



**CITY OF BOULDER, COLORADO
REQUEST FOR PROPOSALS**

**PARTIAL REQUIREMENTS
WHOLESALE ELECTRIC POWER
SUPPLY**

ISSUE DATE: April 16, 2015

DUE DATE: May 18, 2015

**BOULDER RESERVES THE RIGHT TO REJECT ANY OR ALL OFFERS OR
PROPOSALS**

Table of Contents

PART 1: GENERAL RFP INFORMATION	4
1.1 INTRODUCTION	4
PART 2: RESOURCES REQUESTED	5
2.2 REQUIRED ENERGY & CAPACITY	5
2.3 DESIRED PRICING STRUCTURE	7
PART 3: RFP PROCESS	7
3.1 RFP SCHEDULE.....	7
3.2 BID SUBMISSION	7
3.3 BID COMPONENTS.....	8
PART 4: QUALIFIED BIDDER REQUIREMENTS	9
4.1 BALANCING AREA REQUIREMENTS	9
4.2 FINANCIAL REQUIREMENTS	9
PART 5: SERVICE ATTACHMENTS	9
5.1 SERVICE ATTACHMENTS	9
PART 6: LOAD INFORMATION	10
6.1 DEFAULT SERVICE LOAD OBLIGATIONS.....	10
6.2 DEFAULT SERVICE REQUIREMENTS	10
6.3 HISTORICAL DEFAULT SERVICE REQUIREMENTS	10
6.4 LOAD FORECASTING.....	10
PART 7: BIDDER QUESTIONS	10
7.1 QUESTIONS REGARDING THIS RFP	10
7.2 RFP SCHEDULE.....	11
APPENDIX 1: REQUIRED FORMS	12
FORM I: BIDDER’S OFFICER’S CERTIFICATE.....	12
FORM II: STANDARD CONTRACT INFORMATION	15
APPENDIX 2: MASTER POWER PURCHASE AND SALES AGREEMENT	16
COVER SHEET.....	18
MASTER POWER PURCHASE AND SALES AGREEMENT	28

SCHEDULE P: GENERAL DEFINITIONS50
CONFIRMATION LETTER57

1. INTRODUCTION

The City of Boulder (“City”) is requesting a bid for wholesale power supply from Public Service Company of Colorado (“PSCo”) for a minimum of a five-year period commencing January 1, 2018. The basic premise of the bid should be for a "Slice of the System" (Slice) whereby Boulder agrees to pay a fixed percent of PSCo’s power costs in exchange for a fixed percent of the PSCo generation and capabilities. The contract for power should include energy, capacity, ancillary services, renewable energy obligations and losses, and network integration transmission service. The City is requesting a requirements contract for wholesale power less the city’s own hydroelectric and local generation.

The City is interested in exploring any contract terms that allows the city to pursue its energy goals related to price stability, clean energy and potential exposure to stranded cost obligation in its effort to create a locally owned and operated electric utility. PSCo is encouraged to propose any pricing structures that seek to satisfy the City’s objectives as discussed in Section 2.2 below. While the City of Boulder is releasing the solicitation for wholesale power supply as a request for proposals, it acknowledges that PSCo, as Boulder’s current energy supplier, is uniquely positioned to respond to the specific terms of this request. The terms and provisions have been adapted accordingly.

Capitalized terms used but not defined in the body of the Request for Proposals (RFP) have the meanings given such terms in the “Definitions” section of the Master Power Purchase and Sales Agreement (“Standard Contract”), included as Appendix 1 to this RFP. The headings to articles and sections throughout this RFP are intended solely to facilitate reading and do not affect the meaning or interpretation of this RFP or the Standard Contract.

PSCo is invited to submit a proposal (“Bid”) for the right to provide the load requirements identified in this RFP. To be considered for selection, PSCo is asked to meet all the requirements set forth in Section 4, Qualified Bidder Requirements, and adhere to the schedule and other requirements set forth in Section 3, RFP Process. The City will base its evaluation and award on (i) pricing, (ii) compliance with the Standard Contract, (iii) the financial and credit risks associated with the Bid, and (iv) compliance with the RFP Process.

The City will evaluate any conforming Bid, however, the City makes no commitment to PSCo that it will receive an award under this RFP. The City reserves the right to modify or discontinue the RFP process at any time for any reason whatsoever. This is an RFP and not a binding offer to contract. If the RFP is modified by the City, including but not limited to the RFP Schedule, PSCo will be notified of any such modifications.

The City also agrees to treat the Pricing Information and any other non-publicly available financial information that is clearly marked “Confidential” that it receives from PSCo and any Guarantor in a confidential manner and will use reasonable efforts, except as required by law or regulatory authority, not to disclose such information to any third party or use such information for any purpose other than in connection with its evaluation of PSCo’s participation in the solicitation process described herein.

