inspection. If Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Generator's expense, in order to provide accurate metering. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than one percent (1%) from the measurement made by the standard meter used in the test, adjustment shall be made correcting all measurements made by the inaccurate meter for (i) the actual period during which inaccurate measurements were made, if the period can be determined, or if not, (ii) the period immediately preceding the test of the Metering Equipment equal to one-half the time from the

date of the last previous test of the Metering Equipment; provided that the period covered by the correction shall not exceed six months.

**10.4 Metering Data.** If the Parties have not made other arrangements, if hourly and/or daily energy readings are available and if such data are requested by the Transmission Provider, Generator shall report same to the Transmission Provider's representatives as indicated in Appendix E, by telephone or electronically or as the Parties otherwise agree, on a schedule to be agreed upon. At Generator's expense, Generator's metered data shall be telemetered to a location designated by the Transmission Provider and one or more locations designated by Generator.

**10.5 Communications.**

**10.5.1 Generator Obligations.** At Generator's expense, Generator shall maintain satisfactory operating communications with the Transmission Provider's system dispatcher or representative, as designated by the Transmission Provider or the Transmission Owner, as applicable. Generator shall provide standard voice line, dedicated voice line and facsimile communications at its Facility control room through use of the public telephone system. Generator shall also provide the dedicated data circuit(s) necessary to provide necessary generator data to the Transmission Provider as set forth in Appendix E. The data circuit(s) shall extend from the Facility to a location(s) specified by the Transmission Provider or its designate. Any required maintenance of such communications equipment shall be performed at Generator's expense, and may be performed by Generator or by the Transmission Owner. Operational communications shall be activated and maintained under, but not be limited to, the following events: (i) system paralleling or separation; (ii) scheduled and unscheduled shutdowns; (iii) equipment clearances; and (iv) hourly and daily load data.

**10.5.2 Remote Terminal Unit.** Prior to any operation of the Facility, a Remote Terminal Unit ("RTU") or equivalent data collection and transfer equipment acceptable to all Parties shall be installed by Generator, or by the Transmission Owner at Generator's expense, to gather accumulated and instantaneous data to be telemetered to a location(s) designated by the Transmission Owner through use of a dedicated point-to-point data circuit(s) as indicated in Section 10.5.1. The communication protocol for this data circuit(s) shall be specified by the Transmission Owner. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by the Transmission Provider.

**ARTICLE 11  
FORCE MAJEURE**

- 11.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing or by telephone within a reasonable time after the occurrence of the cause relied on.
- 11.2 Duration of Force Majeure.** Except as set forth in Section 11.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure whether occurring on the Transmission System, the Facility, the Interconnection Facilities or any connecting electric generating, transmission or distribution system affecting the Party's operations. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 11.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

**ARTICLE 12  
INFORMATION REPORTING**

- 12.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.

**ARTICLE 13  
CREDITWORTHINESS, BILLING AND PAYMENTS**

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

Agreement during its term. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to the Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to the Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the interconnection has been placed in service, Generator shall, subject to the standards of this Section 13.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Section 4.10 and its obligations under Section 9.4.1. At least sixty (60) days prior to the date on which the interconnection is anticipated to be placed in service and at least annually thereafter, the Transmission Owner shall notify Generator of the estimated monthly payment obligation under Section 4.10. Generator's estimated liability under Section 9.4.1 is stated in Appendix A.

- 13.2 Generator's Continuing Creditworthiness.** In the event Generator's creditworthiness becomes unsatisfactory to Transmission Owner in its reasonably exercised discretion for amounts for which payment is not otherwise assured, Transmission Owner may demand that Generator provide, at Generator's option (but subject to Transmission Owner's acceptance based upon reasonably exercised discretion), either (i) the posting of a letter of credit; (ii) a cash prepayment; (iii) the posting of other acceptable collateral or security by the Generator; (iv) a guarantee agreement executed by a creditworthy entity; or (v) some other mutually agreeable method of providing assurance of payment satisfying Transmission Owner. Failure of Generator to provide such reasonably satisfactory assurances of its ability to make payment under this Agreement within seven (7) days of demand therefore shall be an event of Default under Article 17 of this Agreement and Transmission Owner shall have the right to exercise any of the remedies provided for in Article 17.
- 13.3 Invoice.** Each invoice shall (i) delineate the month in which the services will be provided; (ii) fully describe the services to be rendered; and (iii) itemize the services to be performed or provided.
- 13.4 Payment.** The invoice shall be paid within thirty (30) days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party.
- 13.5 Final Invoice.** Within six (6) months after completion of the construction of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades, the Transmission Owner shall provide an invoice of the final cost of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades and shall set forth such costs in sufficient detail to enable

Generator to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. To the extent that the final, actual costs that Generator is obligated to pay hereunder for the construction of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades exceeds the estimated costs already paid by Generator hereunder for such purposes, Generator shall reimburse the Transmission Owner for the amount of such difference within thirty (30) days after receipt of an invoice for such amount in accordance with the billing provisions of this Agreement. To the extent that the estimated costs already paid by Generator hereunder for such purposes exceed the final, actual costs that Generator is obligated to pay hereunder for such purposes, the Transmission Owner shall refund to Generator an amount equal to the difference within thirty (30) days of the issuance of such final cost invoice. The Transmission Owner shall use Reasonable Efforts to minimize its costs.

- 13.6 Disputes.** All invoiced amounts shall be paid on or before the invoice payment due date. In the event of a billing dispute between the Transmission Provider, Transmission Owner, and/or Generator, the Transmission Provider shall continue to provide interconnection service under the Interconnect Agreement as long as Generator pays disputed amounts on or before the due date. In the event the dispute is resolved in favor of the Generator, the Transmission Provider or Transmission Owner shall, within thirty (30) days of the resolution, make payment to the Generator with interest calculated in accordance with Section 13.8. If Generator fails to meet this requirement for continuation of service, then the Transmission Provider may provide notice to Generator of a Breach pursuant to Articles 17 and 18.
- 13.7 Waiver.** Payment of an invoice shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.
- 13.8 Interest.** Interest on any unpaid amounts shall be calculated daily at the then current prime interest rate per annum as published in the Federal Reserve Statistical Release H.15, or its successor publication, plus two percent (2%) per annum, or the maximum rate permitted by law, whichever is less, from the date due until the date upon which payment is made.
- 13.9 Payment During Dispute.** In the event of a billing dispute between the Transmission Provider, Transmission Owner, and/or Generator, each Party shall continue to provide services and pay all invoices.
- 13.10 Collection Expenses.** No Party shall be responsible for the other Parties' costs of collecting amounts due under this Agreement, including attorney fees and expenses and the expenses of arbitration.

## **ARTICLE 14 ASSIGNMENT**

- 14.1 General.** No Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed, except in connection with the sale, merger, or transfer of a substantial portion or all of its properties including the Interconnection Facilities which it owns so long as the assignee in such a sale, merger, or transfer directly assumes in writing all rights, duties and obligations arising under this Agreement. Prior to the effective date of any assignment pursuant to this Section 14.1 by Generator, the assignee shall demonstrate to the Transmission Provider and the Transmission Owner that the assignee will comply with the requirements of Article 13 on the effective date of the assignment, and such assignor shall be, without further action, released from its obligation hereunder. Any such assignment or delegation made without such written consent shall be null and void. In addition, the Transmission Provider shall be entitled to assign this Agreement to any wholly-owned direct or indirect subsidiary of the Transmission Provider.
- 14.2 Assignment.** Notwithstanding the provisions of Section 14.1, Generator may assign this Agreement, including the right to receive transmission service credits under Section 9.2, and shall be, without further action, released from the obligations of this Agreement, without the Transmission Provider's or Transmission Owner's prior consent to any future owner that purchases or otherwise acquires, directly or indirectly, all or substantially all of the Facility provided that prior to the effective date of any such assignment, the assignee demonstrates to Transmission Owner that he assignee will comply with the provisions of Article 13 on the effective date of the assignment and assumes all other rights, duties, and obligations arising under this Agreement in a writing provided to the Transmission Provider and Transmission Owner. In addition and also notwithstanding the provisions of Section 14.1, Generator or its assignee may assign this Agreement to the persons, entities or institutions providing financing or refinancing for the development, design, construction or operation of the Facility and Generator Interconnection Facilities, provided that such assignment does not affect compliance with Article 13 and with all other rights, duties and obligations arising under this Agreement. If Generator provides notice thereof to the Transmission Provider and Transmission Owner, the Transmission Provider and Transmission Owner shall provide notice and reasonable opportunity for such lenders to cure any Default under this Agreement. The Transmission Provider and Transmission Owner shall, if requested by such lenders, execute its standard documents and certificates as may be requested with respect to the assignment and status of this Agreement, provided such documents do not change the rights of the Transmission Provider or Transmission Owner under this Agreement except with respect to providing notice and reasonable opportunity to cure. Such standard documents and certificates shall include, if true at the time the statement is to be made, statements that (i) this Agreement is in full force and effect and that

neither Generator, the Transmission Provider, nor Transmission Owner are in Default; (ii) all representations made by the Transmission Provider and Transmission Owner in this Agreement are true and complete as of the specified date; and (iii) all conditions to be satisfied by the Transmission Provider and Transmission Owner on or prior to the specified date have been satisfied. In the event of any foreclosure by such lenders, the purchasers at such foreclosure or any subsequent purchaser, shall upon request, be entitled to the rights and benefits of (and be bound by) this Agreement so long as it is an entity entitled to interconnect with the Transmission System. The Transmission Provider and Transmission Owner may bill Generator for the cost of providing such standard documents and certificates.

## **ARTICLE 15 INSURANCE**

**15.1 Generator Insurance.** Without limiting any obligations or liabilities under this Agreement, Generator shall, at its expense, provide and maintain in effect for the life of this Agreement, minimum insurance coverage (in any combination of primary and excess layers) as follows:

**15.1.1 Workers' Compensation.** Workers' compensation insurance in accordance with all applicable state, federal, and maritime laws, including employer's liability insurance in the amount of one million dollars (\$1,000,000) per accident. The policy shall be endorsed to include a waiver of subrogation in favor of the Transmission Provider and Transmission Owner, and their affiliated and associated companies.

