



30 west superior street / duluth, minnesota 55802-2093 / fax: 218-723-3955 / www.allete.com

David R. Moeller  
Senior Attorney  
218-723-3963  
dmoeller@allete.com

September 29, 2014

**VIA ELECTRONIC FILING**

Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

Re: Multi-Party Facilities Construction Agreement  
MISO, ALLETE, Inc. and 6690271 Manitoba Ltd.

Dear Dr. Haar,

Minnesota Power currently has a matter before the Minnesota Public Utilities Commission for a Certificate for Need and Route Permit for the Great Northern Transmission Line. Midcontinent Independent System Operator, Inc. (“MISO”), ALLETE, Inc. and 6690271 Manitoba Ltd. have filed a Multi-Party Facilities Construction Agreement with FERC. Therefore, please find attached a copy of the Agreement stated above as service upon the Minnesota Public Utilities Commission.

Yours truly,

David R. Moeller

DRM:sr  
Enc.





**Jacob Krouse**  
Attorney  
Direct Dial: 317-249-5715  
Email: jkrouse@misoenergy.org

September 26, 2014

**VIA ELECTRONIC FLING**

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: Midcontinent Independent System Operator, Inc.  
FERC Docket No. ER14-\_\_\_\_-000  
Filing of Executed Multi-Party Facilities Construction Agreement

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act (“FPA”), and part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations, the Midcontinent Independent System Operator, Inc. (“MISO”) and ALLETE, Inc. (“ALLETE”) hereby submit for filing an executed version of their Multi-Party Facilities Construction Agreement (“FCA”) among MISO, ALLETE and 6690271 Manitoba Ltd. (“Manitoba Sub”)<sup>1</sup> (collectively, “the Parties”).<sup>2</sup> As explained herein, the FCA reflects ALLETE’s and Manitoba Sub’s capital contributions towards and ownership of the Great Northern Transmission Line Project and related facilities (“GNTL”) which, when completed, will be a new 220-mile, 500 kV line that will run from the Canadian-U.S. border northwest of Roseau, Minnesota to an expanded Blackberry Substation east of Grand Rapids, Minnesota. Parties request that the Commission accept the FCA to be effective November 25, 2014.<sup>3</sup>

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<sup>1</sup> Manitoba Sub is a wholly owned subsidiary of Manitoba Hydro. As a provincial Crown Corporation, Manitoba Hydro’s participation in the FCA and support of this filing does not affect its status as a non-jurisdictional entity.

<sup>2</sup> Although MISO’s Open Access Transmission and Operating Reserves Markets Tariff (“MISO Tariff”) contains a *pro forma* Multi-Party Facilities Construction Agreement for generator interconnection, MISO does not have a parallel agreement for transmission upgrades that are necessary to satisfy a request for transmission service. The FCA is a “stand alone” agreement and not a case-specific deviation from a MISO *pro forma* agreement. Therefore, it need not meet the standards used to review deviations from *pro forma* agreements. See *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,067 at P 9-10 (2005) (finding that non-conforming provisions in particular interconnection agreements that deviate from the related Commission-approved *pro forma* agreement need to be justified as operationally necessary by the unique circumstances of a given situation).

<sup>3</sup> The GNTL and related facilities are referred to as “Common Use Upgrades” in the FCA. The FCA is the first of several sets of filings the Parties will submit over the next two years concerning the development, cost treatment, and transmission capacity entitlements of the GNTL and construction of related facilities. These agreements will detail ALLETE’s and Manitoba Sub’s rights and obligations to each other with respect to the GNTL and will be submitted for filing as required by the Commission’s regulations. This present filing relates to the FCA and is being submitted at this time so that the ALLETE and Manitoba Sub may commence the necessary certification and construction activities provided in the FCA.

## **I. BACKGROUND**

### **A. ALLETE**

ALLETE is headquartered in Duluth, Minnesota. ALLETE generates, transmits, and distributes electricity in a 26,000-square-mile region of northern Minnesota, serving 140,000 retail customers and providing wholesale electric power and transmission service to ALLETE's other Minnesota municipal customers. Functional control of ALLETE's transmission facilities has been turned over to MISO. ALLETE operates its Minnesota retail utility business under the jurisdiction of the Minnesota Public Utilities Commission ("MPUC"). ALLETE is authorized to sell electric energy, capacity, and ancillary services at market-based rates.

### **B. Manitoba Sub**

Manitoba Sub is a special purpose entity formed by its parent, Manitoba Hydro, to finance the construction of the GNTL and associated transmission facilities. Manitoba Sub will transfer its interest in the GNTL to a MISO transmission owner (or will become a MISO transmission owner) before the GNTL commences commercial operation. This transfer may be to ALLETE.

Manitoba Hydro is the electric power and natural gas distribution utility in the province of Manitoba, Canada. Manitoba Hydro is a provincial Crown Corporation established and existing pursuant to *The Manitoba Hydro Act*<sup>4</sup>. Manitoba Hydro operates 16 interconnected generating stations. It has more than 555,000 electric power customers and more than 272,000 natural gas customers.

### **C. The GNTL**

The GNTL is being developed by ALLETE and Manitoba Sub, and currently has an anticipated in-service date of June 1, 2020.<sup>5</sup> The GNTL will provide the transmission capacity necessary to facilitate ALLETE's potential purchase of as much as 383 MW of hydroelectric power from Manitoba Hydro to serve ALLETE's native load and energy obligations. The GNTL will also provide Manitoba Hydro an outlet to deliver as much as an additional 500 MW of hydroelectric power to other potential power purchase customers, as well as to the MISO market in general. The estimated cost of the GNTL (in 2013 dollars without escalation or gross-up) is approximately \$676 million.

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<sup>4</sup> C.C.S.M. cH190.

<sup>5</sup> ALLETE filed its application for a Certification of Need and Route Permit with the Minnesota Public Utilities Commission ("MPUC") on October 21, 2013 in MPUC Docket No. E-015/CN-12-1163 and on April 15, 2014 in MPUC Docket No. E-015/TL-14-21, respectively. In re Request of Minnesota Power for a Certificate of Need for the Great Northern Transmission Line Project, Minn. Pub. Utilis. Comm'n Docket No. E-015/CN-12-1163 (filed Oct. 21, 2013); In re Request by Minnesota Power for a Route Permit for the Great Northern Transmission Line, Minn. Pub. Utilis. Comm'n Docket No. E-015/TL-14-21 (filed Apr. 15, 2014). ALLETE filed its application for a Presidential Permit for the GNTL with the Department of Energy ("DOE") on April 15, 2014 in DOE Docket No. PP-398. Minnesota Power Application for Presidential Permit for Great Northern Transmission Line, Dept. of Energy Docket No. PP-398 (filed Apr. 15, 2014).

## II. FCA

The GNTL is being constructed for the sole purpose of satisfying the transmission service requests (“TSRs”) submitted by ALLETE, Manitoba Hydro and Wisconsin Public Service Company (“WPS”). The GNTL is being “participant funded” by ALLETE and Manitoba Sub pursuant to Article III, Section A.2.a and A.2.e of Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“MISO Tariff”).<sup>6</sup> The GNTL therefore is not being proposed as a “Multi-Value Project,” “Market Efficiency Project,” or any other transmission facility that may be eligible for regional cost allocation under Attachment FF of the MISO Tariff. Accordingly, the GNTL is also not eligible for designation as an Open Transmission Project and is not subject to MISO’s Order No. 1000 bidding process for Transmission Developers under MISO’s Attachment FF.

The FCA reflects ALLETE’s and Manitoba Sub’s capital expenditure obligations and ownership rights with respect to the GNTL. The agreement divides the relevant parties into four categories: (1) Common Use Upgrade Transmission Customers (“CUU Transmission Customers”), (2) Common Use Upgrade Transmission Owners (“CUU Transmission Owners”), (3) Transmission Line Payers<sup>7</sup> and (4) Transmission Provider. The Transmission Customers are the entities that submitted the TSRs that necessitate the construction of the GNTL.<sup>8</sup> These entities are the merchant function of ALLETE, the merchant function of Manitoba Hydro, and the merchant function of WPS, respectively.<sup>9</sup> The CUU Transmission Owners are the entities that will *actually own* the GNTL.<sup>10</sup> These entities are the transmission function of ALLETE and Manitoba Sub.<sup>11</sup> The Transmission Line Payers are the entities that will *actually provide the capital to finance* the construction of the GNTL.<sup>12</sup> These entities are the merchant function of ALLETE and the Manitoba Sub.<sup>13</sup> The merchant function of WPS and the merchant function of Manitoba Hydro are not Transmission Line Payers. Finally, MISO, the Transmission Provider,

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<sup>6</sup> MISO Tariff, 35.0.0, Attachment FF, Article III, Section A.2.a. (“Market Participant’s Option to Fund: Notwithstanding the Transmission Provider’s assignment of cost responsibility for a project included in the MTEP, one or more Market Participants may elect to assume cost responsibility for any or all costs of a Network Upgrade that is included in the MTEP. Provided however, in the event the Market Participant is also a Transmission Owner such election of the option to fund must be made on a consistent, non-discriminatory basis.”); Attachment FF, Article III, Section A.2.e (“Costs of Transmission Delivery Service Projects shall be assigned and recovered in accordance with Attachment N of this Tariff.”). Network Upgrades triggered by TSRs are funded under Attachment N of the MISO Tariff, which allows a MISO Transmission Owner to roll costs into its rate base or, if it does not do so, to collect a Network Upgrade Charge from the relevant Transmission Customer. ALLETE may eventually seek to recover its GNTL-related costs by rolling them into its rate base but is not proposing such action in this filing. Manitoba Sub is participant funding the portion of the GNTL needed to satisfy Manitoba Sub’s and WPS’s TSRs. Therefore, Attachment N’s provisions related to the rolling-in of upgrade costs into rate base are not implicated by this filing.

<sup>7</sup> FCA at Original Sheet No. 2.

<sup>8</sup> *See id.* at Original Sheet No. 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at Original Sheet Nos. 2-4.

<sup>11</sup> *Id.* at Original Sheet Nos. 2-3.

<sup>12</sup> *Id.* at Original Sheet Nos. 2, 4.

<sup>13</sup> *Id.* at Original Sheet No. 2.

will provide transmission service over the GNTL and will assume “functional control” of the project once it enters commercial operation.<sup>14</sup>

ALLETE’s and Manitoba Sub’s respective capital contributions and ownership interests are based on the amount of transmission capacity on the GNTL necessary to satisfy the line’s primary economic drivers, which are sales of hydroelectric power into the United States. Specifically, ALLETE and WPS require 383 MW and 200 MW of new transmission capacity, respectively, for delivery of new power supply arrangements with Manitoba Hydro.<sup>15</sup> Manitoba Hydro requires 300 MW of transmission capacity on the GNTL in order to provide for potential future hydroelectric development and sales into the United States.<sup>16</sup>

The Parties have agreed that ALLETE will own 51% of the GNTL, but only be responsible for 46% of the project’s costs.<sup>17</sup> Manitoba Sub will own 49% of the GNTL and fund 54% of the project’s costs. Manitoba Sub’s financing will be through: (1) a 49% capital contribution as originally contemplated by the Parties plus (2) a 5% capital contribution to reflect the allocation of costs following an expansion of the project’s capacity as determined by MISO during the TSR studies.

Manitoba Sub is providing the additional 5% capital contribution to finance an unanticipated increase in the GNTL’s transmission capacity over an original estimated capacity of 750 MW to 883 MW. After studying the TSRs underlying the GNTL, MISO originally determined that the GNTL’s transmission capacity would need to be approximately 750 MW. In subsequent studies, however, MISO determined that the project’s transmission capacity could increase to 883 MW with minimal upgrades. ALLETE and Manitoba Sub therefore agreed to move forward based on the GNTL’s increased transmission capacity, with the Manitoba Sub bearing an increased allocation of the costs of the GNTL.<sup>18</sup>

ALLETE’s and Manitoba Sub’s agreed-upon cost responsibilities and ownership allocations with respect to the GNTL are summarized in Tables 1 and 2 below.

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<sup>14</sup> *Id.* at Original Sheet No. 3.

<sup>15</sup> *Id.* at Original Sheet No. 2. The Parties note that WPS has negotiated a delivered product and therefore will not fund any part of the GNTL’s capital costs. These costs will instead be paid by Manitoba Sub. *Id.* at Original Sheet Nos. 2-3, 58-60

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at Original Sheet Nos. 58-59.

<sup>18</sup> One of the ALLETE’s power supply agreements with Manitoba Hydro includes a payment from Manitoba Hydro to ALLETE for an additional 17.7% of the GNTL’s costs. This payment will be applied towards ALLETE’s capital obligations, thereby reducing overall ALLETE’s capital obligations from 46% to 28.3%. ALLETE will apply this payment as a credit towards its retail revenue requirements and MISO Attachment O revenue requirement subject to applicable regulatory approvals. ALLETE anticipates that it will submit its power supply agreement with Manitoba Hydro for review by the MPUC later in 2014. Power supply agreements between ALLETE and Manitoba Hydro, to the extent subject to the Commission’s regulations, will be filed for Commission review before any actual sales of capacity or energy are made under the agreements (which will not take place until after the GNTL goes into service).

<b>Table 1– Capital Contribution</b>			
<b>TSR Customer</b>	<b>TSR Amounts (MW)</b>	<b>Transmission Line Payer</b>	<b>GNTL Capital Cost Allocation</b>
ALETE - merchant	250 south	ALLETE-merchant	28.3 %
	133 south		17.7 %
WPS-merchant	200 south	Manitoba Sub	21.6 %
Manitoba Hydro-merchant	100 south	Manitoba Sub	32.4%
	100 south		
	100 south		
Manitoba Hydro-merchant	133 north	Manitoba Sub	N/A
	200 north		
	115 north (partial)		
	250 north		

<b>Table 2 – GNTL Ownership Summary</b>	
<b>CUU<sup>19</sup> Transmission Owner</b>	<b>Percentage Ownership Share of GNTL</b>
ALLETE-transmission	51%
Manitoba Sub	49% <sup>20</sup>

Other key commercial terms of the FCA are as follows:

**Section 2.2.2 (Termination Upon Default).** Section 2.2.2 of the FCA establishes that Transmission Line Payers and CUU Transmission Owners have the right to terminate the participation in the GNTL of another Transmission Line Payer in the event that such party defaults on its obligations under the FCA and such termination does not pose a threat to reliability.

<sup>19</sup> Pursuant to Table 1 of Appendix A of the FCA, the CUU includes related facilities necessary for the reliable operation of the GNTL in the form of network upgrades on the systems of other transmission owners. The Parties anticipate that the owners of those systems will own those related facilities once they are constructed. Original Sheet No. 57.

<sup>20</sup> Original Sheet Nos. 58-59.