2. RESOURCES REQUESTED

PSCo shall provide to the City, and the City shall compensate PSCo for:

- 1) Firm Capacity;
- 2) Associated Firm Load-Following Energy sufficient to meet 100 percent of the City's Requirements during the Term of this Transaction excluding that portion of Capacity and Energy provided by Behind-the-Meter Generation; and
- 3) All Ancillary Services from generation resources required to support Firm Network Integration Transmission Service for the City's Network Load under PSCo's Operating Companies' Open Access Transmission Tariff (OATT)

Capacity and energy will be supplied from a portfolio of owned and contracted generation resources substantially the same as those used prior to the Initial Effective Date of this Transaction to serve the Native Load located within the municipal boundaries of the City of Boulder, Colorado.

2.1 REQUIRED ENERGY AND CAPACITY

The City desires to evaluate the costs of potential resource options that may be available from PSCo. The City anticipates an initial peak load of 257 MW by 2018, which includes a 16.3% reserve margin. It is expected that the City's energy needs will be served by a mix of traditional resources, renewable resources, and energy conservation. The City desires that electric energy delivery commence January 1, 2018 and should be for a term of not less than five years. PSCo's submittal should include a thorough description of all required information including the quantity and term of the resources along with any updated historic or forecasted load information for the city of Boulder.

The City estimates Boulder's growth rate at 0.56% in coincident peak demand compared to a Colorado system average of 0.83%. This may be due to Boulder's relatively flat load profile and local investments in energy efficiency and distributed generation. Boulder anticipates gradually introducing into its power supply mix capacity and energy supplied by resources other than those owned by PSCo. Boulder wishes to do so at a pace that ensures, in reference to PSCo's forecasted need in its Electric Resource Plan process, that (1) PSCo is not adding new owned or contracted generating capacity to its system in order to serve Boulder's load, and (2) generating resources previously deployed to meet Boulder's requirements are redirected to providing service to new demand on other portions of the PSCo system in a manner that does not cause any disproportionate increase in the cost of service assigned to meet such new demand.

For energy quantity and scheduling provisions, the table below describes the City's current best estimate of Boulder's total forecasted annual demand and energy growth requirements. These estimates are subject to change as updated information on Boulder's load is received.

Table 1: Summary of City of Boulder forecasted annual demand and energy

Year	Energy (MWh) ¹	Retail Peak Demand (MW) ²
2018	1,518,124	257
2019	1,528,687	258
2020	1,542,440	259
2021	1,547,969	261
2022	1,557,645	262

The annual forecast for the proposed local electric utility's service area was developed using the growth trajectory from available data and the adjustments in the 2010 hourly ("8760") data spreadsheet, which is also available for download at www.boulderenergyfuture.com.

Table 2 represents a breakdown of Boulders' annual energy requirements by sector. Based on more accurate system use and load projections from PSCo, estimates will be adjusted accordingly.

Table 2: Annual Boulder Energy by Sector (MWh)

Year	Street lights	Residential	Commercial	Primary General & Transmission General	City Retail Total
2018	4,886	273,735	697,578	541,925	1,518,124
2019	4,934	276,996	701,984	544,773	1,528,687
2020	4,981	281,110	708,289	548,060	1,542,440
2021	5,025	283,004	710,551	549,389	1,547,969
2022	5,069	285,991	714,894	551,691	1,557,645

¹ 2011 Electric Resource Plan (ERP) Response by Xcel Energy to Discovery Request BLDR 3-2.A1 (monthly adjusted to annual)

² 2011 Electric Resource Plan (ERP) Xcel Energy Response to Discovery Request BLDR 2-3.A1 (provided August 2012)

2.2 DESIRED PRICING STRUCTURE

The City is interested in any pricing structure that aims to balance the city's objectives of price stability and clean energy while limiting the city's exposure to stranded costs and avoiding impact to other rate payers in PSCo's service territory. Therefore, the City encourages PSCo to propose pricing for various contract structures such that Boulder can reduce its purchase of demand and energy from PSCo, commensurate with self-generation or purchases on the market in increasing blocks of power. Options may include but are not limited to:

- 2.2.1 Resources priced at PSCo's system average embedded cost for capacity and system average cost for Energy ("Slice of System").
- 2.2.2 Resources priced at a fixed or preset market-based price.
- 2.2.3 Resources priced at PSCo's system average embedded cost for capacity and system average cost for Energy ("Slice of System") modified such that Boulder's resource mix contains a higher percentage of renewable energy than is provided, on average, to PSCo retail customers e.g. 5%, 10%, 15% and 20%.
- 2.2.4 Resources priced at PSCo's system average embedded cost for capacity and system average cost for Energy ("Slice of System") modified such that Boulder can reduce its purchase of demand and energy from PSCo, commensurate with PSCo's reported resource need³ of 34MW in 2020, 104MW in 2021 and 435 MW in 2022.