**15.1.2 Commercial General Liability.** Commercial general liability insurance, including contractual liability coverage, for liabilities assumed under this Agreement and personal injury coverage in the amount of twenty-five million dollars (\$25,000,000) per occurrence for bodily injury and property damage. The policy shall be endorsed to include the Transmission Provider, Transmission Owner, and their affiliated and associated companies as additional insureds with a provision substantially in the form of the following:

In consideration of the premium charged, the Transmission Provider, Transmission Owner, and their affiliated and associated companies are named as additional insureds with respect to liabilities arising out of the Transmission Provider's and Transmission Owner's use and ownership of the Transmission System and/or the Transmission Owner Interconnection Facilities and the Transmission Provider's and Transmission Owner's use of the Generator Interconnection Facilities. The inclusion of more than one insured under this policy shall not



operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limits of the carrier's liability. The Transmission Provider and Transmission Owner will not, by reason of their inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

**15.2 Generator Self-Insurance.** Generator, at its option, may, with adequate credit assurance provided to Transmission Owner, self-insure all or part of the insurance required in this Article 15; provided, however, that all other provisions of this Article 15, including, but not limited to, waiver of subrogation, waiver of rights of recourse, and additional insured status, which provide or are intended to provide protection for the Transmission Provider, Transmission Owner, and their affiliated and associated companies under this Agreement, shall remain enforceable. Generator's election to self-insure shall not impair, limit, or in any manner result in a reduction of rights and/or benefits otherwise available to the Transmission Provider, Transmission Owner, and their affiliated and associated companies through formal insurance policies and endorsements as specified in the above paragraphs of this Article 15. All amounts of self-insurance, retentions and/or deductibles are the responsibility of and shall be borne by Generator.

**15.3 Transmission Owner Insurance.** Without limiting any obligations or liabilities under this Agreement, the Transmission Owner shall, at its expense, provide and maintain in effect for the life of this Agreement, minimum insurance coverage (in any combination of primary and excess layers) as follows:

**15.3.1 Workers' Compensation.** Workers' compensation insurance in accordance with all applicable state, federal, and maritime laws, including employer's liability insurance in the amount of one million dollars (\$1,000,000) per accident. The policy shall be endorsed to include a waiver of subrogation in favor of Generator and its affiliated and associated companies.

**15.3.2 Commercial General Liability.** Commercial general liability insurance, including contractual liability coverage for liabilities assumed under this Agreement, and personal injury coverage in the amount of twenty-five million dollars (\$25,000,000) per occurrence for bodily injury and property damage. The policy shall be endorsed to include Transmission Provider, Generator and their affiliated and associated companies as additional insureds with a provision substantially in the form of the following:

In consideration of the premium charged, Transmission Provider, Generator and their affiliated and associated companies are named as additional insureds with respect to liabilities arising out of Generator's use and ownership of the Facility and/or the Generator Interconnection Facilities and Generator's use of the Transmission System and/or the Transmission Owner Interconnection Facilities. The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limits of the carrier's liability. Generator will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.

**15.4 Transmission Owner Self-Insurance.** The Transmission Owner, at its option, may, with adequate credit assurance provided to Generator, self-insure all or part of the insurance required in this Article 15; provided, however, that all other provisions of this Article 15, including, but not limited to, waiver of subrogation, waiver of rights of recourse, and additional insured status, which provide or are intended to provide protection for Generator and its affiliated and associated companies under this Agreement, shall remain enforceable. The Transmission Owner's election to self-insure shall not impair, limit, or in any manner result in a reduction of rights and/or benefits otherwise available to Generator and its affiliated and associated companies through formal insurance policies and endorsements as specified in the above paragraphs of this Article 15. All amounts of self-insurance, retentions and/or deductibles are the responsibility of and shall be borne by the Transmission Owner.

**15.5 Notices and Certificates of Insurance.** All policies of insurance shall provide for thirty (30) days prior written notice of cancellation or material adverse change. Prior to the date the Facility is first operated in parallel with the Transmission System and annually thereafter during the term of this Agreement, certificates of insurance shall be furnished by the Transmission Owner to Generator.

## **ARTICLE 16 INDEMNITY**

**16.1 General.** Each Party shall indemnify and hold harmless the other Parties, and the other Parties' respective officers, shareholders, stakeholders, managers, representatives, directors, agents and employees, and affiliated and associated companies, from and against any and all loss, liability, damage, cost or expense, including damage and liability for bodily injury to or death of persons, or damage

to property of persons (including reasonable attorney's fees and expenses, litigation costs, consultant fees, investigation fees and sums paid in settlements of claims and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "Loss") to the extent arising out of, in connection with or resulting from (i) the indemnifying Party's breach of any of the representations or warranties made in, or failure to perform any of its obligations under, this Agreement; or (ii) the negligence or willful misconduct of the indemnifying Party or its contractors and regardless whether arising under Applicable Laws and Regulations or otherwise; *provided*, however, that no Party shall have any indemnification obligations under this Section 16.1 with respect to any Loss to the extent the Loss results from the negligence or willful misconduct of the Party seeking indemnity.

- 16.2 Notice and Defense.** Promptly after receipt by a person entitled to indemnity ("Indemnified Person") of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 16.1 may apply, the Indemnified Person shall notify the indemnifying Party of such fact, but any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay shall be materially prejudicial to the indemnifying Party. The indemnifying Party shall have the right to assume the defense thereof with counsel designated by such indemnifying Party and reasonable satisfaction to the Indemnified Person; *provided*, however, that if the defendants in any such action include one or more Indemnified Persons and the indemnifying Party and the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person; *provided*, further that the indemnifying Party shall only be required to pay the fees and expenses of one additional law firm to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses. The Indemnified Person shall be entitled, at its expense, to participate in any action, suit or proceeding, the defense of which has been assumed by the indemnifying Party. Notwithstanding the foregoing, the indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person or there exists a conflict or adversity of interest between the Indemnified Person and the indemnifying Party, and in such event the indemnifying Party shall pay the reasonable expenses of the Indemnified Person in such defense, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld or delayed.

- 16.3 Indemnified Person.** If an Indemnified Person is entitled to indemnification under this Article 16 as a result of a claim by a third party, and the indemnifying Party fails to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle, consent to the entry of any judgment with respect to, or pay in full, such claim.
- 16.4 Amount Owing.** If an indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 16, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, not of any insurance or other recovery.
- 16.5 Limitation on Damages.** Notwithstanding any other provision of this Agreement, liability of all Parties shall be limited to direct actual damages, and all other damages at law or in equity are waived. Under no circumstances shall any Party or its affiliates, directors, officers, employees and agents, or any of them, be liable to the other Parties, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits. The limitations on damages specified in this Section 16.5 are without regard to the cause or causes related thereto, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. The provisions of this Section 16.5 shall survive the termination or expiration of this Agreement. This Section 16.5 shall not be interpreted in any way to override the provisions of Sections 16.1 through 16.4.

## **ARTICLE 17 BREACH, CURE AND DEFAULT**

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

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

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

**17.3 Cure and Default.** Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach. Upon the occurrence described in part (c) of Section 17.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have thirty (30) days to cure such Breach unless such Breach is due to an occurrence under Section 17.1(a) or (c) in which case the cure period will be five (5) days. If the Breach is such that it cannot be cured within thirty (30) days, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such thirty (30) day time period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within thirty (30) days of becoming aware of the Breach, the Breaching Party will be in Default of this Agreement.

**17.4 Right to Compel Performance.** Notwithstanding the foregoing, upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to (i) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, and (ii) exercise such other rights and remedies as it may have in equity or at law.

**ARTICLE 18**  
**TERMINATION OF INTERCONNECTION SERVICE**

- 18.1 Expiration of Term.** Except as otherwise specified in this Article 18, Interconnection Service for the Facility shall terminate at the conclusion of the term of this Agreement.
- 18.2 Termination.** In addition to the termination provisions set forth in Section 2.2, Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Section 18.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.
- 18.3 Disposition of Facilities Upon Termination of Agreement.**
- 18.3.1 Transmission Provider and Transmission Owner Obligations.** Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner shall:
- (a) prior to the construction and installation of any portion of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades and to the extent possible, cancel any pending orders of, or return, such facilities to the extent that such orders or facilities are not required to provide Interconnection Service to a Subsequent Generator;
  - (b) keep in place any portion of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades already constructed and installed, provided that Transmission Owner may, in its discretion, remove the Transmission Owner Interconnection Facilities; and
  - (c) perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization, wind-up work).
- 18.3.2 Generator Obligations.** Upon billing by Transmission Owner, Generator shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Section 18.3.1 and for the cost of any Transmission Owner Interconnection Facilities and Interconnection System Upgrades described in Appendix A, including any study or redesign costs associated therewith, that are necessary for the provision of

Interconnection Service to a Subsequent Generator that has entered into an Interconnection and Operating Agreement with Transmission Provider and/or Transmission Owner on or before the date of the termination of this Agreement. The Transmission Owner and the Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Generator shall pay these costs pursuant to §13.4 of this Agreement. If the cost of any Transmission Owner Interconnection Facilities and Interconnection System Upgrades described in Appendix A, including any study or redesign costs associated therewith are necessary for the provision of Interconnection Service to such Subsequent Generator, Generator may seek recovery of such costs from the Subsequent Generator in accordance with Section 3.6 to the extent that Generator has paid such costs to Transmission Owner.

**18.3.3 Pre-construction or Installation.** Upon termination of this Agreement and prior to the construction and installation of any portion of the Transmission Owner Interconnection Facilities or Interconnection System Upgrades, Transmission Owner may, at its option, retain any portion of such facilities not cancelled or returned in accordance with Section 18.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such facilities. To the extent that Generator has already paid Transmission Owner for any or all of such costs, Transmission Owner shall refund such amounts to Generator. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Generator such facilities as soon as practicable after Generator's payment for such facilities.

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

## **ARTICLE 19 SUBCONTRACTORS**

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

**19.1.1 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations

under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

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

**19.1.3 No Limitation by Insurance.** The obligations under this Article 19 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 20 CONFIDENTIALITY**

**20.1 Term.** During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 20, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

**20.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate (i) is generally available to the public other than as a result of a disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, after due inquiry, was under no obligation to the other Party to keep such information confidential; (iv) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Agreement; or (vi) is required, in accordance with Section 20.7 of this Agreement, to be disclosed to any Governmental Authority as long as such information is made available to the public, is otherwise required to be disclosed by Applicable Laws and Regulations or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information shall no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

**20.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except on a need-to-know basis, to its employees, consultants or to parties who may be or considering providing financing to or equity participation with Generator in connection with this Agreement, unless such person has first been advised of the confidentiality



provisions of this Article 20 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person receiving the initial Confidential Information shall remain primarily responsible for any release of Confidential Information in contravention of this Article 20.

- 20.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to another Party. The disclosure by each Party to another Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 20.5 No Warranties.** By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.
- 20.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as that it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to other Parties under this Agreement or to comply with Applicable Laws and Regulations.
- 20.7 Order of Disclosure.** If a Governmental Authority with the right, power, and apparent authority to do so requests or requires a Party, by subpoena, oral deposition, interrogatories, requests for production of documents, data request, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt prior written notice to the extent possible of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or agreement, or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or agreement, or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party shall use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.
- 20.8 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, at the Party's option, within ten (10) days after receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure and deletion certified in writing to the other Parties) or return to the other Parties, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Parties.