**Section 2.2.3 (Consequences of Termination)**. Section 2.2.3 of the FCA establishes that costs may be reallocated between Transmission Line Payers and CUU Transmission Owners if a particular Transmission Line Payer's participation in the GNTL terminates. The Transmission Line Payer whose participation in the project is terminating must compensate amounts due to any remaining Transmission Line Payer and/or CUU Transmission Owner as of the date that termination is effective. The performance assurance of the terminated Transmission Line Payer may be applied towards such entity's remaining proportionate share of the cost of the GNTL. In the event that the termination results in the cancellation of the FCA, the terminating Transmission Line Payer must compensate the CUU Transmission Owners for reasonably incurred costs to "wind up" construction in a safe and reliable manner.

**Section 2.2.5 (Transmission Provider's Option to Add New TSR and Restudy)**. Section 2.2.5 of the FCA establishes that the Transmission Provider may add transmission line payer(s) as parties to the FCA at any time, subject to certain requirements. The addition of such other party may result in the reallocation of capital contribution requirements among the Transmission Line Payers and may result in the need for a restudy. Section 2.2.5 also establishes that a TSR will be withdrawn if the relevant Transmission Line Payer withdraws from the project or defaults.

**Article 3.1 (Construction of Common Use Upgrades)**. Article 3 of FCA establishes that the CUU Transmission Owners shall (or shall cause such action through subcontractors) design, procure, engineer, construction, install, and commission the GNTL with funds provided by the Transmission Line Payers. The CUU Transmission Owners have the right to suspend work on (and the incurrence of additional expenses associated with) the construction of the GNTL upon written notice to the Transmission Line Payers upon a default by the Transmission Line Payers, including the failure to provide adequate financial assurances. CUU Transmission Owners are obligated to use reasonable efforts to design, procure, engineer, construct, install, and commission the GNTL in accordance with the schedule set forth in Appendix A (as explained below) and are obligated to keep Transmission Line Payers apprised of their progress and any studies and/or work papers in the event that the GNTL is delayed.

**Section 3.2.1 (Transmission Service Costs and Credits)**. Section 3.2.1 of the FCA establishes that Transmission Line Payers shall pay the CUU Transmission Owners the costs (including taxes) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and commissioning the GNTL, and seeking the necessary right of ways to site the GNTL for the different phases of the development of the GNTL (as described below). Section 3.2.1 also establishes that the Parties do not waive any rights to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits that a Transmission Line Payer or CUU Transmission Owner may be entitled to under the MISO Tariff based on its participation in the GNTL.

**Section 7 (Assignment)**. Section 7 of the FCA establishes that ALLETE and Manitoba Sub may assign their interest, rights and obligations in or concerning the GNTL. Section 7 expressly states that Manitoba Sub may assign its interest, rights and obligations in or concerning the GNTL to ALLETE or, subject to applicable consents, to another MISO transmission owner.

**Section 16.4 (Section 205 and 206 Rights)**. Section 16.4 of the FCA establishes that MISO has the right to make a unilateral filing with the Commission under section 205 of the FPA to modify the FCA with respect to any rates, terms and conditions, charges, classifications of service, and rules or regulations, provided it does not exercise the right to alter the capital cost responsibility of the Transmission Line Payers except to add an additional Transmission Line Payer, consistent with Section 2.2.5 of the FCA, or as provided by a Commission order. MISO agrees to give the Parties thirty days advance notice, an explanation of the rationale for any proposed modifications, and an opportunity to discuss any proposed modifications to the FCA prior to making a unilateral filing with the Commission. In the event the Parties are unable to reach agreement regarding MISO's proposed changes in the thirty days prior to filing, MISO agrees to include an alternative proposal provided by the CUU Transmission Owners and the Transmission Line Payers in its unilateral filing for the Commission's consideration. Section 16.4 also provides that the CUU Transmission Owner and Transmission Line Payers each have the right to make a unilateral filing with the Commission to modify the FCA pursuant to section 206 or any other applicable provision of the FPA.

**Appendix A**. Appendix A of the FCA establishes that there are two phases for the development of the GNTL: (1) the certification phase, and (2) the construction phase. Each phase has its own financial, regulatory, and construction obligations and milestones. Appendix A provides estimates for each of these phases and the deadlines for Transmission Line Payers to pay their portion of the GNTL costs.

The Certification Phase will consist of the CUU Transmission Owners developing, filing, and securing the approvals of all major state and federal permits required for the GNTL's construction. Permitting activities will continue to overlap with additional engineering and construction activities during the Construction Phase. The Construction Phase will include the construction of the GNTL.

Both the Certification Phase and the Construction Phase are subject to agreed-upon conditions precedent including, among other things, approval by ALLETE's and Manitoba Hydro's Board of Directors, obtainment of the necessary state and federal regulatory approvals, finalization of the underlying power supply agreements between Manitoba Hydro and ALLETE, execution of the relevant governance, transmission capacity exchange, transmission interconnection and operation and maintenance agreements, and conditional approval of the relevant TSRs. The timing of ALLETE's and Manitoba Sub's payment and financial assurance obligation for the Certification Phase and Construction Phase are established in Table 3 in Appendix A.

The FCA reflects the Parties' decision to participant fund the GNTL based on Commission-approved Article III, Sections A.2.a and A.2.e of Attachment FF of the MISO Tariff, with actual ownership of the GNTL's transmission capacity as reflected in Table 2 in Appendix A of the FCA. The FCA's terms are just, reasonable, and not unduly discriminatory because they reflect the arms-length negotiated allocation of the risks, obligations, and benefits associated with the development of the GNTL among ALLETE and Manitoba Sub. The Commission should therefore accept the FCA for filing to be effective as requested herein.



### **III. EFFECTIVE DATE AND REQUESTS FOR WAIVER**

The Parties respectfully request that the FCA be accepted for filing effective November 25, 2014.

The Parties also request waiver of the requirement to file the cost of service statements required pursuant to part 35 of the Commission's regulations because they are not applicable to the FCA. To the extent that this filing requires waivers of section 35.12(b) of the Commission's regulations, the Parties respectfully request such waivers. This filing provides sufficient support for the Commission to accept the FCA for filing.

### **IV. DESCRIPTION OF THE DOCUMENTS BEING SUBMITTED WITH THIS FILING**

This filing includes the following materials:

- This Transmission Letter;
- Attachment A: public version of FCA and
- Attachment B: non-public version of FCA.
- Attachment C: CEII Protective Agreement

The Parties have designated the one-line diagrams included in Attachment A as Critical Energy Infrastructure Information ("CEII") because they provide the proposed final configuration of the contemplated transmission facilities. The designated pages provide specific engineering and detailed design information relating to the transmission facilities that could be useful to a person planning an attack on critical infrastructure and do not simply give the location of critical infrastructure. These pages are exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

Accordingly, MISO and ALLETE request confidential treatment of the non-public version of the FCA included in Attachment B as CEII pursuant to 18 C.F.R. § 388.12. The relevant pages of the non-public version of the FCA have been marked "CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION—DO NOT RELEASE" and redacted from the public version of the FCA included in Attachment A.

**V. COMMUNICATIONS AND CORRESPONDENCE**

Communications and correspondence with respect to this filing should be directed to:

Jacob Krouse Midcontinent System Operator, Inc. P.O. Box 4202 Carmel, IN 46082-4202 (317) 249-5400 jkrouse@misoenergy.com	Joseph C. Hall Ruth M. Porter Dorsey & Whitney LLP 1801 K Street, N.W. Suite 750 Washington, D.C. 20006 (202) 442-3000 hall.joseph@dorsey.com porter.ruth@dorsey.com
Michael Splete Venable LLP 575 7 <sup>th</sup> Street N.W. Washington, D.C. 20004 (202) 344-4512 masplete@Venable.com	David Moeller Senior Attorney ALLETE, Inc. 30 West Superior Street Duluth, MN 55802 (218) 723-3963 dmoeller@allete.com
<i>Counsel for MISO</i>	<i>Counsel for ALLETE, Inc.</i>

**VI. SERVICE**

MISO notes that it has served a copy of this filing electronically, including attachments, upon all Tariff Customers under the Tariff, MISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, MISO Advisory Committee participants, as well as all state commissions within the Region. The filing has been posted electronically on MISO's website at <https://www.misoenergy.org/Library/FERCFilingsOrders/Pages/FERCFilings.aspx> for other interested parties in this matter. In addition, MISO has served a copy of this filing electronically on all parties to this agreement.

Service will be provided by ALLETE to the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

## VII. CONCLUSION

For all of the foregoing reasons, MISO and ALLETE respectfully request that the Commission accept the FCA as requested to be effective November 25, 2014 and grant all waivers requested herein, as appropriate.

Respectfully submitted,

/s/ Jacob T. Krouse

Jacob T. Krouse  
Attorney for the Midcontinent Independent  
System Operator, Inc.

/s/ Joseph C. Hall

Joseph C. Hall  
Attorney for ALLETE

Attachment

# Attachment A

SA 2700 MINNESOTA POWER-MANITOBA MPFCA VERSION 31.0.0

EFFECTIVE 11/25/2014

ORIGINAL SERVICE AGREEMENT NO. 2700

**PUBLIC VERSION**

MULTI-PARTY

FACILITIES CONSTRUCTION AGREEMENT

entered into among:

Midcontinent Independent System Operator, Inc.,

and

Minnesota Power, an operating division of ALLETE, Inc.,

and

6690271 Manitoba Ltd.,

and

Minnesota Power, an operating division of ALLETE, Inc.

**MULTI-PARTY  
FACILITIES CONSTRUCTION AGREEMENT**

**entered into among:**

**Midcontinent Independent System Operator, Inc.,**

**and**

**Minnesota Power, an operating division of ALLETE, Inc.,**

**and**

**6690271 Manitoba Ltd.,**

**and**

**Minnesota Power, an operating division of ALLETE, Inc.**

on the 25 day of September, 2014

**THIS MULTI-PARTY FACILITIES CONSTRUCTION AGREEMENT** (sometimes hereinafter referred to as the "Agreement") is made and entered into this 25 day of September, 2014, among:

Midcontinent Independent System Operator, Inc.,  
(a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware sometimes hereinafter referred to as the "**Transmission Provider** or "**MISO**"),

and

Minnesota Power, an operating division of ALLETE, Inc.,  
(a Minnesota corporation sometimes referred to as "**MPM**"),

and

6690271 Manitoba Ltd, a wholly owned subsidiary of Manitoba Hydro  
(a Manitoba corporation sometimes referred to "**6690271**"),

and

Minnesota Power, an operating division of ALLETE, Inc.,  
(a Minnesota corporation sometimes referred to as "**MP**"),

(6690271 and MPM may be collectively referred to as the "**Transmission Line Payers**" or individually as a "**Transmission Line Payer**", MP and 6690271 may be collectively referred to as the "**CUU Transmission Owners**" or individually as a "**CUU Transmission Owner**" and the Transmission Line Payers, the CUU Transmission Owners and the Transmission Provider each may be individually referred to as a "**Party**" or collectively as the "**Parties.**")

## RECITALS

**WHEREAS**, Minnesota Power, an operating division of ALLETE, Inc. is the owner and operator of electric generation and transmission facilities in the United States and is engaged in generation, transmission, distribution, and/or sale of electric power and energy;

**WHEREAS**, when MPM is referred to in this Agreement it refers to the obligations being entered pursuant to this Agreement on behalf of Minnesota Power, an operating division of ALLETE, Inc.'s marketing and sales functions;

**WHEREAS**, when MP is referred to in this Agreement it refers to the obligations being entered into pursuant to this Agreement on behalf Minnesota Power, an operating division of ALLETE, Inc.'s transmission functions;

**WHEREAS**, The Manitoba Hydro-Electric Board (“**MH**”) is the owner and operator of electric generation and transmission facilities in Canada and is engaged in generation, transmission, distribution, and/or sale of electric power and energy;

**WHEREAS**, 6690271 is a wholly owned subsidiary of MH;

**WHEREAS**, Wisconsin Public Service Corporation (“**WPSM**”) is the owner and operator of electric generation facilities in the United States and is engaged in generation, distribution, and/or sale of electric power and energy;

**WHEREAS**, when WPSM is referred to in this Agreement it refers to Wisconsin Public Service Corporation’s marketing and sales functions;

**WHEREAS**, MH’s marketing and sales division (“**MHEM**”) has filed transmission service requests pursuant to Reservation Request Numbers 79429002, 79258492, 79258646, and 79258668 for north bound service totaling 883 MW;

**WHEREAS**, WPSM has filed a transmission service request pursuant to Reservation Request Number 79258364 for south bound service totaling 200 MW;

**WHEREAS**, MPM has filed a transmission service request pursuant to Reservation Request Numbers 76703672 and 79258361 for south bound service totaling 383 MW;

**WHEREAS**, MHEM has filed transmission service requests pursuant to Reservation Request Number 80142548, 80142558, and 80142561 for south bound service totaling 300 MW;

**WHEREAS**, MP has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and transmission service on the transmission facilities under its control;

**WHEREAS**, MISO has agreed with MPM that upon completion of the Common Use Upgrades that MISO will provide MPM with 250 MW of south bound Firm Transmission Service and 133 MW of south bound Firm Transmission Service in accordance with Service Agreements entered into by MISO and MPM on the Effective Date;

**WHEREAS**, MISO has agreed with WPSM that upon completion of the Common Use Upgrades that MISO will provide WPSM with 200 MW of south bound Firm Transmission Service in accordance with the Service Agreement entered into by MISO and WPSM on the Effective Date;

**WHEREAS**, MISO has agreed with MHEM that upon completion of the Common Use Upgrades that MISO will provide MHEM with 300 MW of southbound Firm Transmission Service in accordance with the Service Agreements entered into by MISO and MHEM on the Effective Date;



**WHEREAS**, MISO has determined that only 698 MW of northbound Firm Transmission Service will be available upon completion of the Common Use Upgrades and MISO has agreed with MHEM that upon completion of the Common Use Upgrades that MISO will provide MHEM with a total of 698 MW of northbound Firm Transmission Service in accordance with Service Agreements entered into by MISO and MHEM on the Effective Date;

**WHEREAS**, MPM, WPSM and MHEM in their capacity as the entities that will receive Firm Transmission Service may be collectively referred to as the “**CUU Transmission Customers**” or individually as a “**CUU Transmission Customer**”);

**WHEREAS**, as set out in Table 2 of Appendix A each Transmission Line Payer has agreed to accept the financial responsibility for payment of the allocated cost of the Common Use Upgrades for the CUU Transmission Customers’ transmission service requests that are identified in Table 2(A) and Table 2(B) for that Transmission Line Payer (the “**Transmission Line Payers Associated TSR**”);

**WHEREAS**, the Parties acknowledge that if a Transmission Line Payer defaults under the provisions of this Agreement and its participation in this Agreement is terminated in accordance with the provisions of this Agreement, the Transmission Line Payers Associated TSR will also be withdrawn and the applicable CUU Transmission Customer will not be entitled to receive its respective Firm Transmission Service;

**WHEREAS**, MP and 6690271 have jointly agreed to design, own and construct the Common Use Upgrades as tenants in common;

**WHEREAS**, the CUU Transmission Owners as of the In-Service Date will be MISO Transmission Owners; and

**WHEREAS**, the Transmission Line Payers have requested, and the Transmission Provider and CUU Transmission Owners have agreed, to enter into this Agreement with the Transmission Line Payers for the purpose of facilitating construction of the CUU and to enable the Transmission Provider to provide WPSM, MPM and MHEM, as CUU Transmission Customers, with the Firm Transmission Service referred to herein for such CUU Transmission Customer.