For comparison purposes, the desired pricing format is a firm, fixed price on both capacity (\$/kW-year or \$/kW-month) and energy (\$/MWh) for a term not less than five years in length beginning January 1, 2018. Additional pricing information is included in section 3.3.3 below. If there are pricing variations based on on-peak/off-peak or seasonal periods, PSCo is asked to provide the specifics.

3. RFP PROCESS

- 3.1 RFP SCHEDULE. Table 3 hereto provides the schedule for this RFP. The City, at its sole discretion, may modify and/or supplement the schedule at any time.
- 3.2 BID SUBMISSION
 - 3.2.1 Writing; Delivery. Bids must be in writing and delivered to the office of Energy Strategy and Utility Development via electronic mail as set forth below. Supplementary delivery options are also offered below for back-up purposes and

³ Need shown in Loads and Resources Table: 2014 Annual ERP Report

for Supporting Information which is not available in electronic form. Any deliveries under this section should be confirmed by phone with Jonathan Koehn at (303) 441-1915.

3.2.1.1 By hand or delivery to:

Jonathan Koehn
1101 Arapahoe Ave., 1st Floor
Boulder, Colorado 80302

3.2.2 Numbering. Items in the submittal should refer to the appropriate numbered bidding instruction items in this section of the RFP.

3.3 BID COMPONENTS. Bids must include the following parts.

3.3.1 Supporting Information consists of the following documents, collectively the “Supporting Information”:

- 3.3.1.1 Required Forms. PSCo is asked to complete and execute all Forms in Appendix 1.
- 3.3.1.2 Standard Contract. The City requests that PSCo abide by the form of Standard Contract included as Form 2 to this RFP (the “2015 Contract”). If PSCo deems changes to be necessary, PSCo should submit the required changes with the bid for review and consideration.
- 3.3.1.3 PSCo must describe in detail any circumstance in which it or an affiliate was deemed to be in default or noncompliance of a wholesale contract, Billing Policy or Financial Assurance Policy obligation within the past five (5) years.
- 3.3.1.4 The City reserves the right to require Bidder to provide such other information and financial assurances as the City, in its discretion, deems adequate to demonstrate that Bidder can and will fully honor its obligations under the Standard Contract.
- 3.3.1.5 PSCo must provide the names of outside advisors engaged or planned to be engaged (if any) to assist in this transaction.
- 3.3.1.6 PSCo must provide a list of contacts (including e-mail addresses, and telephone and fax numbers) with whom the City may discuss the Bid and, who will be available on the dates that Pricing Information is submitted until the applicable Service Attachment(s) are executed.

3.3.2 Executed Documents Prior to Submission of Pricing Information. To qualify for submission of Pricing Information, PSCo must submit by the applicable due dates in Table 1 the following:

- 3.3.2.1 Standard Contract. A final form of the Standard Contract must be provided to the City.
- 3.3.2.2 Financial Security. Security associated with the Standard Contract in the form of either (i) a Guaranty acceptable to the City, substantially in the form of the Standard Guaranty or (ii) an alternative acceptable form of financial security as described in Section 3.2.2 below, must be provided to the City.
- 3.3.3 Pricing Information. Subject to satisfaction of the above requirements, PSCo must submit its Pricing Information as follows:
 - 3.3.3.1 Pricing Information submitted as of the time and dates that the Pricing Information component of the Bids are due shall be firm, irrevocable and binding.

PSCo must complete and submit Exhibit A: Master Power Purchase and Sales Agreement. The completed Agreement becomes PSCo's Pricing Information.
 - 3.3.3.2 The desired pricing format is a firm, fixed price on both capacity (\$/kW-year or \$/kW-month) and energy (\$/MWh) for a term not less than five years in length and beginning January 1, 2018. Monthly prices will be rounded to the nearest thousandths of cents/kWh (i.e., three digits beyond the decimal point) prior to evaluation.
 - 3.3.3.3 Upon selection as a winning Bidder, PSCo agrees that the Pricing Information component of its Bid shall remain binding until it is reflected in a fully executed and binding Service Attachment(s).

4. QUALIFIED BIDDER REQUIREMENTS

- 4.1 BALANCING AREA REQUIREMENTS. In Form I, PSCo must certify that it has or will provide balancing requirements for the City's load.
- 4.2 FINANCIAL REQUIREMENTS TO BID. Financial performance assurance requirements are designed to achieve two goals: (i) to determine PSCo's eligibility to bid, and (ii) to protect the City and Retail Customers from non-performance risks. PSCo must demonstrate in its Bid that it has the financial resources and experience to meet the terms and conditions of the Standard Contract and perform such Standard Contract if selected as a winning Bidder.