**20.9 Remedies.** The Parties expressly agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 20. Each Party accordingly expressly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party breaches or threatens to breach its obligations under this Article 20, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed to be an exclusive remedy for the breach of this Article 20, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 20.

## **ARTICLE 21 INFORMATION ACCESS AND AUDIT RIGHTS**

**21.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than to operate and maintain their respective facilities and equipment for the purposes set forth in this Section 21.1 and to enforce their rights under this Agreement.

**21.2 Audit Rights.** Subject to the requirements of confidentiality under Article 20, a Party at its expense shall have the right, during normal business hours, and upon prior reasonable notice to another Party, to audit each other's accounts and records pertaining to a Party's performance and/or satisfaction of obligations arising under this Agreement during the twenty-four (24) month period prior to commencement of the audit, other than the performance and/or satisfaction of the Transmission Provider under Section 4.7, which shall be subject to the audit provisions of such Section. Any audit authorized by this Section 21.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

## **ARTICLE 22 DISPUTES**

**22.1 Submission.** Any claim or dispute, which a Party may have against others, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Transmission Provider OATT.

**22.2 Rights under the Federal Power Act.** Nothing in this Article 22 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.

**22.3 Equitable Remedies.** Nothing in this Article shall prevent either Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

## **ARTICLE 23 NOTICES**

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

To the Transmission Provider:

Manager, Interconnection Planning  
Transmission Provider  
701 City Center Drive  
Carmel, IN 46032

To Transmission Owner:

Director, System Transmission  
LG&E Energy Services Company  
119 North 3<sup>rd</sup> Street  
Louisville, KY 40202

To Generator:

Estill County Energy Partners, LLC  
Attention: Project Manager  
6000 Sulphur Well Road  
Lexington, KY 40509

**23.2 Billings and Payments.** Billings and payments shall be sent to the addresses shown in Section 23.1.

**23.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given

in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To the Transmission Provider:

Voice telephone – (317) 249-5759  
Facsimile telephone – (317) 249-5703  
Email address – jfohey@midwestiso.org

To Transmission Owner:

Voice telephone – 859-748-5221  
Facsimile telephone – 859-748-4686  
Email address – LGEETRANS@lgeenergy.com

To Generator:

Voice telephone – (859) 263-1652  
Facsimile telephone – (859) 263-0064  
Email address – foxtrotcorp@earthlink.net

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

To the Transmission Provider:

Facsimile telephone – (317) 249-5703  
Email address – jfohey@midwestiso.org

- 23.5 Notification of In-Service Date.** Transmission Owner will serve to the Transmission Provider a copy of Appendix C - Operation Date as forwarded to Generator on the same day to the address shown in Section 23.1, and by facsimile to the numbers set out below:

To the Transmission Provider:

Facsimile telephone – (317) 249-5703

## **ARTICLE 24 MISCELLANEOUS**

- 24.1 No Ownership Control.** Generator represents and warrants as of the effective date of this Agreement, that it does not own more than five percent (5%) of the

voting shares of the Transmission Provider, nor has contractual rights permitting it to direct the voting of such percentage of shares, and further agrees that this representation shall remain true during the term of this Agreement.

- 24.2 Waiver.** Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 24.3 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Indiana without regard to the conflicts of law provisions.
- 24.4 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 24.5 Amendments and Rights Under the Federal Power Act.** This Agreement may be amended by and only by a written instrument duly executed by all Parties. Upon satisfaction of all Applicable Laws and Regulations, an amendment to this Agreement shall become effective and a part of this Agreement. Notwithstanding the foregoing, nothing contained herein shall be construed as affecting in any way the rights of the Transmission Provider, Transmission Owner, or Generator under Sections 205 and 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder. The Transmission Provider reserves the right to file rate schedules with FERC concerning any services the Transmission Provider deems necessary for reliable and orderly bulk power system management, including but not limited to any standby or related services that may arise from a failure by Generator to meet its schedule of deliveries across the Transmission System.
- 24.6 Entire Agreement.** This Agreement constitutes the entire agreement among the Parties hereto with reference to the subject matter hereof and no change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Generator, Transmission Owner, and the Transmission Provider. The terms and conditions of this Agreement and every appendix referred to herein shall be amended, as mutually agreed to by the Parties, to comply with changes or alterations made necessary by a valid applicable order of any Governmental Authority having jurisdiction hereof.
- 24.7 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

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

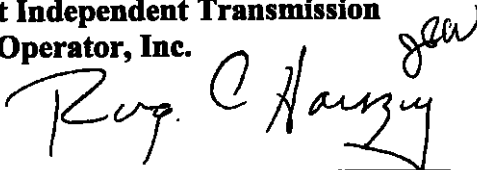
## **ARTICLE 25 REPRESENTATIONS AND WARRANTIES**

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

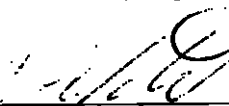
25.1.5 Solvency. That each Party is financially solvent.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.


**Midwest Independent Transmission  
System Operator, Inc.**

By:   
Name: Roger C. Harszy  
Title: Executive Director Engineering

**Estill County Energy Partners, LLC**  
DUNS # 33-1020609

By:   
Name: C. E. Yates  
Title: V.P. & CEO

**Kentucky Utilities Company**  
DUNS # 016787371

By:   
Name: Mark S. Johnson  
Title: Director, System Transmission

55 JW Fading  
4/12/04

APPENDIX A

**POINT OF INTERCONNECTION, TRANSMISSION OWNER INTERCONNECTION FACILITIES, INTERCONNECTION SYSTEM UPGRADES, COST ESTIMATES AND RESPONSIBILITY, TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE, AND MONTHLY PAYMENT SCHEDULE**

This Appendix A is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Transmission Provider.

- 1.1 Point of Interconnection.** The Point of Interconnection shall be at the point where Generator connects to the Transmission System at the Kentucky Utilities Co.'s West Irvine 161 kV substation at Estill County, Kentucky. See Exhibit A1.1 Drawing No. S-1193 dated 12/18/2003, and Figure 1, dated 02/04/2004, which drawing is attached hereto and made a part hereof.
- 1.2 Transmission Owner Interconnection Facilities (including metering equipment) to be constructed by the Transmission Owner.** The Transmission Owner shall construct one 161 kV breaker (shown as B1, in Figure 1, Exhibit A1.1), including protection and control devices and appurtenant material.
- 1.3 Transmission Owner Interconnection Facilities (including metering equipment) to be constructed by Generator.** Not Applicable.
- 1.4 Interconnection System Upgrades to be installed by the Transmission Owner.** The Transmission Owner shall install the items B2, B3, B4, B5, B6, B7, L1, T1, and bus West Irvine 161, as shown in Figure 1, Exhibit A1.1. Technical detail of the new facilities is shown in Exhibit A1.4.
- 1.5 Cost Estimates and Responsibility.** Generator and the Transmission Owner hereby acknowledge and agree that the cost indicated below is only an estimate and that Generator hereby agrees to and shall reimburse the Transmission Owner for all actual costs, as determined pursuant to Section 9.4 herein associated with the construction and installation by the Transmission Owner and/or Generator of the Transmission Owner Interconnection Facilities and the Interconnection System Upgrades.
  - 1.5.1** The cost for the Transmission Owner Interconnection Facilities to be constructed by the Transmission Owner is estimated at \$ 308,552 in 2006 dollars (see Table 1 of the Interconnection Facility Study Report, dated January 2004, included as Exhibit A1.5.1 of this Agreement. The Transmission Owner maintains the detailed cost estimate as confidential and therefore, it is not included with this document.
  - 1.5.2** The cost for the Transmission Owner Interconnection Facilities to be constructed by Generator is estimated at \$ Not Applicable.



- 1.5.3** The cost for the Interconnection System Upgrades is estimated at \$ 3,683,896 in 2006 dollars and detailed in Table 1 of Interconnection Facility Study Report, dated January 2004, included as Exhibit A1.5.1.
- 1.5.4** The cost, including penalties, of redispatch or market-related costs arising from outages described in Section 9.1.10 of the Agreement is estimated at \$ 0.0.
- 1.5.5** The total cost for the Transmission Owner Interconnection Facilities and Interconnection System Upgrades is estimated at \$ 3,992,448 in 2006 dollars and detailed in Table 1 of the Interconnection Facility Study Report, dated January 2004, included as Exhibit A1.5.1.
- 1.5.6** Generator's liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under Section 9.4.1 is estimated at \$ 0.0. This amount is not included in the total cost for Transmission Owner Interconnection Facilities and Interconnection System Upgrades stated in Section 1.5.5 of this Appendix A.
- 1.6 First Equipment Order.** The first date for the ordering of equipment by Transmission Owner for installing Transmission Owner Interconnection Facilities and/or Interconnection System Upgrade is expected to be September 1, 2005 (see Table 3 of the Interconnection Facility Study Report, dated January 2004, included as Exhibit A1.5.1 of this Agreement). However, engineering design of West Irvine Tap to West Irvine 161 kV line needs to begin by December 2004 and right-of-way acquisition of the same line needs to begin by March 1, 2005.
- 1.7 Transmission Credits.** The portion of the Interconnection System Upgrades that is subject to the transmission service credits described in Section 9.2 of this Agreement is estimated to be \$ 3,683,896 in 2006 dollars, as shown in Section 1.5.3. Transmission credits will be based on the final, actual cost of completing the Interconnection System Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Section 13.5 of this Agreement. Any reimbursement due Generator will include (i) the final, actual cost after any true-up amounts have been paid pursuant to Section 13.5, and (ii) interest at the rate calculated each month using FERC's regulations at 18 C.F.R. §35.19a(a)(2)(ii) applied to the amount remaining to be reimbursed from the date of collection from Generator until fully reimbursed.

Transmission Owner shall reimburse Generator as directed by the Transmission Provider on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges on the Transmission System, as payments are made under the Transmission Provider OATT using either of the following options:

- X Credits against transmission service taken from the Facility - Generator shall provide the Transmission Provider with a monthly record of the various transmission services that the Generator or a Transmission Customer for the Facility's generation has taken from the Transmission Provider originating

from the Facility. Transmission Provider will verify the records, calculate the total cost of the monthly transmission service, and provide Transmission Owner the amount Transmission Owner is to reimburse Generator pursuant to Section 9.2.1 of this Agreement. If the Transmission Customer for the Facility's generation obtains Transmission Service under the Transmission Provider OATT, then in the absence of a mutually agreeable payment schedule, refunds to Generator shall be based on the Transmission Provider OATT firm and non-firm point-to-point transmission service rate for the pricing zone corresponding to the Transmission Customer's Point of Delivery, multiplied by either the amount of Facility generation designated as a Network Resource if Network Integration Transmission Service is taken, or the Transmission Customer's reservation if Point-to-Point Transmission Service is taken, as applicable.