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

## **ARTICLE 1**

### **DEFINITIONS**

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

- 1.1** “**Applicable Laws and Regulations**” shall mean all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities, and/or the respective services they provide.
- 1.2** “**Applicable Reliability Council**” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System in which the CUU is located.
- 1.3** “**Breach**” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.4** “**Breaching Party**” shall mean a Party that is in Breach of this Agreement.
- 1.5** “**Common Use Upgrades**” or “**CUU**” shall collectively mean all of the Transmission Facility, Network Upgrade, System Protection Facility, or any other classified additions, alterations, or improvements on the Transmission System of MP and on the Transmission Systems of the other Transmission Owners identified in Table 1 of Appendix A (not classified under Attachment FF as a Baseline Reliability Project, Market Efficiency Project, or Multi-Value Project) that are needed to accommodate MHEM’s Reservation Request Numbers, 79258492, 79258646, 79258668 (partial service) and 79429002 for 698 MW of north bound service and 80142548, 80142558, and 80142561 for 300 MW of south bound service, WPSM’s Reservation Request Number 79258364 for 200 MW of south bound service, MPM’s Reservation Request Numbers 76703672 and 79258361 for 383 MW of south bound service as more particularly set out in Appendix A (the Transmission Service Requests are collectively referred to as the “**Transmission Customers’ TSRs**” and individually as the “**Transmission Customer’s TSR**”).
- 1.6** “**Confidential Information**” shall mean any proprietary or commercially or competitively sensitive information, trade secret, or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.
- 1.7** “**Default**” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.

- 1.8 “**Effective Date**” shall have the meaning set forth in Section 2.1.
- 1.9 “**Executive Officer**” shall mean such officer designated by each Party from time to time.
- 1.10 “**FERC**” shall mean the Federal Energy Regulatory Commission, also known as the “Commission,” or its successor.
- 1.11 “**Firm Transmission Service**” shall mean firm Point-To-Point Transmission Service provided under Module B of the Tariff and firm Network Integration Transmission Service under Module B of the Tariff and shall include all rights conveyed to the Transmission Customer, including but not limited to energy and capacity market congestion rights, as defined in the Tariff.
- 1.12 “**Force Majeure**” shall mean an event or circumstance that prevents or delays one Party from performing its obligations under this Agreement and that is not within the reasonable control of, nor the result of the negligence of, the claiming Party, and that, by the exercise of Good Utility Practice, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not restricted to, acts of God, floods, droughts, earthquakes, storms, fires, lightning, tornados, strikes, lockouts and other labor disturbances, epidemics, pandemic, war (whether or not declared), blockades, acts of public enemies, acts of sabotage or terrorism, civil insurrection, riots or civil disobedience, any situation where delivery or acceptance will endanger a Party’s facilities or endanger that Party’s system operations, explosions, acts or omissions of any Governmental Authority taken on or after the Effective Date, (including the adoption or change in any law or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if, and to the extent that, such action or inaction by such Governmental Authority prevents or delays performance and/or renders the Party unable, despite due diligence, to obtain any license, permit, or approval required by any Governmental Authority, and the issuance of any order, injunction, or other legal or equitable decree to the extent that any of the foregoing prevents or delays the performance of a Party’s obligations hereunder. A Force Majeure event does not include intentional wrongdoing by the Party claiming Force Majeure.
- 1.13 “**Good Utility Practice**” shall mean any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business

practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- 1.14** “**Governmental Authority**” shall mean any federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, or taxing authority or power; provided, however, that such term does not include any Transmission Line Payer, any Transmission Provider, any CUU Transmission Owner, any CUU Transmission Customer, or any Affiliate thereof.
- 1.15** “**In-Service Date**” shall mean the date that the 500 kV Line that is a component of the CUU is commissioned and comes into service, presently scheduled to be June 1, 2020.
- 1.16** “**Local Balancing Authority**” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the Transmission Provider Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.
- 1.17** “**Loss**” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.
- 1.18** “**NERC**” shall mean the North American Electric Reliability Corporation, or its successor organization.
- 1.19** “**Non-Breaching Party**” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by a Party and “**Non-Breaching Parties**” shall mean all of the Parties that are not in Breach of this Agreement with regard to a specific event of Breach by a Party.
- 1.20** “**Northbound Transmission Service**” shall mean any transmission service the Transmission Provider will grant contingent on construction of the CUU which is to be

utilized for the delivery of energy from within the Transmission Provider region to the interface between MH and the Transmission Provider region.

- 1.21 “**Reasonable Efforts**” shall have the meaning as provided in the Tariff.
- 1.22 “**Tariff**” shall mean the Transmission Provider’s Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.23 “**Total Transmission Service Capacity**” means the total of the capacities associated with all transmission service to be granted by the Transmission Provider contingent on the construction of the CUU.
- 1.24 “**Transmission System**” shall mean the facilities owned by MP and controlled or operated by Transmission Provider or MP that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

## **ARTICLE 2 TERM OF AGREEMENT**

- 2.1 **Effective Date.** This Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties (the “**Effective Date**”).
- 2.2 **Term.**
- 2.2.1 **General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the design, procurement, construction, and installation of the Common Use Upgrades; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination as permitted or provided for under Appendix A of this Agreement; and (iv) Transmission Line Payers have mutually agreed to terminate this Agreement after providing Transmission Provider and CUU Transmission Owners with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that all of the Transmission Line Payers have no outstanding contractual obligations to Transmission Provider or CUU Transmission Owners under this Agreement as of the termination date. No purported termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties.

**2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination and removal rights described in Article 9.2 and in addition, if one or more Transmission Line Payers (but not all) are in Default, the CUU Transmission Owners or the Transmission Provider may terminate the participation of the defaulting Transmission Line Payer(s) without terminating this entire Agreement; provided, however, if an event described in part (a) or (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, if a Transmission Line Payer is the Breaching Party then neither the Transmission Provider nor the CUU Transmission Owners may terminate the participation of such Transmission Line Payer, if such Transmission Line Payer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Transmission Line Payer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates the Transmission Provider or the CUU Transmission Owners, as applicable, within thirty (30) Calendar Days for the amount of damage billed to such Transmission Line Payer by the Transmission Provider or the CUU Transmission Owners, as applicable, for any damages, including costs and expenses, incurred by the Transmission Provider or the CUU Transmission Owners, as applicable, as a result of such Default. In the event of an occurrence described in part (a) or (c) of Article 9.1, and provided the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate participation of the defaulting Transmission Line Payer(s) provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party or Non-Breaching Parties, and pays any applicable damages. Notwithstanding the foregoing, Default by one or more Transmission Line Payers shall not provide the other Transmission Line Payers either individually or in concert, with the right to terminate the entire Agreement. The Non-Breaching Parties may, in concert, initiate the removal of a Transmission Line Payer that is a Breaching Party from this Agreement as described in Article 9.2. The Transmission Provider shall not terminate this Agreement or the participation of any Transmission Line Payer without provision being made for the CUU Transmission Owners to be fully reimbursed for all of their costs incurred under this Agreement. The Parties acknowledge that if a Transmission Line Payer defaults under the provisions of this Agreement and its participation in this Agreement is terminated in accordance with the provisions of this Agreement, the Transmission Line Payer's Associated TSR will also be withdrawn and the applicable CUU Transmission Customer will not be entitled to receive the Firm Transmission Service.

**2.2.3 Consequences of Termination.** In the event of a termination by or of any Party, other than a termination by the Transmission Line Payer(s) due to a Default by the CUU Transmission Owners, each Transmission Line Payer whose participation in this Agreement is terminated must pay to the CUU Transmission Owners the Transmission Line Payer's proportionate share of all amounts still due and payable for construction and installation of the CUU (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by the CUU Transmission Owners in connection with the construction and installation of the CUU, through the date of termination and, in the event of the termination of the entire Agreement, any actual costs which the CUU Transmission Owners (A) reasonably incur in winding up work and construction demobilization (including previously incurred capital costs, penalties for early termination, removal and site restoration) and (B) reasonably incur to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System.

The Parties acknowledge that this Article 2.2.3 and such payments do not restrict the right of any Non-Breaching Party pursuant to any other provision of this Agreement or any other agreement or Applicable Laws and Regulations to make a claim against the Transmission Line Payer whose participation in this Agreement or the entire Agreement was terminated due its Default.

The performance assurance of a terminated Transmission Line Payer will be applied to the terminated Transmission Line Payer's proportionate share of the cost of the CUU. A Transmission Line Payer's performance assurance will not be refunded in the event the Transmission Line Payer is terminated from this Agreement, unless otherwise provided for in Article 6.8. Other Transmission Line Payers remaining as parties to the Agreement will share, subject to the provisions of this Agreement, the remaining CUU costs according to the portion of the Total Transmission Service Capacity, excluding Northbound Transmission Service, which is associated with the Transmission Line Payer or as otherwise agreed to by the Parties.

**2.2.4 Material Adverse Change.** In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's material rights and/or material obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and the Transmission Provider shall file such amendments with FERC. If, within sixty

(60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto. The Transmission Provider and/or the CUU Transmission Owners shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Transmission Line Payer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event; and (ii) such Party acts in accordance with its obligations under this Article 2.2.4. A material change in law or regulation affecting a Transmission Line Payer's ability to perform under this Agreement will not suspend any other Transmission Line Payer's obligations to perform under this Agreement.

**2.2.5 Transmission Provider's Option to Add New Transmission Service Requests and Restudy.** In addition to the Transmission Provider's right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, the Transmission Provider may, at its sole option after reasonable consultation with the CUU Transmission Owners, add a transmission line payer or transmission line payers as parties to this Agreement at any time, provided that: (i) the transmission customer or transmission customers TSR(s) associated with such transmission line payer(s) impacts the same CUU; (ii) the inclusion of that party or parties to this Agreement is consistent with Good Utility Practice; (iii) the addition is made prior to the completion of the CUU; (iv) the CUU scope, completion schedule and cost is not changed; (v) there are no material changes to the CUU unless the change is mutually agreed to by all the Parties, with such agreement not to be unreasonably withheld or delayed. The addition of such other party or parties to this Agreement will result in the reallocation of costs among the Transmission Line Payers and



may result in the need for a restudy as provided under this Article 2.2.5. Each new transmission line payer must meet the creditworthiness requirements pursuant to Article 6.1. As a condition of executing this Agreement, each Transmission Line Payer agrees that an additional party or parties may be added to this Agreement without the renegotiation or prior consent of the Transmission Line Payers, provided that such addition is consistent with other provisions of this Agreement, including that if a new Transmission Service Request is added, which is not Northbound Transmission Service, the costs will be reallocated to the Transmission Line Payers according to the portion of the Total Transmission Service Capacity, excluding Northbound Transmission Service, which is associated with the Transmission Line Payer or as otherwise agreed to by the Parties and if a new Transmission Service Request is added which is Northbound Transmission Service, costs will not be reallocated. This provision does not affect each Transmission Line Payer's right to seek dispute resolution under Article 14 or to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder.

Subject to Section 2.2.2 in the event one or more Transmission Line Payers either withdraws from this Agreement, in accordance with the provisions of this Agreement or fails to cure a Breach, it will result in the termination of that Transmission Line Payer as a party to this Agreement and the Parties acknowledge that the Transmission Line Payers Associated TSR(s) will also be withdrawn and the applicable CUU Transmission Customer will not be entitled to receive Firm Transmission Service. The Transmission Provider shall attempt to add similarly situated Transmission Service Request(s), pursuant to this Article 2.2.5, to replace the withdrawn or terminated Transmission Service Request(s) with a new transmission customer or transmission customers. If the Transmission Provider is unable to identify similarly situated Transmission Service Request(s), and the Transmission Provider deems it likely that another CUU would be more prudent, the Transmission Provider may, in its sole discretion after reasonable consultation with the CUU Transmission Owners, declare a restudy. If one or more Transmission Line Payers either withdraws from the Agreement or fails to cure a Breach resulting in termination of that Transmission Line Payers Associated TSR(s) and the Transmission Line Payer as a party to this Agreement and the Transmission Provider does not replace it, the Transmission Provider will provide the remaining Transmission Line Payers with an analysis stating whether or not the same CUU is needed and the re-allocated proposed costs for which each Transmission Line Payer is responsible and the provisions of Article 6 will also apply. If the Transmission Provider is able to add a similarly situated

Transmission Service Request upon withdrawal or termination, the CUU costs shall be reallocated according to the portion of the Total Transmission Service Capacity, excluding Northbound Transmission Service, which is associated with the Transmission Line Payer or as otherwise agreed to by the Parties.

**2.2.6 Termination of Transmission Line Payer.** If a Transmission Line Payer is terminated from this Agreement, the CUU Transmission Owners will retain the performance assurance of the terminated Transmission Line Payer and all remaining Transmission Line Payers, and the Transmission Provider will determine whether to add a new transmission line payer or transmission line payers as parties to this Agreement pursuant to Article 2.2.5. Additionally, whether or not a new transmission line payer or transmission line payers are added to this Agreement, the Transmission Provider shall adjust the proportionate share of the costs to be borne by the remaining Transmission Line Payers when a Transmission Line Payer has been terminated from this Agreement in accordance with the provisions of this Agreement. If the addition of a new transmission line payer or transmission line payers to the Agreement results in a reduction of cost estimates, the cost estimates of all remaining Transmission Line Payers will be reduced proportionately subject to the provisions of this Agreement. It is expressly understood that a Transmission Line Payers' proportionate share of the responsibility for the costs of the CUU may increase or decrease. If such cost adjustment causes the cost estimate for any of the remaining Transmission Line Payers to increase by more than twenty-five (25%) percent above the cost estimate set forth in Appendix A, any such Transmission Line Payer whose proportionate share of the cost estimate increases by more than twenty-five (25%) percent may withdraw from the Agreement within thirty (30) Calendar Days of the date that the Transmission Provider notifies the Transmission Line Payer of the redetermination of its proportionate share of the cost responsibility. If a Transmission Line Payer withdraws pursuant to this option, the unused portion of its performance assurance will be released or refunded and the Transmission Line Payers Associated TSR will also be withdrawn and the applicable CUU Transmission Customer will not be entitled to receive Firm Transmission Service. If a Transmission Line Payer's withdrawal under this option causes the cost estimate for any of the remaining Transmission Line Payers to increase by more than twenty-five (25) percent from the estimate in Appendix A, that Transmission Line Payer may also withdraw pursuant to this Article 2.2.6.