5. SERVICE ATTACHMENTS

- 5.1 SERVICE ATTACHMENTS. Awards made to PSCo shall be included as attachments to the Standard Contract. See Exhibit 1, Form of Service Attachment, to the Standard Contract for the form of those attachments.

6. LOAD INFORMATION

- 6.1 **LOAD SERVICE OBLIGATIONS.** PSCo is responsible for forecasting and satisfying Load obligations on an hourly, daily, and monthly basis during the Term of Agreement.
- 6.2 **SERVICE REQUIREMENTS.** Load Service Requirements are expected to vary in quantity hourly throughout the Term of Agreement. The quantity of purchased energy may change with time, and PSCo must supply all such requirements during the Term of Agreement. PSCo must be (i) prepared to supply its contracted-for Load Service Requirements, regardless of fluctuations in Retail Customer demand during the Term of Agreement and (ii) capable of meeting the hourly, daily and seasonal electricity load fluctuations associated with their Load Service Requirements.
- 6.3 **HISTORICAL LOAD SERVICE REQUIREMENTS.** PSCo has access to Boulder forecast obligations pursuant to Section 6.1. The City does not represent or warrant the accuracy of this information, and shall have no liability or responsibility to any entity resulting from the provision or use of this information. PSCo's submittal should include a thorough description of all required information including the quantity and term of the resources along with any updated historic or forecasted load information for the city of Boulder as discussed in Section 2.1.
- 6.3.1 **Load Data.** Projected load requirements are located in Section 2.1.
- 6.3.2 The effect of customer migration can be significant, particularly with regard to the Larger Customers. Bidder is advised to carefully review the historical loads for all Customer classifications as part of the bidding process.
- 6.4 **LOAD FORECASTING.** Historical values reflect changes in load due to demand-side management or on-site generation. The City makes no representation regarding the projections of the aggregated load or the load of such customers, and the City shall have no liability or responsibility to any entity resulting from the provision or use of any such information. No penalties or limitations on load reduction efforts including local demand-side management (DSM) and on-site distributed generation will be applied.
- 6.4.1 Because the load for the Customer classifications may vary, PSCo will be required to supply the contracted-for percentage of load and all Services for the duration of the Term of Agreement of the final Standard Contract, not a particular megawatt level.
- 6.4.2 **Load Profiles.** Forecasted energy by sector can be found in Section 2.1.

7. BIDDERS' QUESTIONS

- 7.1 The City will be available throughout the solicitation process to receive questions. PSCo should submit all inquiries or requests for additional information in email form to: koehnj@bouldercolorado.gov

7.2 RFP SCHEDULE

TABLE 3 - RFP Schedule

Action item	Date
Release of RFP	April 16, 2015
Bid Due	May 18, 2015
Bidders' Executed Standard Contract and related Financial Security Due	May 18, 2015
Bidders' Pricing Information Due	May 18, 2015

APPENDIX 1

Form I: Bidders Officer's Certificate

Form II: Standard Contract Information

Form I: Bidder's Officers Certificate

This Form I is provided to the City by Public Service Company of Colorado (PSCo) ("Bidder") in satisfaction of the requirements of the Default Service of the City's Request for Proposals, dated April 16, 2015.

PSCo hereby certifies to the City that the information contained in and submitted pursuant to this Certificate is accurate and complete. Capitalized terms used but not defined herein have the meanings given such terms in the RFP and the Default Service Wholesale Sales Agreement.

1. General Bidder Information:

Bidder's Name:	_____		
Bidder's Address:	_____		
Contact Name and Title:	_____		
Contact Phone #:	_____	Contact Fax #:	_____
Contact E-Mail Address:	_____		
Federal Tax ID:	_____	Duns #:	_____
Legal Structure:	<input type="checkbox"/> Corporation <input type="checkbox"/> Parent <input type="checkbox"/> Subsidiary <input type="checkbox"/> Division <input type="checkbox"/> Single Entity <input type="checkbox"/> Proprietorship <input type="checkbox"/> Partnership		
State of Residency or Organization: _____	Date of Incorporation or Date Business Started: _____		

2. General Guarantor Information (if applicable):

Guarantor Name:	_____		
Guarantor Address:	_____		
Contact Name/Title:	_____		
Contact Phone#	_____	Contact Fax #:	_____
Contact E-Mail Address:	_____		
Federal Tax ID:	_____	Duns #:	_____
Legal Structure:	<input type="checkbox"/> Corporation <input type="checkbox"/> Parent <input type="checkbox"/> Subsidiary <input type="checkbox"/> Division <input type="checkbox"/> Single Entity <input type="checkbox"/> Proprietorship <input type="checkbox"/> Partnership		
State of Residency or Organization: _____	Date of Incorporation or Date Business Started: _____		