\_\_\_\_\_ Cash repayment, with payment schedule as follows:

- \_\_\_\_\_ Immediate repayment to be made not later than one-hundred and twenty (120) days following notice as provided in Appendix C, or
- \_\_\_\_\_ Sixty (60) equal monthly payments over five years.

Such reimbursement will begin the second calendar month after the later of Transmission Owner's final invoice pursuant to Section 13.5 or Generator's demonstration of commercial operation of the Facility. Beginning with the first payment through either credits against transmission service or cash repayment, Transmission Owner will send Generator a statement, by the 15<sup>th</sup> day of each month, that will provide the amount of credit or reimbursement and interest paid for the current month, year-to-date and total-to-date, and remaining credit balance.

The Parties may adopt any alternative payment schedule that is mutually agreeable that otherwise provides reimbursement of amounts paid previously by Generator. Transmission Owner shall notify the Transmission Provider upon initiation, completion and any alteration of the payment schedule herein described and shall provide the Transmission Provider what information the Transmission Provider may request to timely file with FERC any required notice or other filing of the alternative payment schedule and to verify such payments are made and their amount.

The Parties' agreement to a crediting mechanism herein, whether credits apply to transmission service obtained by Generator or its assignee, or through cash payments, shall not serve as precedent regarding any Party's future agreement to a crediting mechanism.

- 1.8 Construction Schedule.** Construction of the Facility, Generator Interconnection Facilities, the Transmission Owner Interconnection Facilities and Interconnection System Upgrades is provided in Table Ad.1 of the Interconnection Facility Study Report, dated January 2004, included as Exhibit A1.5.1 of this Agreement

**1.9 Monthly Payment Schedule.** Generator shall pay the Transmission Owner for the installation of the Transmission Owner Interconnection Facilities and Interconnection System Upgrades in accordance with the following schedule:

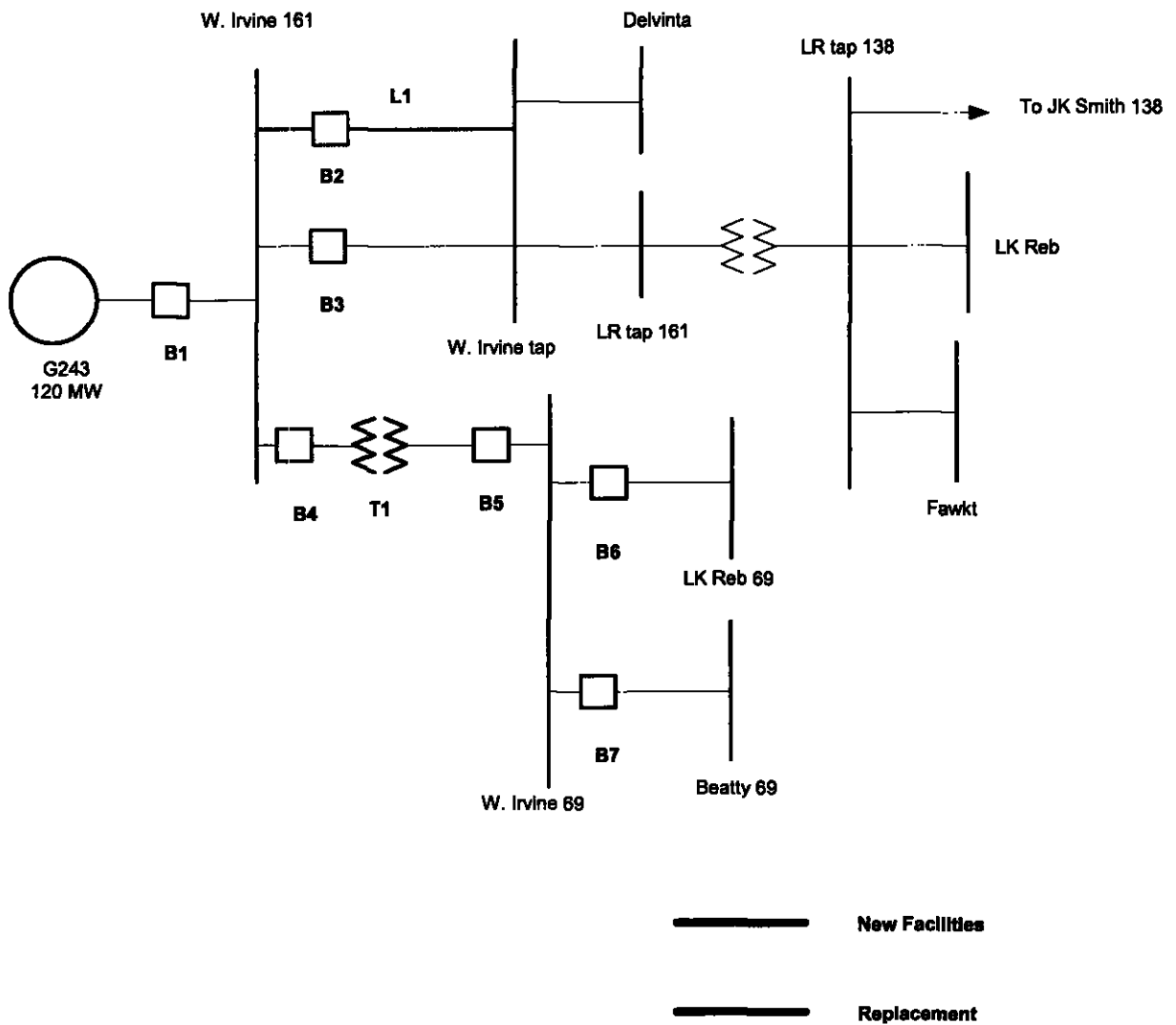
Time Frame: Months, prior to Operation date	Activity	Deposit Required	
		(In 2003 \$\$)	(In 2006 \$\$)
41	Begin Engineering Design of 161 kV line	55,000	60,627
35	Finalize the routing and design	55,000	60,627
24	Begin R/W acquisition	250,000	275,576
20	Begin the condemnation process, if necessary	190,000	209,438
13	Begin acquisition of materials	330,000	363,760
8	Remaining funds for the construction of the line	412,939	455,184
	<b>Total Line estimate</b>	<b>1,292,939</b>	<b>1,425,210</b>
18	To complete Substation Engineering and Design work	25,000	27,558
13	Rest of the costs for Substation construction	2,303,977	2,539,681
	<b>Total Substation construction cost</b>	<b>2,328,977</b>	<b>2,567,238</b>
	<b>Total Line and Substation construction cost</b>	<b>3,621,916</b>	<b>3,992,448</b>

Generator shall make any additional payment to Transmission Owner or Transmission Owner shall refund payment to Generator, as applicable, within thirty (30) days of Generator's receipt of Transmission Owner's invoice. Generator shall provide notice to Transmission Provider of the payment's amount and date as they are provided to the Transmission Owner. The Transmission Owner shall notify the Transmission Provider when payments are received. Upon receipt of Transmission Owner's notice of receipt of payment, Transmission Provider will authorize the Transmission Owner to proceed with the Activity for which Generator's payment is made.

So long as Generator is pre-paying in accordance with the requirements of this Section 1.9, Transmission Owner shall not require Generator to provide or maintain security under Sections 13.1 and 13.2 of the Agreement.

**1.10 Permits, Licenses and Authorizations.** The Transmission Owner shall obtain all necessary permits, licenses and authorizations for the facilities in this Appendix A.

**Exhibit A 1.1**



**Network Upgrades:** Breakers B2, B3, B4, B5, B6, B7; Line L1, Transformer T1, Bus West Irvine 161

**Interconnection Facilities:** Breaker B1 and associated Breaker Failure protection scheme

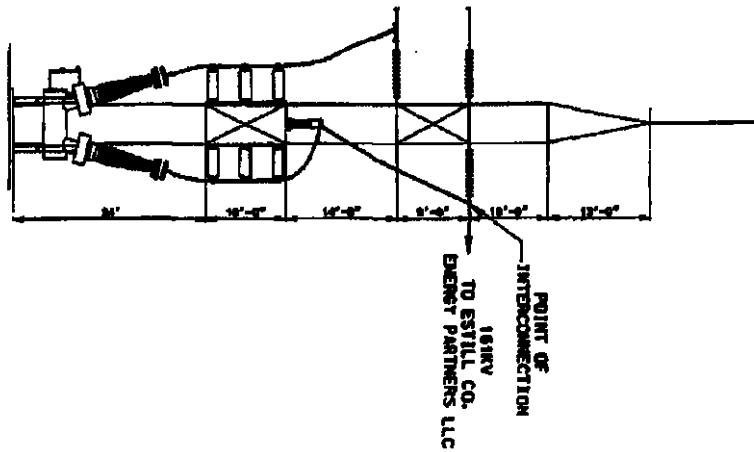
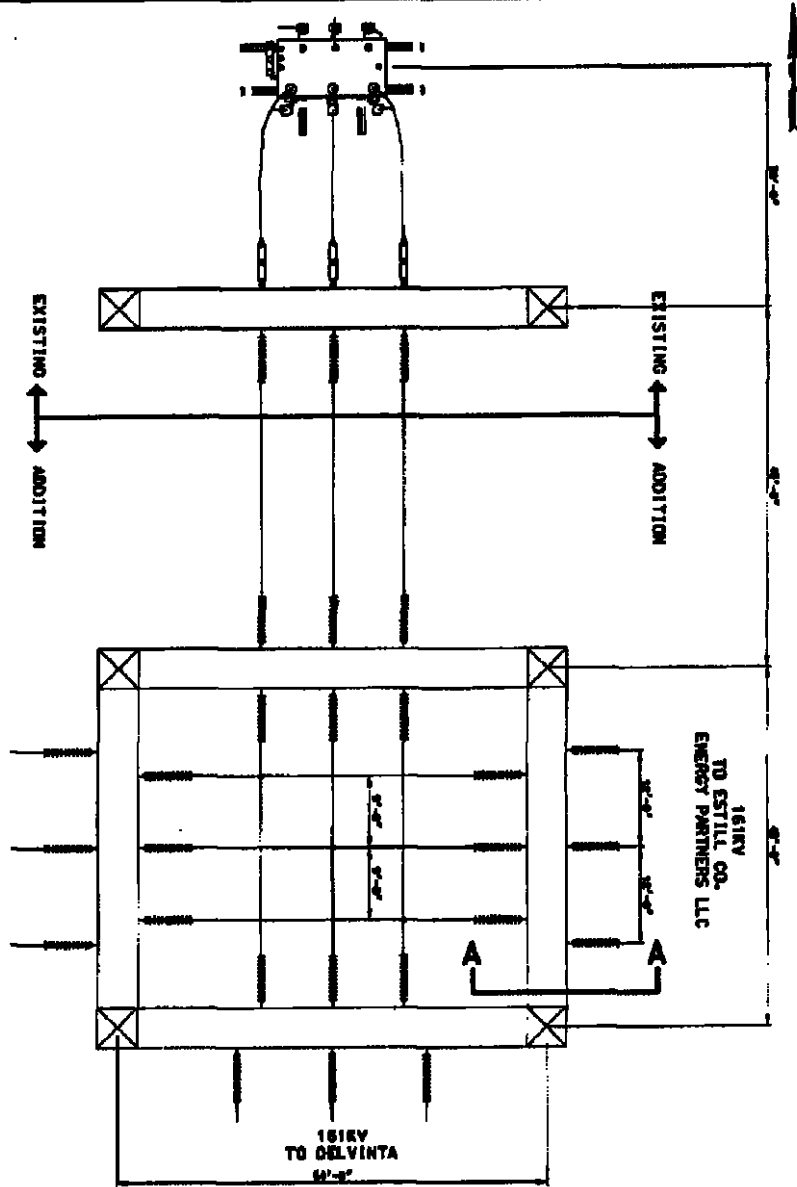
Figure 1: Existing and new facilities at the point of interconnection