**2.3 Regulatory Filing.** In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as a service agreement under the Tariff. Subject to

Section 2.2.4 each Transmission Line Payer that has executed this Agreement or any amendment to this Agreement, shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing, and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

- 2.4 Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

### **ARTICLE 3 CONSTRUCTION OF COMMON USE UPGRADES**

#### **3.1 Construction.**

**3.1.1 CUU Transmission Owners Obligations.** The CUU Transmission Owners shall (or shall cause such action to) design, procure, engineer, construct, install and commission the Common Use Upgrades and the Transmission Line Payers shall pay, consistent with Article 3.2, the cost of the CUU in accordance with Appendix A. The Parties acknowledge that Appendix A provides that the construction of the CUU shall proceed in two distinctive phases and the obligations of the Parties under each phase is set out in Appendix A. The CUU designed, procured, constructed, installed and tested by the CUU Transmission Owners pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of the CUU Transmission Owners and the Transmission Provider, and shall include all additions, modifications and upgrades required to be made to certain facilities of the Transmission System in order to accommodate the Transmission Customers' TSRs, and shall comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

**3.1.2 Right to Suspend Due to Inadequate Funding.** The CUU Transmission Owners reserve the right, upon written notice to Transmission Line Payers, to suspend, at any time, work by the CUU Transmission Owners and the incurrence of additional expenses associated with the construction and installation of the CUU, upon the occurrence of a Default by a Transmission Line Payer, including a

Default caused by a Transmission Line Payer's failure to provide performance assurance pursuant to Article 6.1 that the remaining Transmission Line Payer(s) does not (do not) cure pursuant to Article 9. Any form of suspension by the CUU Transmission Owners shall not be barred by Articles 2.2.2 or 2.2.3 nor shall it affect the CUU Transmission Owners' right to terminate the work or this Agreement pursuant to Article 9. In such events, the Transmission Line Payers shall be responsible for costs which the CUU Transmission Owners incur as set forth in Article 2.2.3.

**3.1.3 Construction Status.** The CUU Transmission Owners shall keep the Transmission Line Payers and the Transmission Provider advised periodically as to the progress of its respective design, procurement, engineering, construction, installation and commissioning efforts as described in Appendix A. A Transmission Line Payer may, at any time, request a progress report from the CUU Transmission Owners, with a copy to be provided to all other Parties. If, at any time, a Transmission Line Payer determines that the completion of the CUU will not be required until after the specified In-Service Date, such Transmission Line Payer may provide written notice to all other Parties of such requested later date for the completion of the CUU. The CUU Transmission Owners may delay the In-Service Date accordingly, but only if agreed to in writing by all other Transmission Line Payers.

**3.1.4 Timely Completion.** The CUU Transmission Owners shall use Reasonable Efforts to design, procure, engineer, construct, install, and commission the CUU in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the CUU, or the ability to complete any component of the CUU, the CUU Transmission Owners and/or the Transmission Provider shall promptly notify all other Parties. In such circumstances, the Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with the Transmission Line Payers and the CUU Transmission Owners to evaluate the alternatives available to the Transmission Line Payers. The CUU Transmission Owners and/or the Transmission Provider shall also make available to the Transmission Line Payers all studies and work papers related to the event and corresponding delay, including all information that is in the possession of the Transmission Provider or the CUU Transmission Owners that is reasonably needed by the Transmission Line Payers to evaluate alternatives. The CUU Transmission Owners shall, at any Transmission Line Payer's request and expense, use Reasonable Efforts to accelerate their work under this Agreement to meet the schedule set forth in Appendix A, provided that:

(i) Transmission Line Payers jointly authorize such actions; (ii) such authorizations to be withheld, conditioned or delayed by a given Transmission Line Payer only if it can demonstrate that the acceleration would have a material adverse effect on it; and (iii) the requesting Transmission Line Payer funds the incremental costs associated therewith.

## **3.2 Transmission Service Costs and Credits**

### **3.2.1 Costs.**

The Transmission Line Payers shall pay to the CUU Transmission Owners the costs (including taxes) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and commissioning the Common Use Upgrades, as identified in and in accordance with the cost recovery method set forth in Appendix A of this Agreement.

#### **3.2.1.1 Lands of Other Property Owners.**

If any part of the CUU is to be installed on property owned by persons other than CUU Transmission Customers, or Transmission Line Payers or CUU Transmission Owners, the CUU Transmission Owners shall at the Transmission Line Payers' expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the CUU upon such property.

**3.2.1.2 Rights not Relinquished.** Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that each Transmission Line Payer as well as each CUU Transmission Customer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the CUU, including the right to obtain refunds or transmission credits for transmission service.

## **3.3 Taxes.**

**3.3.1 Indemnification for Contributions in Aid of Construction.** The Parties intend that any payments made by a Transmission Line Payer to a CUU Transmission

Owner for the installation of the CUU shall be non-taxable contributions to capital under Internal Revenue Code Sec. 118 to the extent the payments meet the safe harbor requirements of IRS Notice 2001-82 and IRS Notice 88-129. All CUU Transmission Owners and all Transmission Line Payers covered by this Agreement agree to cooperate in good faith to meet the intent of Section 3.3.1 in that any payments made by a Transmission Line Payer to a CUU Transmission Owner for construction of the CUU shall be treated as non-taxable contributions to capital to the extent allowed under Applicable Laws and Regulations.

With regard to any such contribution, the CUU Transmission Owner receiving the contribution shall not include a gross-up for income taxes for the amount the Transmission Line Payer is to pay pursuant to this Agreement for the installation of the CUU unless: (i) the CUU Transmission Owner and the Transmission Line Payer have determined, in good faith, that the payments or property transfers made by the Transmission Line Payer should be reported as income subject to taxation by that CUU Transmission Owner; or (ii) the Internal Revenue Service (“IRS”) concludes that the contribution payments or property transfers are income subject to taxation as the result of a final settlement with the IRS, a closing agreement or accepted offer in compromise, which resolves the liability for taxes with respect to the contributions to capital or as a result of the filing of a private letter ruling request and the receipt of such ruling (“**IRS Final Determination**”) (the CUU Transmission Owner that has made such determination pursuant to (i) above or has been required by the IRS to report such payments or property as income in accordance with (ii) above, referred to as the “**Affected CUU Transmission Owner**”). The Transmission Line Payer shall reimburse the Affected CUU Transmission Owner for the tax liability on the applicable amount of the capital contributions on a fully grossed up basis in the manner set out below.

If a gross-up payment for income taxes is required pursuant to this Section 3.3.1, the gross-up amount will be determined by multiplying the gross-up rate by the capital contributions that are subject to tax (the “Gross-Up Amount”). The gross-up rate is calculated as follows:  $(1/(1 - \text{Combined Tax Rate})) - 1$ . The Combined Tax Rate is the sum of the rates for the U.S. federal corporate income tax (net of the Minnesota state tax deduction benefit) and the Minnesota Income and Franchise Taxes imposed by Chapter 290 of the Minnesota Statutes (to the extent imposed on or measured by net income). For the purposes of example the Combined Tax Rate in 2014 is 41.37%. The federal and Minnesota income tax rates used in this calculation of the Combined Tax Rate will be the rates in effect or reasonably expected to be in effect when the Affected CUU Transmission

Owner is required to pay tax on the capital contributions. If it has been determined in advance that the applicable capital contribution payments will be taxable, the Gross-Up Amounts on such capital contributions made during that tax year shall be due and payable by the Transmission Line Payer to the Affected CUU Transmission Owner within ninety (90) Calendar Days of such capital contribution. Within sixty (60) Calendar Days of the IRS Final Determination of the tax payable in any applicable year by the Affected CUU Transmission Owner, a report of such payment and accounting shall be prepared and forwarded by the Affected CUU Transmission Owner to the Transmission Line Payer together with any overpayment in the Gross-Up Amount. Any shortfall on the Gross-Up Amount paid shall be paid by the Transmission Line Payer within thirty (30) Calendar Days of the receipt of such report. If the tax liability is determined in a tax year after the original capital contribution has been made, the Gross-Up Amount is due within ninety (90) Calendar Days of the IRS Final Determination of taxability.

Following the payment of any Gross-Up Amount, commencing in the first fiscal year in which the CUU is placed in-service and for each successive fiscal year thereafter, the Affected CUU Transmission Owner shall within ninety (90) Calendar Days of its fiscal year end remit to the Transmission Line Payer the combined federal and Minnesota tax benefit of the tax depreciation from the taxable capital contribution received by the Affected Transmission Line Owner plus the corresponding federal and Minnesota tax benefit of the additional tax deduction for such payment to such Transmission Line Payer, at the Federal and Minnesota corporate tax rates in effect in the tax year of the tax depreciation deduction (“**Tax Depreciation Credit**”). For greater certainty, the Tax Depreciation Credit will be determined for each fiscal year by multiplying the tax depreciation from the taxable capital contribution for such fiscal year by the depreciation credit rate. The depreciation credit rate is calculated as follows:  $(1/(1 - \text{Combined Tax Rate})) - 1$ .

The indemnification obligation set forth above shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by a CUU Transmission Owner, upon request of the IRS, to keep these years open for audit or adjustment, but only if notice is given to the Transmission Line Payer within sixty (60) days of the statute extension; or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 3.3.1.

As described above, to the extent that the receipt of capital contributions by a CUU Transmission Owner is determined by the IRS and/or the Minnesota Department of Revenue (“**Taxation Authority**”) to constitute income by a CUU Transmission Owner subject to taxation, the Transmission Line Payer shall protect, indemnify, and hold harmless such CUU Transmission Owner and its Affiliates, from all claims by any such Taxation Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Taxation Authority, such CUU Transmission Owner shall provide the Transmission Line Payer with written notification within thirty (30) Calendar Days of such determination and notification. Such CUU Transmission Owner, upon the timely written request by the Transmission Line Payer and at the expense of the Transmission Line Payer, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Such CUU Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that such CUU Transmission Owner shall cooperate and consult in good faith with the Transmission Line Payer regarding the conduct of such contest. If requesting the action, the Transmission Line Payer shall advance to such CUU Transmission Owner on a periodic basis as requested by such CUU Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. The Transmission Line Payer shall not be required to pay such CUU Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which such CUU Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Taxation Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that such CUU Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which the Transmission Line Payer has already made payment to such CUU Transmission Owner, the CUU Transmission Owner shall promptly refund to the Transmission Line Payer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments such CUU Transmission Owner receives or to which such CUU Transmission Owner may be entitled with respect to such payment.

**3.3.2 Private Letter Ruling and Other Cooperation.** At the request of a Transmission Line Payer, a CUU Transmission Owner may and shall file with the IRS a request



for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by such Transmission Line Payer to such CUU Transmission Owner under this Agreement are subject to federal income taxation. In that event, the Transmission Line Payer will prepare the initial draft of the request for a private letter ruling and will bear the expense of such ruling request. The CUU Transmission Owner and the Transmission Line Payer shall cooperate in good faith with respect to the submission of such request.

**3.3.3 Other Taxes.** Any Transmission Line Payer making a contribution to a CUU Transmission Owner shall cooperate in good faith to appeal, protest, seek abatement of, or otherwise contest any tax (other than federal income tax and Minnesota income taxes) asserted or assessed against such CUU Transmission Owner for which such Transmission Line Payer may be required to reimburse such CUU Transmission Owner under the terms of this Agreement.

#### **ARTICLE 4 FORCE MAJEURE**

**4.1 Force Majeure.** No Party shall be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure event or circumstance, provided that:

- (a) the non-performing Party shall give the other Parties notice promptly (and within forty-eight (48) hours if possible) after the non-performing Party's knowledge of the commencement of the Force Majeure, with written confirmation to be supplied within ten (10) calendar days after the commencement of the Force Majeure further describing the particulars of the occurrence of the Force Majeure;
- (b) the delay in performance due to the Force Majeure shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure;
- (c) the Party whose performance is delayed or prevented: (i) shall proceed with Reasonable Efforts to overcome the Force Majeure which is preventing or delaying performance; and (ii) shall provide weekly written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure, the schedule for such actions and

the expected date by which performance shall no longer be affected by the Force Majeure; and

- (d) when the performance of the Party claiming the Force Majeure is no longer being delayed or prevented, that Party shall give the other Parties notice to that effect.

## **ARTICLE 5 INFORMATION REPORTING**

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of any other Party's facilities and equipment and which has been reasonably requested by any other Party.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, and reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

## **ARTICLE 6 CREDITWORTHINESS, BILLING, AND PAYMENTS**

### **6.1 Creditworthiness.**

The CUU Transmission Owners will review the creditworthiness of the Transmission Line Payers to determine if performance assurance is required. If the Transmission Line Payer maintains a senior unsecured bond rating or corporate credit rating from Standard & Poor's of "BBB" or better and/or Moody's of "Baa2" or better and/or DBRS Limited's of "BBB(med)" or better (if such Party maintains multiple credit ratings, for the purposes of this Article 6.1 the lower of such credit ratings shall be utilized) and has a total asset size exceeding \$1 billion (confirmed through audited financial statements) then performance assurance will not be required. If the CUU Transmission Owners determine

that performance assurance is required in accordance with Article 6.1 of this Agreement, then the following applies:

Thirty (30) Calendar Days prior to the due date for the Transmission Line Payer's first payment under the payment schedule specified in Appendix A, each Transmission Line Payer shall provide the CUU Transmission Owners with performance assurance either in the form of cash deposited into an escrow account, a parental guarantee, letter of credit, surety bond or another form of performance assurance and is reasonably acceptable to the CUU Transmission Owners as an adequate assurance of creditworthiness for the Transmission Line Payer's share of responsibility for CUU costs as set out in Appendix A. The amount of performance assurance required to be provided to the CUU Transmission Owners will be as stipulated in Appendix D Subsection 1. This amount of performance assurance will remain in place up to the day that is 20 Business Days after the last of the MPM Certification Phase Conditions Precedent and the MPM Construction Phase Conditions Precedent have been satisfied or waived by MPM.

By no later than 20 Business Days after all of the MPM Certification Phase Conditions Precedent and MPM Construction Phase Conditions Precedent have been satisfied or waived by MPM, each Transmission Line Payer shall provide the CUU Transmission Owners with performance assurance as stipulated in Appendix D Subsection 2.

By no later than the 20 Business Days after all of the MPM Construction Phase Conditions Precedent and the 6690271 Certification Phase Conditions Precedent and the 6690271 Construction Phase Conditions Precedent have been satisfied or waived by the respective Party, the amount of performance assurance required by the CUU Transmission Owners from the Transmission Line Payers will be determined by the CUU Transmission Owners based on the CUU Transmission Owners' projected cost to complete the CUU facilities multiplied by the percentage of the CUU that is required to be funded by such Transmission Line Payer minus any amount of its performance assurance held by the CUU Transmission Owner remaining from Appendix D Subsections 1 and 2.

If performance assurance is in the form of a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of the CUU Transmission Owners, as set out above, have terms and conditions reasonably acceptable to the CUU Transmission Owners and guarantee payment of the amount specified in Article 6.3. The surety bond must be issued by an insurer reasonably acceptable to the CUU Transmission Owners, specify a reasonable expiration date and shall provide that the maximum amount assured under the bond shall reduce on a quarterly basis.

If the performance assurance is in the form of a letter of credit, it must be issued by a bank reasonably acceptable to the CUU Transmission Owners, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter of credit shall reduce on a quarterly basis based on payments received by the CUU Transmission Owners from such Transmission Line Payer.