3. Financial Qualifications of Guarantor or of Bidder with Investment Grade Company Status

a. Name of Company		
b. Investment Grade Company Status		
<u>Rating Agency</u>	<u>Credit Rating</u>	<u>Date of Rating</u>
S&P	_____	_____
Moody's	_____	_____
Fitch's	_____	_____
c. Tangible Net Worth – Provide in accordance with Section 1.80 of the Standard Contract: _____		
d. Acceptable Financial Assurance.		
<p>If Bidder cannot establish or have Guarantor establish Investment Grade Company status, Bidder shall qualify for participation in the RFP by providing in advance of submitting Pricing Information financial assurance to the City from a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having assets totaling not less than USD ten billion (\$10,000,000,000) and having a Credit Rating of at least A3 from Moody's, A- from S&P or Fitch, or an equivalent Credit Rating by another nationally recognized rating service reasonably acceptable to the City, in the form of a Letter of Credit or other acceptable security that the City in its sole discretion deems to be sufficient to secure all of Bidder's obligations to the City, including, but not limited to, its obligations under this RFP and the Standard Contract.</p>		

4. Financial Information

a. **General Financial Information.** Attached hereto are audited annual financial statements of Guarantor (or of Bidder if Bidder has Investment Grade Company status), for the most recent fiscal year and quarterly financial statements for the most recent fiscal quarter, if applicable, all in reasonable detail and duly certified (subject to yearend audit adjustments) by the Chief Financial Officer, Treasurer, Assistant Treasurer or Comptroller of the Guarantor (or of Bidder if Bidder has Investment Grade Company status) as having been prepared in accordance with generally accepted accounting principles consistently applied.

b. **Publicly Owned Companies.** The following documents have been made available through an internet address (or otherwise) to the City for Guarantor (or for Bidder if Bidder has Investment Grade Company status) for the three previous fiscal years:

- Annual Report
- Form 10K (most recent)
- Form 10Q (most recent)
- All Form 8Ks (since last 10Q)

c. **Privately Owned Companies.** Attached is a copy, duly certified (subject to year end audit adjustments) by the Chief Financial Officer, Treasurer, Assistant Treasurer or

Comptroller of the Guarantor (or of the Bidder if Bidder has Investment Grade Company status) as having been prepared in accordance with generally accepted accounting principles consistently applied of the following information for the three previous fiscal years:

Balance Sheet
Income Statement
Statement of Changes in Cash Flow
Notes to Financial Statements (most recent)

The annual financial statements must be audited by a licensed certified public accountant and accompanied by the auditor's opinion letter.

5. **Organization Structure.** Attached to this Certificate is a complete and accurate copy of the current Organizational Chart of Bidder showing relationships between parent, subsidiaries, relevant affiliated entities and joint ventures.
6. **Regulatory and Colorado Compliance.** Bidder has or will obtain all regulatory authorizations necessary for it to legally perform its obligations under the Bid which this Certificate accompanies, and the Default Service Wholesale Sales Agreement and/or any Service Attachment(s) that may be entered into with the City; the execution, delivery, and performance of such a contract will be within its lawful powers; such contract will be duly authorized by all necessary business entity actions and will not violate any of the terms or conditions in its governing documents, any contracts or other agreement to which it is a party or any law applicable to it; and this Bid does and such contract, if entered into, will constitute its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defense.

Form II: Standard Contract Information

The following information will be used to complete the relevant Standard Contract sections for the Bidder without an existing contract. Please see the appropriate section of the Standard Contract for full descriptions of the requested information.

- 1) Please provide a copy of the tariff that you will be providing service under, as well as the following information.

Electric Rate Schedule Number: _____ FERC Docket Number: _____

- 2) Please provide contact information for any notices, demands or requests.

Name or Title:
Full Address:
City, State, Zip
Telephone:
Fax:
E-mail:

- 3) Please provide contact information for correspondence related to load reporting.

Name or Title:
Telephone:
Fax:
E-mail:

- 4) Signature page (if information is presently known).

Name:

Title:

MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

COVER SHEET 18

GENERAL TERMS AND CONDITIONS28

ARTICLE ONE: GENERAL DEFINITIONS28

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS33

 2.1 Transactions33

 2.2 Governing Terms33

 2.3 Confirmation33

 2.4 Additional Confirmation Terms.....34

 2.5 Recording.....34

ARTICLE THREE: OBLIGATIONS AND DELIVERIES34

 3.1 Seller’s and Buyer’s Obligations34

 3.2 Transmission and Scheduling35

 3.3 Force Majeure35

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE35

 4.1 Seller Failure35

 4.2 Buyer Failure35

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES35

 5.1 Events of Default35

 5.2 Declaration of an Early Termination Date and Calculation of Settlement
 Amounts37

 5.3 Net Out of Settlement Amounts.....37

 5.4 Notice of Payment of Termination Payment37

 5.5 Disputes With Respect to Termination Payment37

 5.6 Closeout Setoffs38

 5.7 Suspension of Performance.....38

ARTICLE SIX: PAYMENT AND NETTING38

 6.1 Billing Period38

 6.2 Timeliness of Payment.....39

 6.3 Disputes and Adjustments of Invoices.....39

 6.4 Netting of Payments.....39

 6.5 Payment Obligation Absent Netting40

 6.6 Security40

 6.7 Payment for Options40

 6.8 Transaction Netting.....40

ARTICLE SEVEN: LIMITATIONS.....	40
7.1 Limitation of Remedies, Liability and Damages	40
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS	41
8.1 Party A Credit Protection.....	41
8.2 Party B Credit Protection	43
8.3 Grant of Security Interest/Remedies	44
ARTICLE NINE: GOVERNMENTAL CHARGES.....	45
9.1 Cooperation.....	45
9.2 Governmental Charges.....	45
ARTICLE TEN: MISCELLANEOUS	45
10.1 Term of Master Agreement.....	45
10.2 Representations and Warranties.....	46
10.3 Title and Risk of Loss	47
10.4 Indemnity	47
10.5 Assignment	47
10.6 Governing Law	48
10.7 Notices	48
10.8 General.....	48
10.9 Audit	49
10.10 Forward Contract	49
10.11 Confidentiality	49
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....	50
EXHIBIT A: CONFIRMATION LETTER.....	57

**MASTER POWER PURCHASE AND SALE AGREEMENT
COVER SHEET**

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Party A: [BOULDER LIGHT & POWER]

Party B:

All Notices:

All Notices:

Street:

Street:

City/State:

City/State:

Zip:

Zip:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Duns: 07-575-9969

Duns:

Federal Tax ID Number: 84-6000566

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Scheduling:

Scheduling:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Confirmations:

Confirmations:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Payments:

Payments:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Wire Transfer:

Wire Transfer:

BNK:

BNK:

ABA:

ABA:

ACCT:

ACCT:

Credit and Collections:

Credit and Collections:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

With additional Notices of an Event of Default or Potential Event of Default to:
Attn:
Phone:
Facsimile:

With additional Notices of an Event of Default or Potential Event of Default to:
Attn:
Phone:
Facsimile:

The Parties hereby agree that the General Terms and Conditions, Version 2.1 (modified 04/25/00) published by the Edison Electric Institute and the National Energy Marketers Association, a copy of which is attached hereto, are incorporated herein. The Parties further agree to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff	Tariff	N/A	Dated	N/A	Docket Number	N/A
Party B Tariff	Tariff		Dated		Docket Number	

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

Cross Default for Party A: Not applicable

Party A: _____ Cross Default Amount

Other Entity: _____ Cross Default Amount

Cross Default for Party B: Not applicable

Party B: _____ Cross Default Amount

Other Entity: _____ Cross Default Amount

5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify:

Option C Specify: _____

(b) Credit Assurances:

Not Applicable
 Applicable

(c) Collateral Threshold:

Not Applicable
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable
 Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A
 Option B Specify: _____
 Option C Specify: _____

(b) Credit Assurances:

Not Applicable
 Applicable (as amended)

(c) Collateral Threshold:

Not Applicable
 Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is

continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

Other:

Specify: _____

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

Confidentiality Applicable

If not checked, inapplicable.

Schedule M

Not Applicable

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Add Section 3.6. If not checked, inapplicable

Add Section 8.6. If not checked, inapplicable

Other Changes

The following changes shall be applicable.

ARTICLE ONE: GENERAL DEFINITIONS

The following definitions are hereby amended as follows:

Section 1.12 "Credit Rating" is amended by deleting the word "issues" in line 4 and replacing it with "issuer."

Section 1.23 "Force Majeure" is amended by adding the following sentence at the end thereof: "If the Claiming Party is Party A, Force Majeure does not include any action taken by Party A in its governmental capacity."

Section 1.27 "Letter(s) of Credit" is amended by deleting the phrase "or a foreign bank with a U.S. branch" and replacing it with the phrase "or a U.S. branch of a foreign bank."

Sections 1.35 "Option Buyer" and 1.36 "Option Seller" are amended by deleting, in each section, the phrase "as defined in Schedule P."

Section 1.50 "Recording" is amended by replacing the reference to Section 2.4 with a reference to Section 2.5.

Section 1.51 "Replacement Price" is amended by (i) adding the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line, and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the following: "absent a purchase."

Section 1.52 "S&P" is amended by (i) deleting the words "the Standard & Poor's Rating Group" from the first line and replacing them with "Standard & Poor's Financial Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of The McGraw-Hill Companies, Inc."

Section 1.53 "Sales Price" is amended by (i) deleting the phrase "at the Delivery Point" from the second line, and (ii) deleting the phrase "at Seller's option" from the fifth line and replace it with the following: "absent a sale."