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**PLAN VIEW**

161KV  
TO LAKE MEAD TAP

**SECTION A-A**



<b>WEST IRVINE SUBSTATION - PLAN VIEW</b>			
DRAWN BY T.L. JONES	DATE OCT. 1, 2003	SCALE	DRAWING NUMBER S-1193

## **Exhibit A1.4**

### **Technical specifications of the new facilities**

- 1) A new three phase, 161 kV double circuit line from West Irvine to West Irvine tap, approximately 3 miles in length with 556 kcm ACSR conductor
- 2) Four (4) 161 kV Circuit breakers at West Irvine with interrupting capability of 40 kA and continuous rating of TBD amperes
- 3) One (1) 90 MVA, 161 kV transformer at West Irvine
- 4) Three (3) 69 kV Circuit breakers at West Irvine with interrupting capability of 40 kA and continuous rating of TBD amperes

**Exhibit A1.5.1**

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# **Interconnection Facility Study Report**

**Project G243 (MISO Queue#37384-01)**

**120MW Coal Unit at Estill County, KY**



January 2004

Prepared by

**Engineering Department  
Midwest ISO  
701 City Center Dr.  
Carmel, IN 46032**



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**†: The report was amended based on the latest information provided by the Transmission Owner and the Generator on 03/25/2004.**

**The report was amended based on the latest information provided by the Transmission Owner and the Generator on 03/25/2004. Please refer to the Addendum on pp 11.**

## **1. Executive Summary**

MISO completed an Evaluation Study for the Generator Interconnection project, G243, in July 2003. The interconnection customer requested a Facility Study for this project. The scope of this facility study was to determine the good faith estimate and schedule to construct required facilities for the new interconnection. This report focuses on the detailed engineering analysis for the interconnection of the new generator at LG&E Energy's West Irvine 161 kV substation. The study results show a good faith estimate of \$3,992,448 in 2006 dollars for total construction cost. The study also determined the following construction schedule for the major milestones of this project:

December 1, 2004	West Irvine Tap to West Irvine 161 kV line - Begin Engineering Design
March 1, 2005	West Irvine Tap to West Irvine 161 kV line - Begin Right-of-way acquisition
September 1, 2005	West Irvine Substation Construction - Order Materials
December 1, 2005	West Irvine Tap to West Irvine 161 kV line - Line Material Acquisition
June 1, 2006	West Irvine Tap to West Irvine 161 kV line - Begin Line Construction

## **2. Introduction**

The project is based on a waste coal fueled circulating fluidized bed boiler powering a steam turbine generator of 120 MW in Estill County, Kentucky. It entered in the MISO Generation Interconnection Queue on Aug. 16, 2002, with an initial in-service date of April 2006. During the Interconnection Evaluation Study, the interconnection customer indicated that the in-service date could be delayed to sometime in 2007.

An Interconnection Evaluation Study was performed for this project. The study report was posted in MISO Generation Interconnection Queue in July 2003 ([http://www.midwestiso.org/plan\\_inter/documents/G243\\_IES\\_Final\\_Report.pdf](http://www.midwestiso.org/plan_inter/documents/G243_IES_Final_Report.pdf)). The scope of the evaluation study is to perform load flow, short circuit, and stability analysis. The purpose of load flow study is to provide an indication of the thermal problems when delivering power out from the plant. Short circuit analysis is done to determine the impact of the new generator on the interrupting capability of the breakers at the interconnection point and other substations nearby.

Stability study determines the ability of the proposed generator to remain in synchronism after a disturbance in the system. It also evaluates the impact of the new generation on the system-wide stability performance.

This report is for the Interconnection Facility Study of project G243. The study scope is to explore further the solution options identified in the Interconnection Evaluation Study. The objectives are:

- To determine the facilities necessary to interconnect the proposed generation to the Transmission Network
- To determine the facilities necessary to remove thermal, short circuit, and stability constraints identified in the Interconnection Evaluation Study
- To determine Good Faith cost estimates, following preliminary design, of the facilities determined as a result of Evaluation Study, along with the estimated time for construction

This Interconnection Facility Study evaluates one of the two system upgrade options identified in the Interconnection Evaluation Study to mitigate the thermal overloading problems caused by the proposed interconnection. The solutions analyzed in this study are in addition to the guidelines provided (for consideration in future Transmission Service Request study or operating study) in the Interconnection Evaluation Study (Appendix A).

### **3. Review of Interconnection Evaluation Study**

Interconnection Evaluation Study for project G243 was completed in July 2003. Details can be found from the MISO Generation Interconnection Queue.

In the study, thermal analysis identified several constraints associated with the proposed interconnection. Two solutions were proposed to eliminate these constraints:

- Option 1:** Double circuit the line from West Irvine Substation to West Irvine Tap and upgrade the 161/69kV transformer at West Irvine Substation
- Option 2:** Double circuit the line from West Irvine Substation to West Irvine Tap and add a parallel 161/69kV transformer at West Irvine Substation

In one of the conference calls during the Evaluation Study, the ad hoc group decided to focus only on Option 1 in the following phases of the Interconnection process (Facility Study and IA). In addition, the group agreed to use the existing Right of Way for the new double circuit line, considering the fact that the additional right of way would not increase the reliability of the system significantly, on the other hand it would cost more to the customer.

Short circuit analysis showed the need to replace three existing 69 kV breakers at West Irvine substation. Results did not show any significant fault current increase in EKPC's system caused by the new generator interconnection.

There were no identified significant impacts on system stability due to interconnection of the proposed generator with the proposed upgrades identified in Option 1. However, the protection

scheme at West Irvine substation will require breaker-failure protection to maintain clearing times within the critical values identified in stability study. Critical Clearing Time for a three-phase fault at West Irvine 161kV substation was found to be 16.0 cycles.

#### 4. Location and Connection Point

The proposed plant is located about 1.9 miles northeast of West Irvine substation. The interconnection is to be achieved by building a new 161 kV line from the plant site to the West Irvine substation, thus connecting the generator to LG&E Energy's transmission system. A system map of the surrounding area is shown in Figure 1. A black symbol on the map shows approximate location of the new generator. Network representation with the system upgrades, identified in the evaluation study, is shown in Figure 2, and a plan view of West Irvine substation is shown in Figure 3.