If the performance assurance is a cash escrow account, then the maximum amount available to be drawn under the escrow account shall reduce on a quarterly basis based on payments received by the CUU Transmission Owner from such Transmission Line Payer.

After the CUU has been placed in service and until the Transmission Line Payers have fully compensated the CUU Transmission Owners for construction of the CUU, each Transmission Line Payer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1. Each Transmission Line Payer's estimated liability under Article 3.2.1 is stated in Appendix A. If a Transmission Line Payer provides the entire payment it must remit under the payment schedule as of the date of first payment, it need not provide additional performance assurance unless cost allocation changes pursuant to this Article 6.1 or additional funds are required by the CUU Transmission Owners to complete the CUU and allocated among the Transmission Line Payers according to Article 3.2.

A Transmission Line Payer's performance assurance will not be returned or refunded in the event a Transmission Line Payer is terminated from the Agreement, except as provided in this Article 6.1 and Article 6.8.

The CUU Transmission Owners may draw on the performance assurance in full or in part, acting reasonably, upon any Default, early termination or suspension in order to fund any costs and liabilities owing by such Transmission Line Payer to the CUU Transmission Owners pursuant to this Agreement. The amount of performance assurance required by or available to CUU Transmission Owners is based on estimates of costs and liabilities and shall not limit the damages that are otherwise required to be paid by Transmission Line Payers hereunder, if any. In the event the performance assurance drawn by or paid to CUU Transmission Owners is not sufficient to cover all amounts due to CUU Transmission Owners from such Transmission Line Payer under the terms of this Agreement, Transmission Line Payer shall be required to pay the full amount of the deficiency to CUU Transmission Owners.

**6.2 Failure to Provide Performance Assurance.** If a Transmission Line Payer fails to provide acceptable performance assurance pursuant to Article 6.1, the Transmission Line

Payer can be terminated from this Agreement by the CUU Transmission Owners and the Transmission Line Payers Associated TSR will also be withdrawn and the applicable CUU Transmission Customer will not be entitled to receive Firm Transmission Service.

When a Transmission Line Payer withdraws from the Agreement as a result of an increase of more than twenty-five (25%) percent in its cost estimate pursuant to Article 2.2.6, the Transmission Provider will notify all other Parties to the Agreement of the withdrawal and will provide a revised cost estimate of each Transmission Line Payer's responsibility for the cost of the CUU within thirty (30) Calendar Days. Within thirty (30) Calendar Days of receiving such notification, each remaining Transmission Line Payer(s) must either withdraw or submit additional assurance necessary to cover its revised cost responsibility, if applicable. Failure to provide such additional performance assurance, if applicable, will be a Breach of the Agreement and subject to Article 9, any Transmission Line Payer that does not provide additional performance assurance within thirty (30) Calendar Days of receiving the cost allocation notice can be withdrawn from this Agreement by the CUU Transmission Owners and if such Transmission Line Payer is withdrawn, the Transmission Line Payer's Associated TSR will also be withdrawn and the applicable CUU Transmission Customer will not be entitled to receive Firm Transmission Service. If such cost adjustment causes the cost estimate for any of the remaining Transmission Line Payers to increase by more than twenty-five (25%) percent above the cost estimate provided in response to the prior withdrawal, the Transmission Provider will perform a restudy of the CUU unless the remaining Parties agree to proceed without a restudy.

**6.3 Monthly Invoice.** The CUU Transmission Owners shall submit to each Transmission Line Payer, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to another Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party. The Parties may by mutual consent adjust the invoicing procedures. These procedures could include but are not limited to construction advances by the Transmission Line Payers to the CUU Transmission Owners.

**6.4 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.

- 6.5 Final Invoice.** Within six (6) months after completion of the construction of the CUU, unless otherwise agreed to under Appendix A, the CUU Transmission Owners shall provide an invoice of the final cost of the construction of the CUU and shall set forth such costs in sufficient detail to enable each Transmission Line Payer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. The CUU Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to each Transmission Line Payer any amount by which the actual payment by the Transmission Line Payer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 6.6 Interest.** Interest on any unpaid amounts shall be calculated in accordance with Section 7 of the Tariff.
- 6.7 Payment During Dispute.** In the event of a billing dispute among the Parties, the CUU Transmission Owners shall continue to construct the CUU as long as each Transmission Line Payer: (i) continues to make all payments not in dispute; and (ii) pays to the Transmission Provider or the CUU Transmission Owners or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If any Transmission Line Payer fails to meet these two requirements, then the Transmission Provider may or, at the CUU Transmission Owners' request upon a Transmission Line Payer's failure to pay the CUU Transmission Owners, shall provide notice to such Transmission Line Payer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accordance with the methodology set forth in 18 C.F.R. Section 35.19a(a)(2)(iii).
- 6.8 Return of Excess Performance Assurance.** Excess performance assurance will be refunded or released if any funds remain when the CUU is placed in service or if the Transmission Provider determines that the CUU is no longer needed. The amount of excess performance assurance to be refunded or released will be determined net of any performance assurance required by the CUU Transmission Owners for any amounts still due and payable for construction and installation of the CUU (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by the CUU Transmission Owners in connection with the construction and installation of the CUU, any actual costs which the CUU Transmission Owners (A) reasonably incur in winding up work and construction demobilization (including previously incurred capital costs, penalties for early termination, removal and site restoration) and (B) reasonably incur to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System, through the In-

Service Date or date the Transmission Provider determines that the CUU is no longer required.

## **ARTICLE 7 ASSIGNMENT**

- 7.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement. In addition 6690271 may assign its interest, rights and obligations in or arising out of this Agreement: (i) as a CUU Transmission Owner to MP without the consent of MP or any other Party to this Agreement; or (ii) as a CUU Transmission Owner and/or Transmission Line Payer to Great River Energy or an Affiliate of Great River Energy (the “Assignee”) with the consent of MP and without the consent any other Party to this Agreement provided that the Assignee has the legal authority and operational ability to satisfy the obligations of 6690271 as the assigning party under this Agreement, and without restricting the generality of the foregoing, if such assignment is in respect of 6690271 interests, rights and obligations as a Transmission Line Payer, the Assignee must meet or satisfy the creditworthiness provisions of Article 6. Any attempted assignment that violates this Article 7.1 is void and ineffective and shall not relieve any Party of its obligations under this Agreement. No Party’s obligations shall be enlarged, in whole or in part, by reason of an assignment. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

## **ARTICLE 8 INDEMNITY**

- 8.1 General.** To the extent permitted by law, a Party (the “**Indemnifying Party**”) shall at all times indemnify, defend, and hold the other Parties (each an “**Indemnified Party**”) harmless from Loss, only as provided in the Tariff.
- 8.1.1 Indemnified Party.** If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

**8.1.2 Indemnifying Party.** If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

**8.1.3 Indemnity Procedures.** Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit, or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit, or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit, or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, and in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned, or delayed.



**8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

**ARTICLE 9  
BREACH, CURE AND DEFAULT**

**9.1 Events of Breach.** A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
- (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement; or
- (f) Failure of a Party to provide the performance assurance required pursuant to Article 6.1.

**9.2 Notice of Breach, Cure and Default.** Upon the occurrence of an event of Breach, any Party aggrieved by the Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Parties in advance. Upon receiving written notice of a Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as “Cure Period”) which shall be thirty (30) Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Calendar Days. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

**9.2.1** Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Parties in writing within seven (7) Calendar Days after the commencement of such occurrence.

**9.2.2** If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

(A) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or

(B) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party shall be in Default of this Agreement and the Non-Breaching Parties may, at their option: (1) act in concert to amend the Agreement to remove a Transmission Line Payer that is in Default from this Agreement for cause and to make other changes as necessary; or (2) either in concert or individually, take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement. Alternatively, if a Transmission Line Payer is the Breaching Party and the Breach results from a failure to provide payments or performance assurance under Article 9.1, the other Transmission Line Payers, either individually or in concert, may cure the Breach by paying the amounts owed or by providing adequate performance assurance, without waiver of contribution rights against the Transmission Line Payer in Default with the right to receive an assignment of all rights the CUU Transmission Owners had in respect of such Breach. Such cure for the Breach of a Transmission Line Payer is

subject to the reasonable consent of the Transmission Provider and CUU Transmission Owners. The CUU Transmission Owners may also cure such Breach by funding the proportionate share of the CUU costs related to the Breach of the Transmission Line Payer. CUU Transmission Owners must notify all Parties that it will exercise this option within thirty (30) Calendar Days of notification that a Transmission Line Payer has failed to provide payments or performance assurance under Article 9.1.

- 9.3.1 Rights in the Event of Default.** Notwithstanding the foregoing, upon the occurrence of an event of Default, any Non-Breaching Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

## **ARTICLE 10 TERMINATION OF AGREEMENT**

- 10.1 Expiration of Term.** Except as otherwise specified in this Article 10, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

- 10.2 Termination.** In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a Non-Breaching Party may terminate this Agreement only upon the later of: (i) its giving written notice of termination to the other Parties; and (ii) the filing of a notice of termination for this Agreement.

- 10.3 Disposition of Facilities Upon Termination of Agreement Due to Default.**

**10.3.1 Transmission Provider and CUU Transmission Owners Obligations.**

Upon termination of this Agreement due to Default, unless otherwise agreed by the terms of this Agreement, the CUU Transmission Owners:

- (a) shall, prior to the construction and installation of any portion of the CUU described in Appendix A and to the extent possible, cancel any pending orders of, or return, such equipment or material for the CUU;
- (b) may keep in place any portion of the CUU already constructed and installed; and
- (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System.

**10.3.2 Transmission Line Payer Obligations.** Upon billing by the CUU Transmission Owners, each Transmission Line Payer shall reimburse the CUU Transmission Owners for its share of any costs incurred by the CUU Transmission Owners in performance of the actions required or permitted by Article 10.3.1. The CUU Transmission Owners and the Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Each Transmission Line Payer shall pay these costs pursuant to Article 6.3 of this Agreement.

**10.3.3 Pre-construction or Installation.** Upon termination of this Agreement and prior to the construction and installation of any portion of the CUU, the CUU Transmission Owners may, at their option, retain any portion of the CUU not cancelled or returned in accordance with Article 10.3.1(a), in which case the CUU Transmission Owners shall be responsible for all costs associated with procuring the CUU. To the extent that the Transmission Line Payers have already paid the CUU Transmission Owners for any or all of such costs, the CUU Transmission Owners shall refund such amounts to the Transmission Line Payers within six (6) months. If the CUU Transmission Owners elect to not retain any portion of such facilities, and one or more of the Transmission Line Payers wish to purchase such facilities, the CUU Transmission Owners shall convey and make available to the applicable Transmission Line Payer(s) such facilities as soon as practicable after receiving payment for such facilities and the CUU Transmission Owners shall account to the other Transmission Line Payer(s) for such payment.

**10.4 Survival of Rights.** Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

## **ARTICLE 11 SUBCONTRACTORS**

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

**11.1.1 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

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

**11.1.3 No Limitation by Insurance.** The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including subcontractor's insurance.

## **ARTICLE 12 CONFIDENTIALITY**

**12.1 Confidentiality.** Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall also maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information ("CEII"), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

**12.1.1 Term.** During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

**12.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

**12.1.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-parties who may be or are considering providing financing to the Transmission Line Payers, or to potential purchasers of the Transmission Line Payer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain

primarily responsible for any release of Confidential Information in contravention of this Article 12.

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

**12.1.5 No Warranties.** By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

**12.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication, or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

**12.1.7 Order of Disclosure.** If a court or a Governmental Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by Freedom of Information Act request, subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

**12.1.8 Termination of Agreement.** Upon termination of this Agreement for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic

Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.

**12.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for direct, indirect, incidental or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12 except to the extent of any and all gains wrongfully acquired, directly or indirectly, from unauthorized disclosure of any Confidential Information covered by this Agreement.

**12.1.10 Disclosure to FERC, Its Staff, or a State.** Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests Confidential Information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested Confidential Information to FERC or its staff, within the time provided for in the request for information. In providing the Confidential Information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the Confidential Information be treated as confidential and non-public by FERC and its staff and that the Confidential Information be withheld from public disclosure. To the extent provided by applicable law, the Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. §388.112. Requests from a state regulatory body



conducting a confidential investigation shall be treated in a similar manner if consistent with applicable law.

**12.1.11** Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

### **ARTICLE 13 INFORMATION ACCESS AND AUDIT RIGHTS**

**13.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.

**13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, construction, installation and commissioning of the CUU shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the CUU Transmission Owners' issuance of a final invoice in accordance with Article 6.4.

The Transmission Line Payers may jointly or individually, at the expense of the requesting Party or Parties, during normal business hours and upon prior reasonable notice to the other Parties, audit such accounts and records, provided, however, that the CUU Transmission Owners shall not be required to cooperate with more than one audit per quarter (accordingly, if more than one Transmission Line Payer wishes to conduct an audit within a given calendar quarter, they must do so jointly). Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

## **ARTICLE 14 DISPUTES**

- 14.1 Submission.** Any claim or dispute which a Party may have against another Party or Parties, arising out of this Agreement that concerns Tariff related matters shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff. All matters arising out of this Agreement concerning the Transmission Provider shall be submitted for resolution in accordance with the dispute resolutions of the Tariff. All other claims or disputes shall be resolved in accordance with the following provisions of this Article 14.
- 14.2 Condition Precedent to Arbitration.** Prior to initiation of arbitration, any controversy, claim or dispute between any of the Parties shall be first referred in writing to the Executive Officers of the Parties to the dispute for review and decision. Any decision by the Executive Officers to resolve a controversy, claim or dispute must be unanimous. If the controversy, claim or dispute is not resolved within thirty (30) Calendar Days after referral to the Executive Officers, any of the Parties to the dispute may proceed to arbitration.
- 14.3 Initiation.** Arbitration proceedings must be initiated within one hundred and twenty (120) Calendar Days of the date the controversy, claim or dispute was first referred to the Executive Officers and shall be initiated by written notice to the other Party or Parties to the dispute setting forth the point or points in dispute. Unless otherwise agreed to in writing by the Parties to the dispute, failure to initiate arbitration within such one hundred and twenty (120) day period shall be deemed a waiver of the right to arbitrate that controversy, claim or dispute. Provided however, that any such waiver shall not preclude a Party from initiating arbitration proceedings in respect of a similar claim, controversy or dispute based on facts that arise subsequent to the date the controversy, claim or dispute was first submitted to the Executive Officers.
- 14.4 Arbitration Proceedings.** Subject to Article 14.1 above, any and all controversies, claims

or disputes between the Parties arising out of or relating to this Agreement or an alleged breach thereof, shall be settled by arbitration. For greater clarity and certainty, arbitration shall not be available to anyone who is not a Party to this Agreement, and the aforesaid requirement to arbitrate shall not preclude a Party or Parties to the dispute from seeking contribution, indemnification or damages from another Person in proceedings instituted by third parties in courts of competent jurisdiction. Unless otherwise provided in this Article, the arbitration shall be conducted before three arbitrators and shall be conducted in accordance with the International Commercial Arbitration Act (Ontario), RSO 1990, c.19 and the UNCITRAL model Law on International Commercial Arbitration as amended and then in effect. If there are two Parties to the dispute, each Party shall select one arbitrator, and the two selected arbitrators shall jointly agree, within 30 Calendar Days after the last of the two arbitrators have been appointed, on a third arbitrator who shall chair the arbitration. If there are more than two Parties to the dispute the Parties shall jointly appoint three arbitrators provided that if the Parties are unable to reach agreement on the appointment of the three arbitrators one arbitrator shall be appointed in accordance with the International Commercial Arbitration Act (Ontario), RSO 1990, c.19 and the UNCITRAL model Law on International Commercial Arbitration as amended and then in effect. All arbitrators shall be competent by virtue of education and experience in the particular matter subject to arbitration. Before proceeding with the first hearing, each arbitrator shall take an oath of office. The arbitrators shall require witnesses to testify under oath administered by a duly qualified person. The arbitrators shall have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this Agreement insofar as shall be necessary to determine the particular matter subject to arbitration. The arbitrators shall not have jurisdiction or authority to add to, detract from, or alter the provisions of this Agreement or any applicable law or rule of civil procedure. The arbitrators shall have the power to order specific performance under any and all provisions of this Agreement and no Party can avoid specific performance based on an argument that the other Party or Parties to the dispute has or have an adequate remedy at law. All arbitrations shall be held in or near St. Paul, Minnesota.