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

Section 2.4 "Additional Confirmation Terms" is amended by deleting the words "either orally or" in line 7.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

- (a) Section 5.2 "Declaration of an Early Termination Date and Calculation of Settlement Amounts" is amended by reversing the placement of "(i)" and "to."
- (b) Section 5.5 "Disputes With Respect to Termination Payment" is amended by adding the words: "(i) pay the undisputed portion of the Termination Payment to the Non-Defaulting Party and (ii)" after the word "first" in the sixth line; and "disputed portion of the" between the words "the" and "Termination Payment" in the 7th line.

ARTICLE SEVEN: LIMITATIONS

Section 7.1 "Limitation of Remedies, Liability and Damages" is amended by adding the following at the end thereof:

"PARTY A'S LIABILITY IN TORT, IF ANY, ALSO SHALL BE LIMITED BY APPLICATION OF THE COLORADO GOVERNMENTAL IMMUNITY ACT C.R.S. §§ 24-10-101 THROUGH 24-10-120. FOR THE AVOIDANCE OF DOUBT, SUCH APPLICATION SHALL IN NO WAY INFLUENCE PARTY A'S POTENTIAL LIABILITY IN RELATION TO ANY CLAIM IN CONTRACT UNDER THIS AGREEMENT."

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

- (a) Section 8.1(b) "Credit Assurances" is amended by deleting the existing provision in its entirety and substituting therefor the following:

"8.1(b) Credit Assurances. If, from time to time, Party A has reasonable good faith grounds to believe that Party B's creditworthiness or that of its Guarantor, if any, or Party B's ability to perform under this Agreement has become materially impaired, Party A will provide Party B with written notice requesting Performance Assurance, including the basis for such request in reasonable detail, in an amount determined by Party A in a commercially reasonable manner but not to exceed an amount equal to one hundred percent (100%) of the Termination Payment plus Party B's Independent Amount, if any, plus all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions (rounding upwards for any fractional amount to the next Party B Rounding Amount), less any Party B Performance Assurance already posted with Party A. Upon receipt of such notice, Party B shall have one (1) Business Day to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance to Party A within the time period specified in this Section 8.1(b), then an

Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.”

- (b) Section 8.2(b) Credit Assurances is amended by deleting the existing provision in its entirety and substituting therefor the following:

“8.2(b) Credit Assurances. If, from time to time, Party B has reasonable good faith grounds to believe that Party A’s creditworthiness or that of its Guarantor, if any, or Party A’s ability to perform under this Agreement has become materially impaired, Party B will provide Party A with written notice requesting Performance Assurance, including the basis for such request in reasonable detail, in an amount determined by Party B in a commercially reasonable manner but not to exceed an amount equal to one hundred percent (100%) of the Termination Payment plus Party A’s Independent Amount, if any, plus all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions (rounding upwards for any fractional amount to the next Party A Rounding Amount), less any Party A Performance Assurance already posted with Party B. Upon receipt of such notice, Party A shall have one (1) Business Day to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance to Party B within the time period specified in this Section 8.2(b), then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.”

- (c) Section 8.1(d) “Downgrade Event” is amended by adding the phrase “or fails to maintain such Performance Assurance or guarantee or other credit assurance for so long as the Downgrade Event is continuing” after the words “receipt of notice” in the fifth line.
- (d) Section 8.2(d) “Downgrade Event” is amended by adding the phrase “or fails to maintain such Performance Assurance or guarantee or other credit assurance for so long as the Downgrade Event is continuing” after the words “receipt of notice” in the fifth line.

ARTICLE TEN: MISCELLANEOUS

- (a) Subsection (ix) of Section 10.2 “Representations and Warranties” is deleted in its entirety and replaced with the following:

“(ix)(A) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; (B) it is an “eligible contract participant” as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(12)); and (C) it is an “eligible commercial entity” as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(11)).”

- (b) Section 10.4 “Indemnity” is amended by adding the following sentence at the end of the Section: “Party A’s indemnification obligations with respect to any tort claims are subject to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through 24-10-120.”

- (c) Section 10.6 “Governing Law” is amended by adding the following terms at the beginning of the Section: “TO THE EXTENT PERMITTED BY LAW,” and replacing the period at the end of the Section with a semicolon and inserting thereafter the following: “PROVIDED, HOWEVER, THAT ANY ISSUE RELATING TO (1) THE POWER OR AUTHORITY OF PARTY A TO ENTER INTO THIS AGREEMENT, (2) THE INTERPRETATION OF PARTY A’S REPRESENTATIONS AND WARRANTIES RELATING TO ITS ORGANIZATION, OR (3) PARTY A’S STATUS AS A QUASI-MUNICIPAL CORPORATION AND POLITICAL SUBDIVISION, SHALL IN ALL CASES BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO. EACH PARTY HERETO IRREVOCABLY (I) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS FOR THE COUNTY OF BOULDER, STATE OF COLORADO; (II) WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT; AND (III) WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM.”