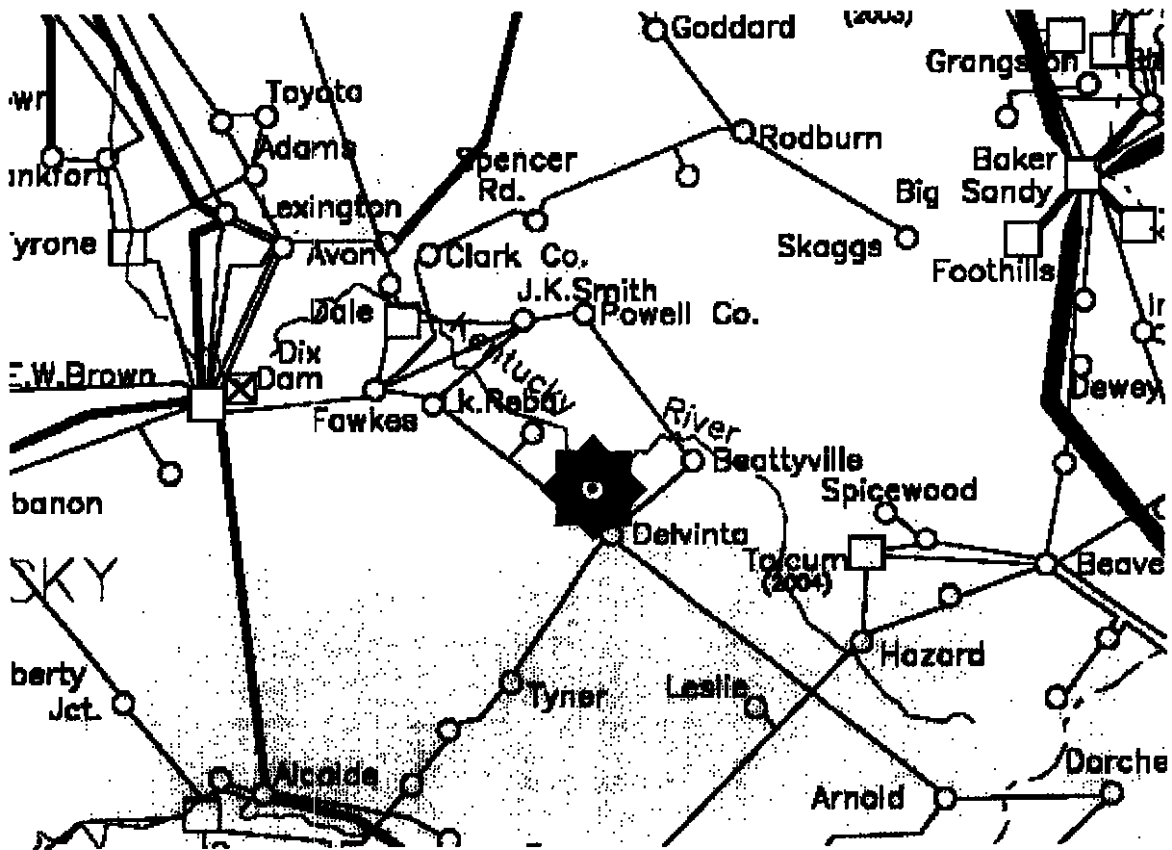


Figure 1 Transmission system map of the area, near the point of interconnection

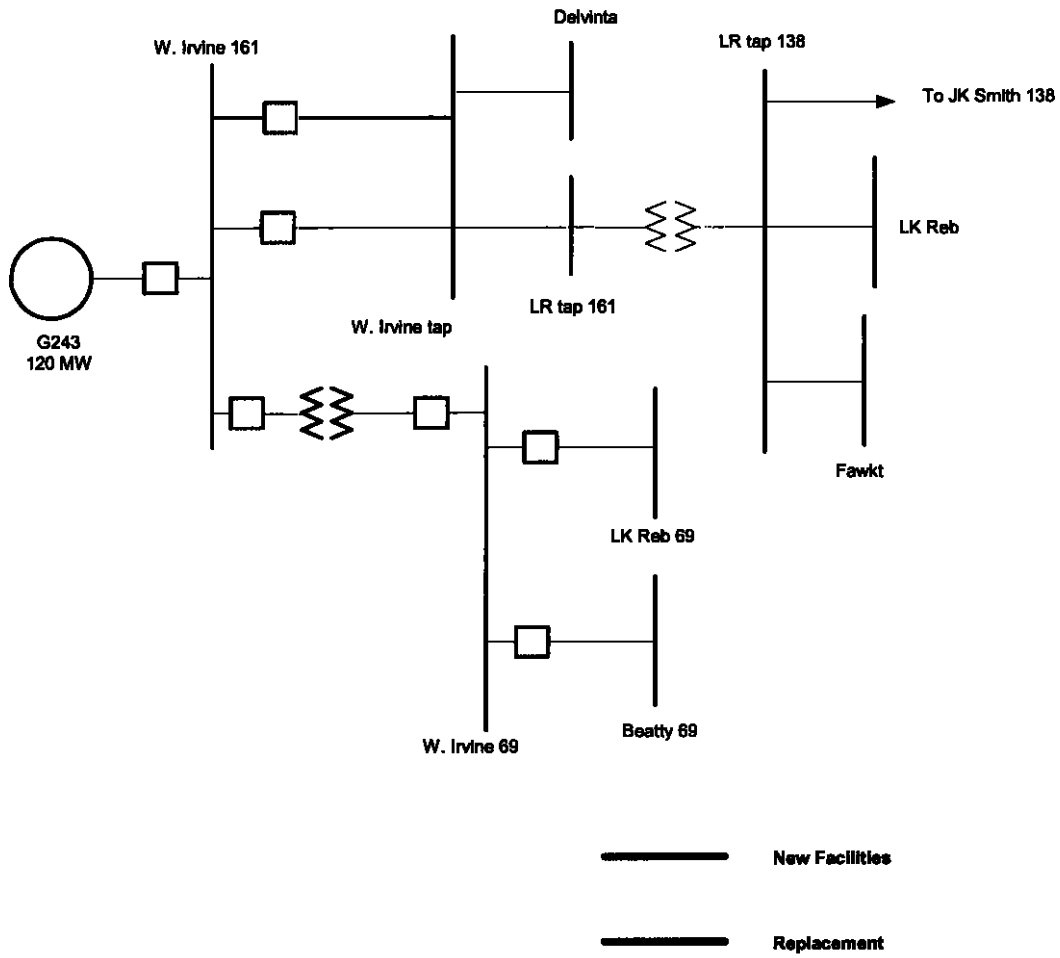
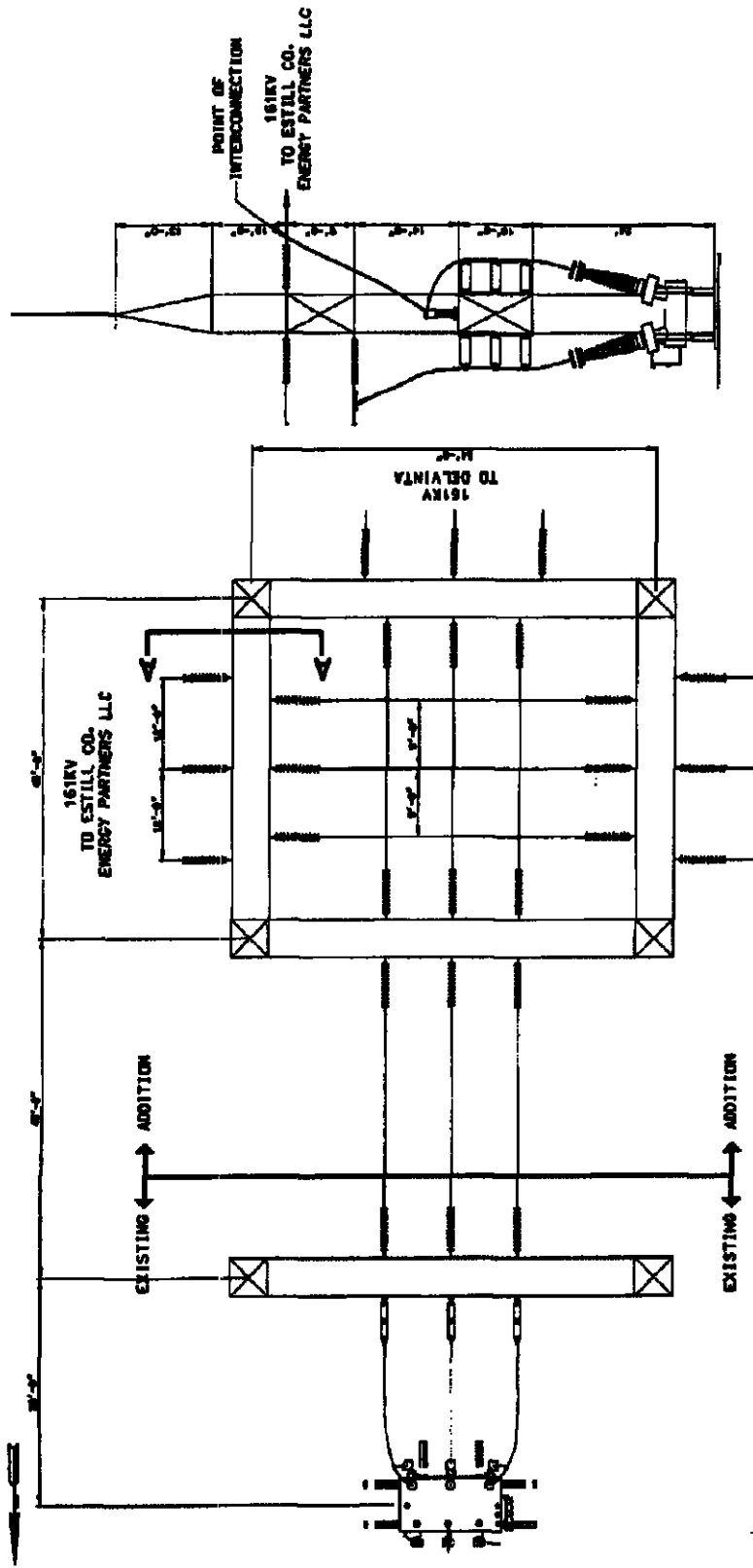


Figure 2 Representation of system upgrades, analyzed in the Facility Study



**SECTION A-A**

**PLAN VIEW**

<b>WEST IRVINE SUBSTATION - PLAN VIEW</b>	
DRAWN BY <b>T.L. JONES</b>	DATE <b>DEC. 3, 2003</b>
SCALE	DRAWING NUMBER <b>S-1193</b>

Figure 3 West Irvine Substation – Plan View

## **5. Interconnection Facilities and Construction Cost**

LG&E Energy performed the Facility Study for this project and determined the cost estimates and construction schedule to implement the system upgrades. One of the upgrades, identified in the Evaluation Study, was to double circuit the 161 kV line from West Irvine to West Irvine Tap. It was decided, during the Evaluation Study, to use the existing Right of Way to build this new line. However, LG&E Energy identified in the Facility Study, that double circuiting the line on the existing Right of Way would cost about the same as acquiring the land for a separate ROW and building the new line on it. In addition to that, LG&E Energy found the following benefits of building the line on a separate ROW:

- Existing 161 kV tap line to West Irvine would not be out for an extended period of time to construct a double-circuit line
- Maintenance of these lines will be much easier if they are not on the same poles. Maintenance outages of both lines simultaneously can be avoided.
- The reliability is slightly higher from the standpoint that a failure of a pole will not outage both lines.
- The tradeoff in tearing down the existing line and installing double circuit steel poles versus acquiring additional ROW to construct a parallel line using wooden H-frame structures is about equal. Therefore, the cost is no more to build the line on parallel ROW.

For these reasons, LG&E Energy decided, with costs being equivalent, to design the line on separate structures on adjacent ROW. Therefore, the estimate for the new line was developed considering a separate ROW and it includes the cost of acquiring the ROW.

The following tables show the good faith cost estimates of facilities required for proposed generator interconnection. All cost estimates in the tables include a 10% contingency margin. All these facilities are required to be completed before connecting the generator to the power network. LG&E Energy transmission facility estimates do not include any cost for construction of facilities between the generator and the insulator bells at the take-off structure in the West Irvine substation.

The estimates presented in the Table 1 have been split to show the interconnection facilities and network upgrades based on the FERC's definition of these terms. The FERC Order 2003, paragraph 21 says "Network Upgrades include only facilities at or beyond the point where the Interconnection Customer's Generating Facility interconnects to the Transmission Provider's Transmission System." In addition, paragraph 22 of the FERC Order 2003 says that Network Upgrade facilities are eligible for future transmission credits while Interconnection Facilities are Generator's direct assignment and are not eligible for credits. For this project, one (out of four) 161 kV breaker at the point of interconnection and the breaker failure protection scheme are considered Interconnection Facilities.

Table 1. Construction cost estimates split based on FERC's definition

Item		Cost in 2003 Dollars	Cost in 2006 Dollars
Network Upgrades	1. Substation work, including the construction of a 161 kV bus at West Irvine, installing three 161 kV breakers and replacing the three 69 kV breakers at West Irvine	1,178,109	1,298,633
	2. Construct 3 miles of 161 kV line using 556 kcm ACSR from the West Irvine Tap point to West Irvine. Includes the cost of acquiring additional right of way.	1,292,939	1,425,210
	3. Replace the West Irvine 161/69 kV, 56 MVA transformer with a 90 MVA transformer	870,952	960,053
Interconnection Facilities	4. Install one 161 kV breakers at West Irvine leading to the proposed generator and Install a breaker-failure protection scheme at West Irvine	279,916	308,552
<b>Total Cost</b>		<b>3,621,916</b>	<b>3,992,448</b>

LG&E Energy does not agree with the way the estimates have been split between Network upgrades and Generator's direct assignment and believe that FERC's definition is very much uncertain. They believe that any upgrades, required to solve the Stability and Short circuit problems, caused by the proposed interconnection, should be assigned to the generator and are not eligible for any future transmission credits. Table 2 shows the estimates split based on LG&E Energy's definition.