- 14.5 Jurisdiction.** The arbitrators may rule on their own jurisdiction, including any objections with respect to the existence or validity of this Agreement. For that purpose, this Article shall be treated as an agreement independent of the terms of the balance of this Agreement. A decision by the arbitrators that this Agreement is null and void shall not entail ipso jure the invalidity of this Article. If a Party disputes the authority or jurisdiction of the arbitrators, it shall notify the other Party or Parties to the dispute as soon as the matter alleged to be beyond the authority or jurisdiction of the arbitrators is raised during the arbitration proceedings. The arbitrators may rule on the issue as to whether or not they have the authority or jurisdiction in dispute, either as a preliminary question or in an award on the merits.

- 14.6 Continuation of Performance.** Pending the final decision of the arbitrators, the Parties to the dispute agree to diligently proceed with the performance of all obligations, including the payment of all sums required by this Agreement. Payment of any interest shall be as determined by the arbitrator.
- 14.7 Costs.** All fees, costs and expenses of the arbitrators incurred in connection with the arbitration shall be allocated among the Parties to the dispute by the arbitrators. The nature of the dispute and the outcome of the arbitration shall be factors considered by the arbitrators when allocating such fees, costs, and expenses. Each Party to the dispute shall be responsible for the fees, costs, and expenses of its own employees, expert consultants and attorneys, and for the costs of exhibits and other incidental costs.
- 14.8 Enforcement.** Any decision (including orders arising out of disputes as to the scope or appropriateness of a request for, or a response to, discovery) of an arbitrator may be enforced in a court of competent jurisdiction with all costs, including court costs and attorney's fees and disbursements, paid by the Party or Parties to the dispute found to be in error. Judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction and may be enforced in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- 14.9 Correction and Interpretation of Award.** Within thirty (30) Calendar Days after receipt of an arbitration award, a Party, with notice to the other Party or Parties to the dispute, may request the arbitrators to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature, or may request the arbitrators to give an interpretation of a specific point or a part of the award. If the arbitrators consider the request to be justified, they shall make the correction or give the interpretation within thirty (30) Calendar Days after receipt of the request. The interpretation shall form part of the award. The arbitrators may correct any error as herein-before referred to on their own initiative within thirty (30) calendar days after the date of award. In addition, within thirty (30) Calendar Days after receipt of an award, a Party with notice to the other Party or Parties to the dispute may request the arbitrators to make an additional award as to claims presented in the arbitration but omitted from the award. If the arbitrators consider the request to be justified, they shall make an additional award within sixty (60) Calendar Days after receipt of the request. The arbitrators may extend, at their sole discretion if necessary, the period of time within which they shall make a correction, interpretation or an additional award.
- 14.10 Rights under the Federal Power Act.** Nothing in this Article 14 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.

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

**ARTICLE 15  
NOTICES**

**15.1 General.** Except for notice required pursuant to Article 6, any notice to be provided to a Transmission Line Payer shall also be provided to the CUU Transmission Customers. Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered, or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

Transmission Provider:

USPS mailing address:  
Midcontinent ISO  
Attn: Director, Transmission Access Planning  
P.O. Box 4202  
Carmel, IN 46082-4202

For overnight deliveries:  
Midcontinent ISO  
Attn: Director, Transmission Access Planning  
720 City Center Drive  
Carmel, IN 46032

To CUU Transmission Owners:

Minnesota Power  
30 West Superior  
Street Duluth, MN  
55802  
Attention: Vice President – Transmission and Distribution

6690271 Manitoba Ltd.

6690271 Manitoba Ltd.  
Attention: Lorne Midford- President

Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6138

with copies to: 6690271 Manitoba Ltd.  
Attention: H.D. Maxwell – General Manager  
Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6137

To Transmission Line Payers:

Minnesota Power  
30 West Superior  
Street Duluth, MN  
55802  
Attention: Transmission Marketing Manager

66902771 Manitoba Ltd.

6690271 Manitoba Ltd.  
Attention: Lorne Midford- President  
Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6138

with copies to: 6690271 Manitoba Ltd.  
Attention: H.D. Maxwell- General Manager  
Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6137

To CUU Transmission Customers:

Manitoba Hydro  
Attention: David Cormie, Division Manager Power Sales  
& Operations

Post Office Box 815  
Winnipeg, Manitoba  
R3C 2P4  
Fax: (204) 360-6137

Minnesota Power  
Attention: Cindy Hammarlund, Transmission Marketing Manager  
30 West Superior Street  
Duluth, MN 55802  
Fax: (218) 723-3955

Wisconsin Public Service Corporation  
Attention: Jody C Arendt, General Manager - Energy Supply &  
Control  
700 N Adams St  
Green Bay WI 54301  
Fax: 920-433-4986

- 15.2 Billings and Payments.** Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

Transmission Provider:

USPS mailing address:  
Midcontinent ISO  
Attn: Director, Transmission Access Planning  
P.O. Box 4202  
Carmel, IN 46082-4202

For overnight deliveries:  
Midcontinent ISO  
Attn: Director, Transmission Access Planning  
720 City Center Drive  
Carmel, IN 46032

To CUU Transmission Owners:

Minnesota Power  
30 West Superior  
Street Duluth, MN  
55802  
Attention: Vice President – Transmission and Distribution

6690271 Manitoba Ltd.

6690271 Manitoba Ltd.  
Attention: Lorne Midford- President  
Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6138

with copies to: 6690271 Manitoba Ltd.  
Attention: H.D. Maxwell - General Manager  
Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6137

To Transmission Line Payers:

Minnesota Power  
30 West Superior  
Street Duluth, MN  
55802  
Attention: Transmission Marketing Manager

6690271 Manitoba Ltd.

6690271 Manitoba Ltd.  
Attention: Lorne Midford- President  
Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6138

with copies to: 6690271 Manitoba Ltd.  
Attention: H.D. Maxwell – General Manager  
Post Office Box 1886  
Winnipeg, Manitoba  
R3C 3R2  
Fax 204-360-6137

**15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing



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

Transmission Provider:

Voice telephone – (317) 249-5700  
Facsimile telephone – (317) 249-5358  
Email address [\\_misotap@misoenergy.org](mailto:_misotap@misoenergy.org) or  
[MISOTransmissionAccessPlanning@misoenergy.org](mailto:MISOTransmissionAccessPlanning@misoenergy.org)

To CUU Transmission Owners:

Minnesota Power  
Phone: (218) 355-2695  
Fax: (218) 723-3955  
[Email address: cfleege@mnpower.com](mailto:cfleege@mnpower.com)

6690271 Manitoba Ltd.

Voice telephone - (204) 360-7002  
Facsimile telephone - (204) 360-6138  
[Email address: lemidford@hydro.mb.ca](mailto:lemidford@hydro.mb.ca)

To Transmission Line Payers:

Minnesota Power  
Phone: (218) 355-3970  
Fax: (218) 723-3955  
[Email address: chammarlund@mnpower.com](mailto:chammarlund@mnpower.com)

6690271 Manitoba Ltd.  
Voice telephone - (204) 360-7002  
Facsimile telephone - (204) 360-6138  
[Email address: lemidford@hydro.mb.ca](mailto:lemidford@hydro.mb.ca)

To CUU Transmission Customers:

Manitoba Hydro  
Phone: (204) 360-3405  
Fax: (204) 360-6137  
[Email address: bmukanik@hydro.mb.ca](mailto:bmukanik@hydro.mb.ca)

Minnesota Power  
Phone: (218) 355-3970  
Fax: (218) 723-3955  
[Email address: chammarlund@mnpower.com](mailto:chammarlund@mnpower.com)

Wisconsin Public Service Corporation  
Voice telephone: (920) 433-1090  
Fax: 920-433-4986  
[Email address: jcarendt@wisconsinpublicservice.com](mailto:jcarendt@wisconsinpublicservice.com)

**15.4 Notification of In-Service Date.** CUU Transmission Owners will serve to Transmission Provider a copy of Appendix B as forwarded to Transmission Line Payers on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:

Facsimile telephone - (317) 249-5703

And copy to  
Midcontinent Independent System Operator, Inc.  
Attn: Director, Transmission Access Planning

P.O. Box 4202  
Carmel, IN 46082-4202

*for overnight deliveries:*  
720 City Center Drive  
Carmel, IN 46032

**ARTICLE 16  
MISCELLANEOUS**

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state where the CUU is located, without regard to its conflicts of law principles
- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation; provided that Transmission Provider may not exercise this unilateral filing right to alter capital cost responsibility of the Transmission Line Payers under the Agreement in a manner other than as provided under Article 2.2.5 or in a FERC order. The CUU Transmission Owners and Transmission Line Payers shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations there under; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Notwithstanding the foregoing, Transmission Provider agrees that (a) at least thirty (30) days prior to making any unilateral filing with FERC to modify this Agreement, it shall provide the Parties with a copy of the proposed modification(s) to this Agreement and the reasons why Transmission Provider believes that such modification(s) are necessary and shall afford the Parties an opportunity to discuss whether such modification(s) are necessary or whether alternative modifications are in the best interests of all of the Parties; and (b) if at the time of the filing all of the Parties are not in agreement with the Transmission Provider's proposed modification(s), the Transmission Provider will include in its unilateral filing with FERC an alternative proposal supported by the CUU

Transmission Owners and Transmission Line Payers, to be considered by FERC contemporaneously with the Transmission Provider's proposed modification(s). Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations there under, except to the extent that the Parties otherwise mutually agree as provided herein.

- 16.5 Entire Agreement.** This Agreement, together with all the appendices and exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of each of the Transmission Line Payers, each of the CUU Transmission Owners, and the Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties except in respect of Appendix A where in the event of conflict with the body of this Agreement the provisions of Appendix A shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

- 16.10 Trial by Jury.** Each Party hereby irrevocably waives to the fullest extent permitted by applicable law, any and all rights it may have to trial by jury with respect to any legal proceeding arising out of or relating to this Agreement and any agreement executed or contemplated to be executed in conjunction with this Agreement. This provision is a material inducement to each of the Parties for entering into this Agreement. Each Party hereby waives any right to consolidate any action, proceeding, or counterclaim arising out of or in connection with this Agreement and any other agreement executed or contemplated to be executed in conjunction with this Agreement, or any matter arising hereunder or thereunder in which a jury trial has not or cannot be waived.
- 16.11 Enurement.** This Agreement shall be binding upon and its benefits enure to the Parties and their permitted successors and assigns. This Agreement shall not create the relationship between any of the Parties of a joint venture or a partnership.
- 16.12 Conditions Precedent.** The obligation of the CUU Transmission Owners and the Transmission Line Payers to complete all or a portion of the matters referenced in this Agreement shall be subject to and contingent upon the fulfillment of the conditions precedent set out in Appendix A in accordance with the provisions of Appendix A.
- 16.13 Recitals.** The recitals hereto shall form an integral part of this Agreement.

## ARTICLE 17

### REPRESENTATIONS AND WARRANTIES

- 17.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 17.1.1. Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its jurisdiction of organization or formation, and is in good standing under the laws of the respective jurisdictions(s) of their organization as stated in the preamble of this Agreement.
- 17.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

**17.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.

**17.1.4 Consent and Approval.** That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

**17.1.5 Solvency.** That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original effective Agreement among the Parties as of the day and year first above written.

**Midcontinent Independent System Operator, Inc.**

By: Jennifer Curran JCB  
- 9/25/14  
Name: Jennifer Curran  
**JENNIFER CURRAN**  
Vice President  
Title: ~~Vice President, System Planning & Seams Coordination~~  
Vice President, System Planning and Seams Coordination

**Minnesota Power – CUU Transmission Owner**

By: \_\_\_\_\_  
Name: Alan R. Hodnik  
Title: Chairman, President and Chief Executive Officer

**6690271 Manitoba Ltd. –CUU Transmission Owner**

By: \_\_\_\_\_  
Name: Lorne Midford  
Title: President

**Minnesota Power -Transmission Line Payer**

By: \_\_\_\_\_  
Name: Alan R. Hodnik  
Title: Chairman, President and Chief Executive Officer

**6690271 Manitoba Ltd. –Transmission Line Payer**

By: \_\_\_\_\_  
Name: Lorne Midford  
Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original effective Agreement among the Parties as of the day and year first above written.

**Midcontinent Independent System Operator, Inc.**

By: \_\_\_\_\_

Name: Jennifer Curran

Title: Vice President, System Planning and Seams Coordination

**Minnesota Power - CUU Transmission Owner**

By:  \_\_\_\_\_

Name: Alan R. Hodnik

Title: Chairman, President and Chief Executive Officer

**6690271 Manitoba Ltd. -CUU Transmission Owner**

By: \_\_\_\_\_

Name: Lorne Midford

Title: President

**Minnesota Power -Transmission Line Payer**

By:  \_\_\_\_\_

Name: Alan R. Hodnik

Title: Chairman, President and Chief Executive Officer

**6690271 Manitoba Ltd. -Transmission Line Payer**

By: \_\_\_\_\_

Name: Lorne Midford

Title: President



**IN WITNESS WHEREOF**, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original effective Agreement among the Parties as of the day and year first above written.

