

Part 6. Physically Settled Power Transactions**(a) Power Transactions under this Agreement; Credit Support Documents**

(i) **Power Transactions.** The provisions of this Part 6 shall apply to transactions between the parties for the purchase, sale or transfer of electricity or electric capacity (the “Product”) on a spot or forward basis or as an option to purchase, sell or transfer the Product (collectively, “Power Transactions”). All Power Transactions will be deemed to have been entered into in accordance with the terms of this Agreement and shall be Transactions for the purposes hereof. Upon the effectiveness of this Agreement, unless otherwise agreed in writing by the parties with respect to a specific Power Transaction, all Power Transactions then outstanding (“Outstanding Power Transactions”) shall be Transactions and shall be subject to the terms and conditions of this Agreement. All confirmations issued or entered into in connection with such Outstanding Power Transactions shall constitute “Confirmations” within the meaning of this Agreement that supplement, form part of and are subject to this Agreement. If any confirmation issued or entered into in respect of one or more Outstanding Power Transactions was issued or entered into pursuant to the terms of a master agreement (an “Outstanding Master Agreement”), then the terms of the Schedule and the pre-printed form of this Agreement shall automatically supersede such Outstanding Master Agreement effective upon the execution of this Part 6.

(ii) **Credit Support Documents.** The parties agree that to the extent any credit support (whether it be in the form of margin, letters of credit, guaranties, securities or otherwise) was provided in connection with Outstanding Power Transactions, such credit support shall be deemed to apply in respect of the Outstanding Power Transactions that are subject to this Agreement in accordance with clause (i) above.

(b) Obligations and Deliveries

(i) **Seller’s and Buyer’s Obligations.** With respect to each Power Transaction, Seller shall sell and deliver, or cause to be delivered, the Quantity to the Delivery Point. Buyer shall purchase and receive, or cause to be received, the Quantity at the Delivery Point and shall pay Seller the Contract Price. However, with respect to options, the obligations set forth in the preceding two sentences shall only arise if the option buyer exercises its option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point. For the purposes of this Part 6: (A) “Buyer” shall mean the party to a Power Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in a Power Transaction; (B) “Seller” shall mean the party to a Power Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in a Power Transaction; (C) “Quantity” shall mean the quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, as specified in a Power Transaction; (D) “Delivery Point” shall mean the point at which the Product will be delivered and received as specified in a Power Transaction and (E) “Contract Price” shall mean the price in U.S. Dollars (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in a Power Transaction.

(ii) **Transmission and Scheduling.** Seller shall arrange and be responsible for transmission service to the Delivery Point and shall schedule or arrange for scheduling services with the entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point (its “Transmission Providers”), as specified by the parties, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule

or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

(iii) **Force Majeure.** To the extent either party is prevented by Force Majeure from carrying out, in whole or part, its obligations under any Power Transaction and such party (the “Claiming Party”) gives notice and details of the Force Majeure to the other party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Power Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. For the purposes of this provision “Force Majeure” shall mean an event or circumstance which prevents one party from performing its obligations under one or more Power Transactions, which event or circumstance was not anticipated as of the date the Power Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither party may raise a claim of Force Majeure based in whole or in part on curtailment by the Transmission Provider unless (i) such party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. **In the event of any inconsistency between the foregoing Force Majeure provisions and the contractual provisions applicable to any Transaction in a Product (whether such terms are specified in the governing confirmation, incorporated by reference therein or otherwise), such contractual provisions will prevail.**

[QUERY: SHOULD SECTION 6(B)(I) ILLEGALITY NOT APPLY TO POWER TRANSACTIONS?]

(c) **Remedies for Failure to Deliver or Receive ; Limitation on Condition Precedent**

(i) **Seller Failure.** If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Power Transaction, and such failure is not excused under the terms of the Power Transaction or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price (as defined below). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. For the purposes of this provision, “Replacement Price” means (A) the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Power Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, (B) the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

(ii) **Buyer Failure.** If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Power Transaction and such failure is not excused under the terms of the Power Transaction or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price (as defined below) from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. For the purposes of this provision "Sales Price" means (A) the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, (B) the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

(iii) **Limitation on Condition Precedent.** Section 2(a) of this Agreement is hereby amended by adding the following phrase at the end of clause (1) immediately before the last comma of such phrase:

"(provided, however, that in relation to any Transaction that is a Power Transaction, if an Event of Default or Potential Event of Default shall have occurred and be continuing for longer than ten (10) NERC Business Days without an Early Termination Date being designated, then the condition specified in this clause (1) shall cease to be a condition precedent to the obligations under Section 2(a)(i))."