- (d) Section 10.8 "General" is amended by adding the following to the end thereof:

"Each Party authorizes the other Party to affix an ink or digital stamp of its signature to any Confirmation and agrees to be bound by a document executed in such a manner. This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page."

- (e) Section 10.10 "Forward Contract" shall be deleted in its entirety and replaced with the following:

"The Parties acknowledge and agree that (1) each Transaction constitutes a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code"); (ii) certain Transactions may constitute "swap agreements" within the meaning of the Bankruptcy Code; (iii) all payments made or to be made by one Party to the other Party pursuant to this Agreement are "settlement payments" within the meaning of the Bankruptcy Code; (iv) all transfers of "Performance Assurance" by one Party to the other Party under this Agreement are "margin payments" within the meaning of the Bankruptcy Code; and (v) this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort."

- (f) Section 10.11 "Confidentiality" is amended by adding the following sentence at the end thereof: "Party A is a Colorado municipal utility and political subdivision of the State of Colorado and, as such, is subject to the Colorado Sunshine Law (C.R.S. §§ 24-6-101 through 24-6-402) and the Colorado Open Records Act (C.R.S. §§ 24-72-201 through 24-72-309). Nothing in this agreement or in any Confirmation hereunder shall be construed to permit or to require Party A to act in violation of either of the foregoing statutes."

- (g) Section 10 is amended by adding the following new Section 10.12 "Additional Party A Representations and Warranties:"

"On the Effective Date and the date of entering into each Transaction, Party A represents and warrants to Party B that:

(i) with respect to this Agreement, all acts necessary to the valid execution, delivery and performance thereof, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or will be taken and performed as required under all relevant federal, state and local laws, ordinances or other regulations with which Party A is obligated to comply;

(ii) all persons making up the governing body of Party A are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with all relevant federal, state and local laws, ordinances or other regulations with which Party A is obligated to comply;

(iii) the Term of Agreement does not extend beyond any applicable limitation imposed by all relevant federal, state and local laws, ordinances or other regulations with which Party A is obligated to comply or other relevant constitutional, organic or other governing documents and applicable law;

(iv) its obligations to make payments hereunder do not constitute any kind of indebtedness of Party A or create any kind of lien on, or security interest in, any property or revenues of Party A which is proscribed by any provision of any relevant federal, state and local laws, ordinances or

other regulations with which Party A is obligated to comply or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets;

(v) its ability to pay any and all amounts due and payable under the Agreement, or any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the City of Boulder, Colorado or any other governmental or administrative authority; and

(vi) Party A covenants, with respect to any contract action brought by Party B, whether in law or equity, to enforce Party A's obligations under this Agreement, that Party A shall not raise sovereign immunity as a defense to such contract action."

(h) Section 10 is amended by adding the following new Section 10.13 "Index Transactions:"

If the Parties enter into a Transaction in which any or all of the pricing component is based on a pricing index, the following shall apply:

(a) Market Disruption. If a Market Disruption Event occurs during the Determination Period, the Floating Price for the affected Trading Day(s) shall be determined pursuant to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then each Party shall reasonably and in good faith obtain a calculation of the relevant Floating Price from a Reference Market-maker, and the Floating Price shall be the average of the two calculations.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means the Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party in good faith from among dealers which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Trading Day" means a day in respect of which the relevant Price Source published the relevant price.

(b) Corrections to Published Prices. For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged."

(i) The following Section shall be added as a new Section 10.14 "FERC Standard of Review: Mobile-Sierra Waiver:"

“(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008) (the “*Mobile-Sierra*” doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).”

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

Schedule M is deleted in its entirety.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

Schedule P is amended by inserting the following preamble prior to the text thereof: “No definition contained in Schedule P shall apply to any Transaction under this Agreement unless the Parties shall have specifically incorporated such definition in the Confirmation establishing such Transaction.”

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A: **[Boulder]**

Party B:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

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

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A 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.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

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

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the 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 a 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. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

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

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "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.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the

Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that 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 the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a 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, 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.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means 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, 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.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such

Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence 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.

3.2 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 its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, 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.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the 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 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.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product 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 or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product 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 or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

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

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

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

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's

calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this

Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). 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.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement 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. 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 Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 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 Section 6.1.

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

- (a) the Party obligated to deliver the greater amount of Energy 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 Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH

DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, 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 BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information.

Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long

as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be

deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information.

Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or

a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or

the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 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 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 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 Article 6 of 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.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to

the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or

proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 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.

10.4 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 in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate’s creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such

Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales 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. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term

“including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

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

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, ____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____