**Midcontinent Independent System Operator, Inc.**

By: \_\_\_\_\_

Name: Jennifer Curran

Title: Vice President, System Planning and Seams Coordination

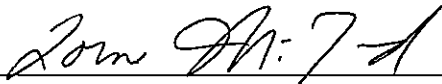
**Minnesota Power – CUU Transmission Owner**

By: \_\_\_\_\_

Name: Alan R. Hodnik

Title: Chairman, President and Chief Executive Officer

**6690271 Manitoba Ltd. –CUU Transmission Owner**

By: 

Name: Lorne Midford

Title: President


**Minnesota Power -Transmission Line Payer**

By: \_\_\_\_\_

Name: Alan R. Hodnik

Title: Chairman, President and Chief Executive Officer

**6690271 Manitoba Ltd. –Transmission Line Payer**

By: 

Name: Lorne Midford

Title: President

## **Multi-Party Facilities Construction Agreement**

### **APPENDIX A**

#### **THE CUU, COST ESTIMATES AND RESPONSIBILITY, CONSTRUCTION SCHEDULE AND PAYMENT SCHEDULE**

This Appendix A is an integral part of the Multi-Party Facilities Construction Agreement between the Transmission Line Payers, the CUU Transmission Owners, and the Transmission Provider (the “**Agreement**”). Terms used in this Appendix A with initial capitalization not defined in this Appendix A shall have the meaning set out in the Agreement.

#### **1.0 Common Use Upgrades.**

The Transmission Provider’s TSR study disclosed that the CUU Transmission Customers’ TSRs caused transmission line constraints requiring the Common Use Upgrades as more particularly set out in this Appendix A. Due to the extensive permitting and regulatory efforts, the significant financial obligations and the complex scheduling needed to construct and install the CUU, the CUU Transmission Owners have developed a two (2) phase approach to assist in meeting the In-Service Date. The two (2) phases are comprised of: (i) Certification Phase; and (ii) Construction Phase. Each phase has its own separate financial, regulatory and construction obligations and milestones and certain conditions and provisions applicable only to such phase as set out in this Appendix A. The CUU Transmission Owners shall provide quarterly progress reports to the Parties. The GNTL progress reports shall be issued no later than 30 days after each calendar quarter.

#### **1.1 Certification Phase.**

**1.1.1** The certification phase will consist of the CUU Transmission Owners developing, filing and securing approvals of all major permits (the “**Major Permits**”) required for the Common Use Upgrades to proceed in the United States after all Certification Phase Conditions Precedent are satisfied or waived (the “**Certification Phase**”). The Major Permits are identified in Section 1.1.4 of this Appendix A. The Certification Phase will include strategic planning, communications, agency coordination related to state and federal permits, routing, stakeholder and public involvement, field studies and surveys, preparation of permit applications, support of regulatory review processes, preliminary engineering design and legal services. Permitting activities will continue to overlap with additional engineering and construction activities during the Construction Phase.

- 1.1.2** The Certificate of Need and Route Permit referenced in Section 1.1.4 are required by the State of Minnesota and are issued by the Minnesota Public Utilities Commission. A Certificate of Need and a Route Permit are anticipated to be separately approved by the Minnesota Public Utilities Commission, within two and one-half years after submittal of the first application.
- 1.1.3** The Presidential Permit and Section 404 Wetland Permit referenced in Section 1.1.4 are Federal approvals and are issued by the US Department of Energy and U.S. Army Corps of Engineers respectively. The approval process for these two Major Permits includes a federally led environmental impact assessment. The Presidential Permit is anticipated to be issued within one and one-half years after submittal of the application for this permit. The Section 404 Wetland Permit is anticipated to be issued within one year after submittal of the application.
- 1.1.4** The Major Permits required for the Common Use Upgrades, referred to in Sections 1.1.2 and 1.1.3, as well as their anticipated durations of review and approval based on the review of relevant projects and the various assumptions identified, are listed below:

	Administering Agency	Anticipated Start Date (or Submittal of Application)	Anticipated End Date
Presidential Permit	U.S. Department of Energy	April 2014	December 2015
Certificate of Need	Minnesota Public Utilities Commission	October 2013	May 2015
Route Permit	Minnesota Public Utilities Commission	April 2014	December 2015
Section 404 Wetlands Permit	U.S. Army Corps of Engineers	January 2015	October 2015

- 1.1.5** Upon approval of the Route Permit by the Minnesota Public Utilities Commission the CUU Transmission Owners shall begin certain preliminary construction related activities deemed necessary by the CUU Transmission Owners in order to achieve the In-Service Date. These activities are comprised of the engagement of land agents, land surveys and research, land acquisition and clearing as well as initial procurement of long lead time materials such as conductors and towers and such other matters as the CUU Transmission Owners and Transmission Line

Payers may mutually agree upon. The CUU Transmission Owners acknowledge and agree that such activities will not include obtaining easements before March 31, 2016, unless the CUU Transmission Owners and Transmission Line Payers mutually agree to an earlier date. The Transmission Line Payers are to provide additional performance assurance for this activity if required by Article 6.1 of this Agreement.

- 1.1.6** Completion of the Certification Phase will be achieved when all of the Major Permits are obtained and all Construction Phase Conditions Precedent have been satisfied or waived. It is estimated that the Certification Phase will continue until the second half of 2016. During the Certification Phase additional state and federal approvals will also be obtained but unlike the Major Permits such approvals are not required prior to proceeding to the Construction Phase.
- 1.1.7** The Transmission Line Payers acknowledge that MP on behalf of and with the consent of the CUU Transmission Owners has begun the Certification Phase prior to the execution date of this Agreement and that these activities and associated cost, charges and expenses were required to ensure timely completion of the Certification Phase in order to meet the In-Service Date presently scheduled as June 1, 2020 (“**Pre-Certification Phase Expenses**”). Each Transmission Line Payer agrees to pay to the CUU Transmission Owners for the share of the costs, charges and expenses of the Certification Phase component as set out in the CUU Cost Allocation Summary Table (Table 2(B) below) including the Pre-Certification Phase Expenses after netting such amounts against payment made for such costs, charges and expenses prior to the Effective Date. A current detailed schedule of anticipated payment obligations arising from Table 2(B) shall be provided by the CUU Transmission Owners on request from a Transmission Line Payer. The costs, charges and expenses consist of internal labor expenses, travel expenses, and costs and charges of outside consultants, engineering services, regulatory expenses, and outside legal counsel and shall be limited to those incurred in accordance with Good Utility Practice. Subject to Articles 1.1.8 and 1.8 of this Appendix A, payments in respect of the Certification Phase payments will be made by the Transmission Line Payers upon submission by the CUU Transmission Owners of: (i) invoices to the Transmission Line Payers for their share of Pre-Certification Phase Expenses; and (ii) monthly invoicing to the Transmission Line Payers for expenses following the execution of this Agreement, as more particularly set out in Table 3.
- 1.1.8** The Parties acknowledge in accordance with Article 1.8 of this Appendix A that the obligations of each Transmission Line Payer to make its payments as set out

in Article 1.1.7 of this Appendix A and to fulfill its other obligations in respect of the Certification Phase are subject to and contingent upon the satisfaction of the Certification Phase Conditions Precedent.

## 1.2 Construction Phase.

- 1.2.1** The Construction Phase will consist of that component of the Common Use Upgrades needed for the granting of the interconnection of the Transmission Customers' TSRs after all Major Permits are secured and all Construction Phase Conditions Precedent are satisfied or waived (the "**Construction Phase**").
- 1.2.2** The Construction Phase will include the construction of a new 500 kV transmission line in Minnesota from the United States/Canadian border to the Minnesota Power Blackberry Substation in the Grand Rapids, Minnesota area (the "**500 kV Line**"), an associated 500 kV substation and a 500 kV series compensation station. The 500 kV Line will be approximately 220 miles in length and will be constructed on a 200 foot wide right of way. The 500 kV Line will be part of a new 500 kV international transmission interconnection (the "**500 kV Interconnection**"). Manitoba Hydro will be constructing the Canadian portion of the 500 kV Interconnection which is not part of this Agreement.
- 1.2.3** A detailed design for the 500 kV Line has not been prepared at this time. Conceptual structure configurations have been prepared for use during the routing process. Following the identification of a route, a detailed design will be prepared that incorporates and complies with the design criteria. As the detailed design is prepared, the preliminary design criteria in the Minnesota Power Great Northern 500kV Transmission Line Project Facilities Study will be expanded, as needed, to include the criteria and parameters established for the detailed design.

Several structure types and configurations were developed for the preliminary design of the 500 kV Line, including: a lattice guyed-V structure, a self-supporting lattice structure, a lattice guyed delta structure, and a self-supporting lattice delta structure. The type of structure in any given section of transmission line will be dependent on land type and land use.

The 500 kV Line will be designed to meet or exceed the applicable clearances recommended in the National Electrical Safety Code (NESC). The preliminary design criteria for the Project assumed a minimum conductor-to-ground clearance of 40 feet.

For the purpose of budgetary estimates, it has been assumed that, each phase of the 500 kV Line will consist of three 1,192.5kcmil ACSR 45/7 conductors, codename “Bunting”, the sub-conductors will be arranged in an ‘inverted delta’ triangular bundle with 18” spacing and the structures will be designed to support two 48-fiber optical ground wires (OPGW). Detailed design of the 500 kV line will begin during the Certification Phase and continue into the Construction Phase.

- 1.2.4** The 500 kV Line will terminate at a new substation (“**Blackberry 500 kV Substation**”) located on the same site as Minnesota Power’s existing Blackberry 230/115 kV Substation. The Blackberry 500 kV Substation will be located adjacent to and east of the existing substation, and will be designed to accommodate the new 500 kV line, 500/230 kV transformation, existing 230 kV lines, and all associated 500 kV and 230 kV equipment.

The CUU will also require a new 500kV series compensation station (“**500 kV Series Compensation Station**”), which will be located within or adjacent to the final approved route. The 500 kV Series Compensation Station will include the 500 kV series capacitor banks necessary for the reliable operation and optimal performance of the CUU, and all associated 500 kV equipment.

The arrangement of the Blackberry 500 kV Substation is designed to accommodate the CUU and facilitate possible future expansion. The 500kV transformer breaker required for the Project will be located such that the 500kV yard can ultimately be arranged in a “ring bus” configuration. The 230kV breakers required for the CUU will be arranged in what is known as a “breaker-and-a-half” configuration. Space outside of the fence will be reserved for the 500kV expansion as well as a future 345kV yard. The appearance of the new substation will be similar to the appearance of existing substation of a similar size, including the existing Blackberry and Forbes substations nearby. The tallest structures in the substation will be the 500kV and 230kV dead-end structures, which are approximately 125 to 135 feet tall (500kV) and 70 feet tall (230kV). Exhibit A1 provides a preliminary one line drawing for the Blackberry 500 kV Substation. The site of the 500 kV Series Compensation Station has not yet been identified at this time, but for budgetary purposes, it has been assumed that the series compensation station will be a separate substation located along the line. This assumption is reflected in the preliminary one-line shown in Exhibit A1. The location of the series compensation equipment and whether it will be located in a separate station or located within the Blackberry 500 kV Substation will be determined in the final design of the 500 kV Line.

The estimate also assumes that a new permanent all weather access road approximately 500 feet in length will be constructed to the site from County Road 434. This is required to provide access for personnel, material deliveries, vehicles, trucks, heavy equipment, low-boy tractor trailer rigs (used for moving large transformers), and ongoing maintenance activities at the site.

- 1.2.5** The Parties acknowledge in accordance with Article 1.8 of this Appendix A that the obligations of each Transmission Line Payer to make its payments in respect of the Construction Phase and to fulfill its other obligations in respect of the Construction Phase are subject to and contingent upon: (i) the satisfaction of the Construction Phase Conditions Precedent applicable to that Transmission Line Payer; and (ii) notice being received from the CUU Transmission Owners that the Certification Phase has been successfully completed.

### **1.3 Cost Estimates**

The Transmission Line Payers hereby acknowledge and agree that the costs, expenses and charges for the two (2) phases of the CUU set out in Table 1 are only an estimate and that the Transmission Line Payers shall pay the CUU Transmission Owners for their allocated percentages in accordance with Table 2(B) for all costs, expenses and charges, as determined pursuant to Article 3.2 of this Appendix A and subject to this Appendix A.

The total estimated costs, expenses and charges for the CUU are \$676,947,930 in 2013 dollars. The estimate does not include escalation or the Tax Gross-Up Amount. Transmission Line Payers are responsible for the actual costs subject to IRS Revenue Procedures 2005-35. The Parties acknowledge that this estimate is based on a preferred route for the 500 kV Line and this estimate will be revised upon approval of the Route Permit by the Minnesota Public Utilities Commission which is anticipated to occur in the time frame described in Articles 1.1.2 and 1.1.4 of this Appendix. A detailed cost estimate updated at the end of the preceding month shall be provided to the Transmission Line Payers by the CUU Transmission Owners on request from a Transmission Line Payer.

**Table 1 - CUU Cost Summary**

	Certification Phase	Construction Phase	Total Project
Certification Expenses-Permitting	\$22,896,300		\$22,896,300
Certification Expenses-Preliminary Construction Activities	\$55,253,400		\$55,253,400
Line Construction		\$457,336,420	\$457,336,420
Blackberry Substation		\$ 42,994,380	\$42,994,380
GNTL Series Compensation Station		\$ 49,258,220	49,258,220
Minnesota Power System Upgrades		\$ 4,579,210	\$ 4,579,210
Capitalize Property Taxes 1/		\$ 44,200,000	\$ 44,200,000
Network Upgrades to Other Systems Which Will Require Execution of Additional Facility Construction Agreements with Other Transmission Owners			
ATC Kewaunee – Point Beach Rating Increase		\$ 250,000	\$ 250,000
GRE-Benton County Rating Increase		\$ 65,000	\$ 65,000
MP-Mud Lake Rating Increase		\$ 65,000	\$65,000
OTP-Browns Valley-Hankinson Rating Increase		\$ 50,000	\$50,000
<b>Totals</b>	<b>\$78,149,700</b>	<b>\$598,798,230</b>	<b>\$ 676,947,930</b>

1/ Capitalize Property Taxes were not included in the Facilities Study Estimate but were added as a line item by the CUU Transmission Owners

#### 1.4 Cost Responsibility

The Parties have agreed that the cost allocation methodology for the construction of the CUU referenced in the Agreement shall be determined independently from traditional cost allocation methodology of pro rata cost allocation based on TSR requested amounts. The Parties further agree that the financial responsibility for funding the CUU assets will fall entirely on the Transmission Line Payers. The Transmission Line Payer financial responsibility ratio is stated in Table 2(B) below. Notwithstanding the Transmission Line Payer financial responsibility ratio, the Parties have also agreed that as of the Effective Date the ownership



share of the CUU assets as tenants in common shall be as stated in Table 2(C) below:

**Table 2(A) - CUU TSR's and Associated Transmission Line Payers**

<b>TSR</b>	<b>CUU Transmission Customer</b>	<b>TSR Amount</b>	<b>Transmission Line Payer</b>
76703672	Minnesota Power	250	Minnesota Power
79258361	Minnesota Power	133	Minnesota Power
79258364	Wisconsin Public Service	200	6690271 Manitoba Ltd.
80142548	Manitoba Hydro	100	6690271 Manitoba Ltd.
80142558	Manitoba Hydro	100	6690271 Manitoba Ltd.
80142561	Manitoba Hydro	100	6690271 Manitoba Ltd.
		883 south	

<b>TSR</b>	<b>CUU Transmission Customer</b>	<b>TSR Amount</b>	<b>Transmission Line Payer</b>
79258492	Manitoba Hydro	133	6690271 Manitoba Ltd.
79258646	Manitoba Hydro	200	6690271 Manitoba Ltd.
79258668	Manitoba Hydro	115 (partial service)	6690271 Manitoba Ltd.
79429002	Manitoba Hydro	250	6690271 Manitoba Ltd.
		698 north	

**Table 2(B) - CUU Cost Allocation Summary**

<b>TSR</b>	<b>TSR Customer</b>	<b>TSR Amounts</b>	<b>Transmission Line Payer</b>	<b>CUU Capital Cost Allocation</b>
76703672	Minnesota Power	250 south	Minnesota Power	28.3 %
79258361		133 south	Minnesota Power	17.7 %
79258364	Wisconsin Public Service	200 south	6690271 Manitoba Ltd.	21.6 %
80142548	Manitoba Hydro	100 south	6690271 Manitoba Ltd.	32.4%
80142558	Manitoba Hydro	100 south	6690271 Manitoba Ltd.	