(d) **Payment**

(i) **Billing Period.** Unless otherwise specifically agreed upon by the parties, the calendar month shall be the standard period for all payments pursuant to any Power Transaction under this Agreement (other than payments due to an Early Termination or an option premium payment). As soon as practicable after the end of each month, each party will render to the other party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

(ii) **Timeliness of Payment.** The parties shall designate which of the two options shall apply with respect to the timing of when payment obligations are due in relation to Power Transactions:

Option A: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party's invoice instructions on or before the later of the fifth (5th) Business Day of each month, or second (2nd) Business Day after receipt of the invoice.

Applicable: _____

Option B: Unless otherwise agreed by the parties, all invoices for payment pursuant to a Power Transaction shall be due and payable in accordance with each party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.

Applicable _____

Each party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(iii) **Payment for Options.** The premium amount for the purchase of an option shall be paid within two (2) Business Days of receipt of an invoice from the option seller. Upon exercise of an option, payment for the Product underlying such option shall be due in accordance with the provisions herein.

(iv) **Power Transaction Netting.** If the parties enter into one or more Power Transactions, which in conjunction with one or more other outstanding Power Transactions, constitute Offsetting Power Transactions, then all such Offsetting Power Transactions may by agreement of the parties, be netted into a single Power Transaction under which:

(A) the Party obligated to deliver the greater amount of Product will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Power Transactions, and

(B) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Power Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Power Transaction occurs, outstanding obligations under the Offsetting Power Transactions which are satisfied by such offset shall terminate. For the purposes of this Part 6, "Offsetting Power Transaction" shall mean any two or more outstanding Power Transactions, having the same or overlapping Delivery Period(s) (as specified in the Power Transaction) Delivery Point and payment date, where under one or more of such Power Transactions, one party is the Seller and under the other such Power Transaction(s) the same party is the Buyer.

(e) **Certain Modifications to this Agreement**

(i) **Section 5(a)(i).** With respect to any Power Transaction, the words "or delivery" in Section 5(a)(i) of this Agreement are hereby deleted.

(ii) **Section 6(c)(i).** Section 6(c)(i) is hereby amended by adding the following phrase at the end of such section:

"(it being understood, that to the extent in the reasonable opinion of the Non-defaulting Party or the Non-Affected Party, as the case may be, certain of the Terminated Transactions that are Power Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, such Terminated Transactions may be liquidated and terminated as soon thereafter as is reasonably practicable)"

(f) **Additional Representations and Limitation of Liability.**

(i) **Regulatory Authorization.** Each party represents to the other party (which representation will be deemed to be repeated by each party on each date on which a Power Transaction is entered into) that it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Power Transaction.

(ii) **Forward Contract Merchant.** Each party represents to the other party (which representation will be deemed to be repeated by each party on each date on which a Power Transaction is entered into) that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

(iii) **WITH RESPECT TO ALL POWER TRANSACTIONS, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER**

BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

(g) Governmental Charges.

(i) **Governmental Charges.** Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product or a Power Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Power Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

(h) Title, Risk of Loss and Indemnity.

(i) **Title and Risk of Loss.** Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

(ii) **Indemnity.** Each party shall indemnify, defend and hold harmless the other party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such party as provided for herein. Each party shall indemnify, defend and hold harmless the other party against any Governmental Charges for which such party is responsible.

(i) Wholesale Power Tariff

(i) This Agreement (including the exhibits, schedules and any written supplements hereto), the Party A FERC Electric Tariff (as specified below) and the Party B FERC Electric Tariff (as specified below) (each a “Tariff”) constitute a single agreement between the Parties. Seller agrees to provide service to Buyer, and Buyer agrees to pay Seller for such service, in accordance with Seller’s Tariff. Each party agrees if it seeks to amend any Tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable Tariff is inconsistent with this Agreement. For the purposes of this Part 6 “FERC” shall mean the Federal Energy Regulatory Commission.

(ii) Party A FERC Electric Tariff: [please provide]

(iii) Party B FERC Electric Tariff: [please provide]

(j) Definitions

The following terms shall have the meanings specified below:

(i) “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business

Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant party's principal place of business. The relevant party, in each instance unless otherwise specified, shall be the party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.