Table 2. Construction cost estimates split based on LG&E Energy's definition

Item		Cost in 2003 Dollars	Cost in 2006 Dollars
Interconnection facilities	1. Substation work, including the construction of a 161 kV bus at West Irvine, installing four 161 kV breakers and a breaker failure protection scheme, and replacing the three 69 kV breakers at West Irvine	1,458,024	1,607,184
	2. Construct 3 miles of 161 kV line using 556 kcm ACSR from the West Irvine Tap point to West Irvine. Includes the cost of acquiring additional right of way	1,292,939	1,425,210
Network upgrades	3. Replace the West Irvine 161/69 kV, 56 MVA transformer with a 90 MVA transformer	870,952	960,053
<b>Total Cost</b>		<b>3,621,916</b>	<b>3,992,448</b>

## 6. Schedule of Activities

All of the identified facilities in Table 1 must be completed 6 months before the commercial operation date. Assuming a commercial operation date of June 1 2007, all transmission facility constructions should be complete by December 1, 2006. A schedule of major milestones is given in Table 3.

Table 3. Construction Schedule

Start date	Major Milestones
December 1, 2004	West Irvine Tap to West Irvine 161 kV line - Begin Engineering Design
March 1, 2005	West Irvine Tap to West Irvine 161 kV line - Begin Right-of-way acquisition
September 1, 2005	West Irvine Substation Construction - Order materials
December 1, 2005	West Irvine Tap to West Irvine 161 kV line - Line Material Acquisition
June 1, 2006	West Irvine Tap to West Irvine 161 kV line - Begin Line Construction

## **7. Conclusion**

The total cost to interconnect the proposed generator to the network has been estimated to be \$3,992,448 in 2006 US dollars. The study also identified the schedule for major milestones in order to achieve a commercial operation date of June 1, 2007.

## **Appendix A. Notes for Brown Plant Units Sensitivity Studies**

In Interconnection Evaluation Study, additional load flow runs were made to honor LG&E Energy's planning criteria. LG&E Energy's planning guidelines specify testing the adequacy of the transmission system with a single element outaged in conjunction with a generation unit outage. The following worst-case generation dispatch scenarios were considered as advised by LG&E Energy:

- Maximum generation in the Brown area
- Minimum generation in the Brown area.

N-1 analysis was performed in conjunction with the above scenarios, with inclusion of upgrade option 1. Some overloads were identified in Appendix A of the Interconnection Evaluation Study. According to Section 2.3 in Attachment R of MISO OATT, Generation Interconnection study process does not assure deliverability from the plant, the purpose of these additional runs is to provide an indication of the thermal problems, the proposed generator could cause (during periods when LG&E Energy is operating under these dispatch scenarios) when delivering power out from this plant.

Finding solutions to the thermal overloading problems identified under Brown maximum and minimum dispatch scenario was not included in the Interconnection Evaluation Study. If a delivery or operating study identifies any system constraints, the delivery/operating study will identify a solution (required upgrade or an operating guideline) before granting of any type of transmission service out of the plant. If a long-term transmission service request is not submitted for this generator, an operating study will be required to address this issue before the project is allowed to deliver power into the grid.

## Addendum

### Amendment to the Report

#### Ad.1 Commercial Operation Date

Generator notified Midwest ISO on 03/25/2004 that the estimated new Commercial Operation Date for this project should be considered as January 2008 and all schedules for this project should be adjusted based on the new in-service date.

#### Ad.2 Construction Schedule

After subsequent review of the construction schedule, prepared for this Facility Study, LG&E Energy believe that the Right of Way acquisition schedule for the new line is not practical for meeting the in-service date for this project. They indicated to MISO on 03/25/04 that based on their past experience, ROW acquisition is the reason of delay in the line completion in most cases. LG&E Energy also indicated to MISO and ECEP about the potential legislation being considered in Kentucky, which would require a Certificate of Convenience & Necessity for all line construction 138 kV and above. Due to these reasons LG&E Energy feel additional time is required for regulatory approval process and for the routing and design of the new line. Therefore, the construction schedule presented in this report is being revised based on LG&E Energy's recommendation. Table Ad.1 shows the revised construction schedule for this project.

Table Ad.1 Revised Construction Schedule

Time Frame: Months, prior to Operation date	Activity
41	Begin Engineering Design of 161 kV line
35	Finalize the routing and design
24	Begin R/W acquisition
20	Begin the condemnation process, if necessary
13	Begin acquisition of materials
8	Begin construction of the line
18	Begin Substation Engineering and Design work
13	Begin Substation construction

**APPENDIX B**  
**FACILITY AND GENERATOR INTERCONNECTION FACILITIES**

This Appendix B is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

- 1.1 Facility.** Generator intends to own and operate a nominally rated 110 net MW electric generating facility located in Estill County, KY, and more specifically described as follows:

Estill County Energy Partners, LLC intends to own and operate the Facility to be located in Estill County, Kentucky on the site of a former coal processing plant. The Facility will be comprised of one circulating fluidized bed boiler primarily fueled with waste coal reclaimed from Facility site. Steam produced by the circulating fluidized bed boiler will power a single steam turbine generator. Generator voltage will be stepped up to 161-kV for transmission to the Point of Interconnection.

Initial operation date (In R1 Application) for the Facility was April 2006. Current estimated operation date is January 2008.

- 1.2 Generator Interconnection Facilities to be constructed by Generator.** Generator shall construct all Generator Interconnection Facilities, including a 161-kV transmission line approximately 2 miles long, required to deliver power from the Facility to the Point of Interconnection.

- 1.3 Permits, Licenses and Authorizations.** Generator shall obtain the following permits, licenses and authorizations: Generator shall obtain all permits licenses and authorizations required for the construction and operation of the Facility and the Generator Interconnection Facilities, including construction certificates from the Kentucky State Board on Electric Generation and Transmission Siting for the Facility and the Generator Interconnection Facilities.

**MISO Project G243 Queue Number 37384-01**

**APPENDIX C - OPERATION DATE**

This Appendix C is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

[Date]

Estill County Energy Partners, LLC  
6000 Sulfur Well Road  
Lexington, KY 40509

Re: Estill County Energy Partners, LLC Facility

Dear \_\_\_\_\_:

On [Date], the Transmission Owner \_\_\_\_\_, and \_\_\_\_\_ (the "Generator") completed to their mutual satisfaction all work on the [Facility] and associated interconnection facilities and related equipment required to interconnect the Facility with the Transmission Owner's transmission system and have energized the Facility in parallel operation with the Transmission Owner's transmission system. This letter confirms that the Generator may commence commercial operation of the Facility and associated interconnection facilities effective as of [Date plus one day].

Thank you.

Director, Transmission  
LG&E Energy Services Company  
For Kentucky Utilities Company

**MISO Project G243 Queue Number 37384-01**

**APPENDIX D - INTERCONNECTION GUIDELINES**

This Appendix D is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

**The unique requirements of each generation interconnection will dictate the establishment of mutually agreeable Interconnection Guidelines that further define the requirements of this Interconnection and Operating Agreement. These Interconnection Guidelines address the following:**

- (a) System Protection Facilities:** Transmission Owner will construct a protective relaying scheme to protect the LG&E/KU system from faults on the Generator-owned facilities. If a differential relaying scheme is used on the Generator-owned transmission line, differential relaying equipment must be installed at the Facility. Generator will be responsible for providing protection for its generators and associated equipment from faults on Generator's transmission line and for faults on the LG&E/KU system.
- (b) Communication requirements:** Generator shall provide a standard telephone number for communication to the Facility control center. Generator shall provide backup voice communications either by establishing a dedicated telephone line or by utilizing wireless phone service. Facsimile communication shall also be available at the Facility control center. If the Facility control center is not staffed at any time when the generators are not synchronized, then Generator shall provide a 24-hour contact telephone number for contacting those personnel responsible for operating the Facility.
- (c) Metering requirement:** Transmission Owner shall construct and/or install as part of the Transmission Owner Interconnection Facilities that metering and telemetry equipment required to provide MW, MVar, MWh, and MVarH for each generator, and that telemetry necessary to provide data to the LG&E/KU transmission system control center and through the LG&E/KU energy management system to the Midwest ISO.
- (d) Grounding requirements:** Generator will tie the ground for its transmission line to the ground grid of the Interconnection Facilities at a point provided by the Transmission Owner.
- (e) Transmission Line and Substation Connection configurations:** Transmission Owner will designate a physical interconnection point at the Interconnection Facilities that shall be at the point where Generator's transmission line connects to the dead end bells on the substation (see Exhibit A1.1) as soon as the engineering and design for the Interconnection Facilities are complete.
- (f) Short Circuit requirements:** Transmission Owner will provide the short circuit contribution associated with its transmission system to the Generator as soon as the engineering and design for the Interconnection Facilities are complete.

- (g) Synchronizing requirements:** Generator will provide any equipment necessary to synchronize to the grid.
- (h) Reactive Power Control requirements:** As specified in Section 4.7 of this Interconnection and Operating Agreement, typical (voltage) schedules, as measured at the 161 kV substation bus (Point of Interconnection) voltage, set by the local Control Area operator are (1) for on-peak hours, 1.03 per unit, (2) for shoulder peak hours, 1.015 per unit, and (3) for off-peak hours, 1.00 per unit. On-peak, shoulder and off-peak hours shall be those hours as established by NERC, and if not so established by NERC, then upon mutual agreement of the Parties. This requires operation within the reactive power capability of the Facility as defined in the Article 4.7.2
- (i) Data provisions:** Generator will provide line disconnect position and breaker statuses. Transmission Owner will provide MW, MVar, MWh and MVarH data, as measured at the Point of Interconnection, to Generator.
- (j) Energization inspection and testing requirements:** Transmission Owner shall have the right to inspect the Generator-owned transmission line and terminal equipment at the Facility before electrically connecting to the Interconnection Facilities.
- (k) Auxiliary Power:** Generator will arrange for auxiliary power from the local electric distribution utility for periods when the Facility is not generating. Generator will design the auxiliary power system of the Facility such that an electrical connection between the Transmission Owner's transmission system and the local electric distribution utility cannot occur.



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**APPENDIX E - OPERATING GUIDELINES**

This Appendix E is a part of the Interconnection and Operating Agreement between Generator, Transmission Owner, and the Midwest ISO.

**The unique requirements of each generation interconnection will dictate the establishment of mutually agreeable Operational Guidelines that further define the requirements of this Interconnection and Operating Agreement. These guidelines address the following:**

- (a) System Protection Facilities (relaying):** Generator and Transmission Owner agree to operate the protective relays associated with the Transmission Owner Interconnection Facilities under Generator's and Transmission Owner's respective operational control in compliance with Transmission Owner's approved settings. To ensure such protective relays are in good operational order and properly adjusted, Generator and Transmission Owner agree to test such protective schemes within their respective control at least once every five (5) years or as agreed by Generator and Transmission Owner or as required by the rules and procedures of the Midwest ISO, if applicable, which rules and procedures shall govern in the event of a conflict under this Paragraph (a). Generator and Transmission Owner shall provide the other sufficient notice so that the other party may have a representative(s) present to witness such test of protective schemes. Upon completion of such testing, Generator and Transmission Owner, as appropriate, shall provide the other party the test results. Generator or Transmission Owner shall notify the other in writing as soon as practicable of any failures in, and/or setting or design changes to, such protective relay schemes.
- (b) Switching and tagging:** The electrical clearance procedures for the Transmission Owner Interconnection Facilities are specified in Exhibit E(b).
- (c) Communication requirements:** The communications requirements and procedures are specified in Exhibit E(c).
- (d) Metering requirements:** On a daily basis, Generator or Generator's designee will checkout scheduled and actual generation meter readings (*i.e.*, MWh and MVarH) with the Transmission Owner transmission system control center. Additionally, in the event of telemetry failure, Generator shall provide by telephone hourly generation meter readings (*i.e.*, MWh and MVarH) for the Facility to the Transmission Owner transmission system control center.
- (e) Data reporting requirements:** [None]
- (f) Training:** [None]
- (g) Capacity determination and verification (including ancillary services and certification):** Before Generator provides any Ancillary Services, Generator will obtain certification pursuant to Midwest ISO requirements and procedures.

- (h) **Emergency operations, including system restoration and black start arrangements:** Emergency operations shall be performed per Article 7.
- (i) **Identified must-run conditions:** [None]
- (j) **Provision of ancillary services:** Transmission Owner is not obligated to provide Ancillary Services to Generator under this Agreement. Notwithstanding, Generator shall be entitled to Ancillary Services from the Transmission Owner or Transmission Provider as applicable, but only to the extent that such Ancillary Services, are available and required by the Transmission Owner, pursuant to Transmission Owner's Ancillary Services tariff, if any, filed with FERC, or Transmission Provider, as applicable, in accordance with the Transmission Provider OATT. If applicable, Generator shall purchase or otherwise provide what Ancillary Services it requires, if any, to deliver the energy produced by the Facility pursuant to the Transmission Provider OATT.
- (k) **Specific transmission requirements of nuclear units to abide by all NRC requirements and regulations:** [Not applicable]
- (l) **Stability requirements, including generation short circuit ratio considerations:** [None]
- (m) **Limitations of operations in support of emergency response:** In accordance with Section 4.13.5.2 as frequency drops generators are expected to stay on line "ride through" until frequency drops below certain set points as described in ECAR DOCUMENT NO. 3 EMERGENCY OPERATIONS, Revised June 16, 1998 - APPENDIX I ISOLATION OF GENERATING UNITS, page 6 and 7, as excerpted below:
 

*If a generating unit is removed from the Control Area at a frequency higher than or a time less than that shown in the following table, an amount of load equal to the generation being removed from the Control Area must also be shed simultaneously.*

*Frequency Time before Generation Unit Isolation*

*60.0 to 59.5 Hz Unlimited*

*59.5 to 58.5 Hz 30.0 minutes before unit isolation can be expected*

*58.5 to 58.2 Hz 7.0 minutes before unit isolation can be expected*

*Below 58.2 Hz Unit isolation without time delay can be expected*

*The above operating time periods and frequencies may be adjusted for specific units for the cumulative effect of blade fatigue over the life of the turbine.*

*If generating units are isolated from the system, every effort should be made by the power plant operators to maintain unit auxiliaries and, if possible, a local load. This will allow rapid resynchronizing of the unit to the main network and aid in restoration of the system.*
- (n) **Maintenance and Testing:** Transmission Owner will provide Generator notice per Midwest ISO requirements of any planned maintenance and testing that will affect the ability of the generating facility to remain interconnected with

Transmission Owner's transmission system. For unplanned maintenance and testing, Transmission Owner will provide notice to Midwest ISO per Midwest ISO requirements and to Generator as soon after Transmission Owner becomes aware of the need for such unplanned maintenance and testing as reasonably possible. Generator will provide Midwest ISO per Midwest ISO requirements and Transmission Owner, Generator's long-term maintenance schedule for generators of greater size than 18 MW (one module) for a minimum of a rolling one-year period (Type I). Generator will submit to Midwest ISO updated maintenance schedules on a quarterly basis. All such planned maintenance outages will be submitted to Midwest ISO and Transmission Owner at least two weeks in advance for review (Type II); this notice shall advise whether Generator requires electrical clearance at the Transmission Owner Interconnection Facilities.

For emergency outages of the generating facility, Generator will provide notice to Transmission Owner as soon after Generator becomes aware of the need for electrical clearance in connection with the outage as reasonably possible. Nothing in this Paragraph prohibits Transmission Owner or Generator from opening its respective transmission facilities without notice to the other should such action avoid injury to personnel or property or to the public.

- (o) **Generation and operation control:** Generator will notify Transmission Owner and the Midwest ISO when the generator is synchronized with the Transmission System and when the generator is taken off-line. Generator will be solely responsible for regulating to its scheduled obligation and will within 10 minutes adjust the electronic tag to the actual output.
- (p) **Reactive Control:** As specified in Section 4.7 of this Interconnection and Operating Agreement.

**APPENDIX E(b)**  
**SWITCHING AND TAGGING PROCEDURES**

1. Definitions

1.1. CLEARANCE - The process of removing and holding a transmission line, section of bus or piece of equipment from service so that work may be safely performed.

1.2. HOLD CARD - The formal registered card in the LG&E/KU Electrical Operating Card system. It is applied at the switches and disconnects through which electrical energy may be supplied to the section of line or equipment at which safety CLEARANCE is desired. It may be used with proper authority and registration at all voltage levels. A HOLD CARD is NEVER used to hold circuits or equipment IN service.

2. Planned Clearance Request originated by Generator

2.1. If the switching on the generating facility impacts the operation of the Transmission Owner Interconnection Facilities, then Generator will send a Clearance Request to the LG&E/KU transmission system control center to facilitate the switching.

3. Planned Clearance Request in the Interconnection Facilities originated by Generator

3.1. Any planned switching originated by Generator will be coordinated with a Clearance Request through the LG&E/KU transmission system control center with a minimum of 24 hours' notice except in emergency situations (notices of between 24 hours and five days may be required depending on the impact of the outage on the transmission grid). The LG&E/KU transmission system control center will accommodate the request as soon as practicable. Personnel availability and system conditions may prevent a Clearance Request from being completed at the time requested by Generator. LG&E/KU personnel will perform all switching and apply all HOLD CARDS. Generator's personnel may observe the switching if desired. Once the LG&E/KU transmission system control center has received assurance from LG&E/KU personnel that all devices are properly opened and carded, the LG&E/KU transmission system control center will provide CLEARANCE to Generator.

4. Planned Clearance Request on Generator Interconnection Facilities originated by Transmission Owner

4.1. All planned Clearance Requests on Generator Interconnection Facilities originated by Transmission Owner will be coordinated with Generator's personnel by a Clearance Request submitted by LG&E/KU personnel with a minimum of 48 hours' notice except in emergency situations. Generator will accommodate the request as soon as practicable. Generator's personnel will perform all switching and apply all HOLD CARDS in Generator Interconnection Facilities. LG&E/KU personnel may observe all switching if desired. Once Generator is assured that all devices are properly opened and carded,

Generator's personnel will provide CLEARANCE to the LG&E/KU transmission system control center.

**5. Planned Clearance Request originated by Transmission Owner**

5.1. Generator will be notified for informational purposes only of any planned Clearance Request of the Interconnection Facilities originated by Transmission Owner that do not require total isolation of Generator Interconnection Facilities from the Transmission Owner's transmission system.

5.2. Any planned Clearance Requests that would result in the isolation of Generator Interconnection Facilities from Transmission Owner's transmission system will be coordinated with Generator.

**6. Unplanned requests to isolate Generator Interconnection Facilities by remote breaker operation**

6.1. Generator may request the Transmission Owner's transmission system control center to isolate Generator Interconnection Facilities from the transmission system by the remote operation of breakers in the Interconnection Facilities. The transmission system control center will accommodate the request as soon as practicable. Personnel availability and system conditions may prevent a request from being completed at the time requested by Generator. CLEARANCE will not be given and Generator's personnel must isolate Generator Interconnection Facilities before performing work. If CLEARANCE is required then a request must be made under the procedures of Section 3.1 above.

**7. Unplanned outages**

7.1. If an unplanned interruption occurs in either Generator Interconnection Facilities or the Interconnection Facilities, then both Transmission Owner's transmission system control center and Generator's personnel will provide the other with all pertinent information as soon as practicable. This information will include, but not limited to:

1. Devices involved,
2. Status of devices in question,
3. Time stamps,
4. Cause of interruption (if available),
5. Relay targets (if available),
6. Any information helpful in determining cause and/or useful in the restoration process

**8. Procedures for re-energizing Generator Interconnection Facilities after isolation from transmission system**

8.1. Generator's personnel must request Transmission Owner's transmission system control center to re-energize Generator Interconnection Facilities after the facilities have become isolated.

9. Emergency switching to isolate Generator Interconnection Facilities from transmission system

9.1 During emergency situations, when LG&E/KU personnel are unable to isolate Generator Interconnection Facilities from the Interconnection Facilities, LG&E/KU may request Generator's personnel to isolate the Generator Interconnection Facilities from the Transmission System.

**APPENDIX E(c)**  
**COMMUNICATIONS REQUIREMENTS**

1. Generator's personnel will notify Transmission Owner's transmission system control center:
  - 1.1. Prior to synchronization of the first generator;
  - 1.2. Prior to the planned separation of the last generator;
  - 1.3. As soon as possible after an unplanned separation of all generators;
  - 1.4. For Clearance Requests for Generator Interconnection Facilities requiring switching on the Interconnection Facilities; and
  - 1.5. When abnormal system conditions are affecting the operation of Generator Interconnection Facilities.
  
2. Transmission Owner's transmission system control center will notify Generator's personnel:
  - 2.1. When conditions may prevent generator synchronization;
  - 2.2. When conditions may require generator separation;
  - 2.3. On a requirement for generator separation;
  - 2.4. On the requirement for redispatch during a system emergency; and
  - 2.5. For a Clearance Request for Transmission Owner-operated equipment requiring switching on Generator Interconnection Facilities.
  
3. In the event of telemetry failure on the Interconnection Facilities, Generator's personnel will be required to provide hourly meter readings (*i.e.*, MWh and MVarH) to Transmission Owner's transmission system control center.
  
4. The Parties anticipate that their respective operating personnel will communicate beyond the requirements of notice above as necessary and appropriate, in accordance with Good Utility Practice, to provide reliable and efficient operation of both Interconnection Facilities and Generator Interconnection Facilities.