80142561	Manitoba Hydro	100 south	6690271 Manitoba Ltd.	
79258492	Manitoba Hydro	133 north	6690271 Manitoba Ltd	N/A
79258646	Manitoba Hydro	200 north	6690271 Manitoba Ltd	N/A
79258668	Manitoba Hydro	115 north (partial) 250 north	6690271 Manitoba Ltd	N/A
79429002	Manitoba Hydro		6690271 Manitoba Ltd	N/A

**Table 2(C) - CUU Ownership Summary**

<b>CUU Transmission Owner</b>	<b>Percentage Ownership Share of CUU Assets</b>
Minnesota Power	51%
6690271 Manitoba Ltd.	49%

**1.5 First Equipment Order.** Will be dependent on final permitting approval.

**1.6 Construction Schedule.** Construction of the CUU is scheduled under Table 3-FCA Milestones and will be periodically updated as necessary.

**1.7 Payment Schedule.**

**1.7.1 Timing of and Adjustments to Transmission Line Payers' Payments and Performance Assurance.** Notwithstanding the requirements of Article 6.1 of the Agreement, the Transmission Line Payers shall make the advance payments, or if a Transmission Line Payer cannot provide advance payments because Governmental Authority approvals have not yet been granted, provide performance assurance, to the CUU Transmission Owners as set forth in the schedule in Table 3 in Section 1.7.2 of this Appendix A. The CUU Transmission Owners shall not be required to send to the Transmission Line Payers an invoice or notice for such initial payments or performance assurance; rather, such payment (or performance assurance) shall be provided by the Transmission Line Payers by the date specified in Table 3 below. Subsequent payments shall

be pursuant to invoices issued by the CUU Transmission Owners in accordance with Section 1.7.2.

- 1.7.2 Payment Schedule.** The Transmission Line Payers' payment schedule is as follows.

Certification Phase Payments

Initial payments shall be made pursuant to Table 3 (1-A) below. Failure by any Transmission Line Payer to provide payments (or performance assurance acceptable to the CUU Transmission Owners, where applicable) by the due date in the table below to the CUU Transmission Owners is a Breach pursuant to Article 9 of the Agreement. Following the initial payment, the CUU Transmission Owners will invoice the Transmission Line Payers monthly for all expenses incurred in accordance with Table 3 (1-B) after crediting the Transmission Line Payers for any payments made prior to the Effective Date

Construction Phase Payments

Funding for the Construction Phase will utilize a construction account which the CUU Transmission Owners can access to pay all Construction Phase payments. It is expected that the CUU Transmission Owners will be requesting a two (2) month forward looking requirement be placed into the construction escrow account with monthly reconciliation and reporting. CUU Transmission Owners will provide a calculation of the interest from an interest bearing escrow account which will be used to reduce the amount of the funding request.

If, at any time during the course of the CUU Transmission Owners' work on the CUU, they become aware that the payments they have received and performance assurance they then hold will not be sufficient to fully fund the work, the CUU Transmission Owners shall submit invoices to the Transmission Line Payers for their proportionate shares of the additional funds needed. Each Transmission Line Payer shall pay the full amount of the invoice (or, if a Transmission Line Payer cannot provide advance payments because Governmental Authority approvals have not yet been granted, provide performance assurance for the full amount) within thirty 30 Calendar Days of receipt. A Transmission Line Payer's failure to make any such payment (or provide acceptable performance assurance, where

applicable) when due shall constitute a Breach by such Transmission Line Payer.

A Transmission Line Payer that fails to make payments when due will be given a Breach notice. Unless the Breach is cured in accordance with Article 9 of the Agreement, the CUU Transmission Owners are relieved from performing under this Agreement. Failure by any Transmission Line Payer to comply with Article 9.2.2(A) or 9.2.2(B) relative to such Breach may, pursuant to Article 2.2.2 of the Agreement, result in termination of the Agreement as to that Transmission Line Payer.

**Table 3 FCA Milestones (Transmission Line Payer share of payments will be based on Table 2(B) )**

No.	MILESTONES	PAYMENT SCHEDULE
1	The CUU Transmission Owners begin the Certification Process and Transmission Line Payers to provide to CUU Transmission Owners a guarantee, letter of credit, cash escrow account or other form of performance assurance for the Certification Phase, if required pursuant to this Agreement (Article 6.1 of the Agreement).	Required performance assurance due 30 Calendar Days after the Effective Date.
1-A	CUU Transmission Owners will submit invoices to the Transmission Line Payers for their proportional share of Pre-Certification Phase Expense pursuant to Section 1.1.7 of this Appendix A.	30 Calendar Days after the Effective Date.
1-B	CUU Transmission Owners begin monthly invoicing to the Transmission Line Payers for all other expenses for the Certification Phase.	Invoices will be submitted by the CUU Transmission Owners on the 15 <sup>th</sup> of every month, beginning the month following the Effective Date.
1-C	CUU Transmission Owners notifies the Transmission Line Payers that all Major Permits have been received and all of MPM's Certification Phase Conditions Precedent and	Required performance assurance due 20 Business Days after notification by the CUU

	MPM's Construction Phase Conditions Precedent have been satisfied or waived and the CUU Transmission Owners shall begin Preliminary Construction Activities and the Transmission Line Payers to provide to CUU Transmission Owners performance assurance, if required pursuant to this Agreement (Article 6.1).	Transmission Owners.
2	Upon notification by the CUU Transmission Owners that the Certification Process has been successfully completed and all Construction Phase Conditions Precedent have been satisfied and or waived, the construction of the CUU will commence in accordance with the Construction Phase component subject to Section 1.8 of this Appendix A. The Transmission Line Payers to provide to CUU Transmission Owners performance assurance, if required pursuant to this Agreement (Article 6.1).	The Construction Phase will commence subject to Section 1.8 of this Appendix A. Required performance assurance due no later than 20 Business Days after notification by the CUU Transmission Owners.
2-A	The CUU Transmission Owner shall request the first two month advance of expected construction expenditures and the CUU Transmission Line Payer shall provide the advance. Additional requests shall be made by the CUU Transmission Owner by the 15 <sup>th</sup> of each month. The Transmission Line Payers have 30 Calendar Days to satisfy the advance request.	Not later than 30 Calendar Days after the Construction Phase begins.
3	CUU Transmission Owners to complete acceptance testing and complete the Construction Phase.	In-Service Date (Expected June 1, 2020)
4	CUU Transmission Owners to provide final report to the Transmission Line Payers (Article 6.5 of this Agreement)	180 days after In-Service Date

**1.7.3** When applicable, each Transmission Line Payer shall pay any difference between actual costs and actual payments in accordance with this Agreement, no later than thirty (30) Calendar Days after receipt of the CUU Transmission Owner' final construction invoice. If agreed in writing by the Parties, payments may be made in accordance with a revised schedule.

1.7.4 All costs will be paid for on a proportional basis as set out herein.

1.7.5 Any refund shall be allocated on a proportional basis as set out herein.

## 1.8 Conditions Precedent.

### MPM

#### 1.8.1 MPM's Certification Phase Conditions Precedent.

The obligations of MPM to complete the matters referenced herein in respect of the Certification Phase shall be subject to and contingent upon the fulfillment of the following conditions ("MPM's Certification Phase Conditions Precedent") to the satisfaction of MPM, as certified or waived in writing by MPM, by the dates specified:

- (a) MP obtaining approval of the Board of Minnesota Power, an operating division of ALLETE, Inc. within thirty (30) days of the Effective Date approving MP entering into this Agreement.

#### 1.8.2 MPM's Construction Phase Conditions Precedent.

The obligations of MPM to complete the matters referenced herein in respect of the Construction Phase shall be subject to and contingent upon the fulfillment of the following conditions ("MPM's Construction Phase Conditions Precedent") to the satisfaction of MPM, as certified or waived in writing by MPM, by the dates specified:

- (a) MPM obtaining approval of its Board of Directors by July 1, 2016 approving MPM proceeding to fund its proportionate share of costs of the CUU pursuant to the Construction Phase of this Agreement;
- (b) All conditions precedent to the 250 MW System Power Sale Agreement between MHEM and MPM, dated May 19, 2011 being satisfied or waived by July 1, 2016, or by such other date (if any) as the Transmission Line Payers and CUU Transmission Owners may mutually upon;
- (b) The Transmission Line Payers and CUU Transmission Owners executing a Project Development Agreement, an Operations and Maintenance Agreement, a Transmission Capacity Exchange Agreement, and if deemed applicable by the Transmission Provider, an Interconnection Agreement, by June 30, 2015 and all conditions precedent to such agreements being satisfied by September 30, 2015,

or by such other date (if any) as the Transmission Line Payers and CUU Transmission Owners may mutually agree upon;

- (c) All required FERC filings and authorizations related to this Agreement are accepted by FERC on or before July 1, 2016, including acceptance by FERC under Section 205 of the Federal Power Act; and
- (e) Conditional approval by the Transmission Provider by June 30, 2015 of the MPM transmission service request pursuant to Reservation Number 76703672 of 250 MW south and Reservation Number 79258361 of 133 MW south on conditions acceptable to MPM.

**6690271 Manitoba Ltd.**

**1.8.3 6690271's Manitoba Ltd. Certification Phase Conditions Precedent.**

The obligations of 6690271 to complete the matters referenced herein in respect of the Certification Phase shall be subject to and contingent upon the fulfillment of the following conditions ("**6690271's Certification Phase Conditions Precedent**") (MPM's Certification Phase Conditions Precedent and 6690271's Certification Phase Conditions Precedent are collectively referred to the "**Certification Conditions Precedent**") to the satisfaction of 6690271 as certified or waived in writing by 6690271 by the dates specified:

- (a) MH obtaining an Order in Council of the Lieutenant Governor (Manitoba) within ninety (90) days of the Effective Date approving 6690271 entering into this Agreement.

**1.8.4 6690271's Construction Phase Conditions Precedent.**

The obligations of 6690271 to complete the matters referenced herein in respect of the Construction Phase shall be subject to and contingent upon the fulfillment of the following conditions ("**6690271's Construction Phase Conditions Precedent**") (MPM's Construction Phase Conditions Precedent and 6690271's Construction Phase Conditions Precedent are collectively referred to the "**Construction Conditions Precedent**") to the satisfaction of 6690271 as certified or waived in writing by the dates specified:

- (a) 6690271 obtaining approval of its Board of Directors by October 31, 2016 approving 6690271 proceeding to fund its share of costs of the CUU pursuant to the Construction Phase of this Agreement;

- (b) MH obtaining an Order in Council of the Lieutenant Governor (Manitoba) within ninety (90) days of the Effective Date approving 6690271 entering into this Agreement;
- (c) MH obtaining the final non-appealable order of the National Energy Board (“NEB”) on conditions acceptable to MH, in its sole and absolute discretion, by October 31, 2016 or by such other date (if any) as the Transmission Line Payers and CUU Transmission Owners may mutually agree upon, authorizing: (i) the construction and operation of the component of the 500 kV Interconnection in the province of Manitoba; and (ii) the modification of the component of any existing transmission interconnection in the province of Manitoba that pursuant to the laws applicable to the NEB is an international power line and that MH, in its sole and absolute discretion, determines is necessary to be modified in conjunction with the construction of the component of the 500 kV Interconnection in the province of Manitoba;
- (d) MH obtaining the final non-appealable license from the Province of Manitoba, on conditions acceptable to MH, in sole and absolute discretion, authorizing MH to commence construction of the Canadian component of the 500 kV Interconnection by October 31, 2016, or such other date (if any) as the Transmission Line Payers and CUU Transmission Owners may mutually agree upon;
- (e) All conditions precedent to the 250 MW System Power Sale Agreement between MHEM and MPM, dated May 19, 2011 being satisfied or waived by the dates set out in the 250 MW System Power Sale Agreement, or by such other date (if any) as the Transmission Line Payers and CUU Transmission Owners may mutually agree upon;
- (f) The Transmission Line Payers and CUU Transmission Owners executing a Project Development Agreement, an Operations and Maintenance Agreement, a Transmission Capacity Exchange Agreement, and if deemed applicable by the Transmission Provider, an Interconnection Agreement by June 1, 2015 and all conditions precedent to such agreement being satisfied by September 30, 2015 or by such other date (if any) as the Transmission Line Payers and CUU Transmission Owners may mutually agree upon;
- (g) Conditional approval by MHEM’s transmission provider by June 30, 2015 of the MHEM transmission service request pursuant to Reservation Number 76703161,



79622800, 79622805, 79622810 for a minimum of 698 MW north on conditions acceptable to MHEM;

- (h) Conditional approval by MHEM's transmission provider by June 30, 2015 of the MHEM transmission service request pursuant to Reservation Number 76703213, 76703216, 79622799 of 883 MW south on conditions acceptable to MHEM;
- (i) Conditional approval by the Transmission Provider by June 30, 2015 of the MHEM transmission service request pursuant to Reservation Number 79429002, 79258492, 7928646, 79258668 for a minimum of 698 MW north on conditions acceptable to MHEM; and
- (j) Conditional approval by the Transmission Provider by June 30, 2015 of the MHEM transmission service requests pursuant to Reservation Number 80142548, 80142558 and 80142561 of up to 300 MW south on conditions acceptable to MHEM.

**1.8.5 Reasonable Assistance.**

The CUU Transmission Owners and Transmission Line Payers agree to provide reasonable assistance to another Party, if requested, in order to assist that Party to obtain any approval associated with its condition precedent.

**1.8.6 Conditions Precedent Notices and Termination.**

Each Party shall notify the other Parties as soon as practicable following the satisfaction or waiver or the failure to satisfy or waive its condition precedent. The CUU Transmission Owners shall provide notice to all Parties when the Certification and Construction Phases have begun. The Parties acknowledge:

- (a) If MPM's conditions precedent applicable to the Certification Phase or Construction Phase are not satisfied or waived in accordance with this Section 1.8: (i) MPM shall be terminated as party to the Agreement; (ii) MPM's Transmission Line Payers Associated TSR's shall be withdrawn from the Transmission Provider's transmission queue; and (iii) the Transmission Line Payers whose conditions precedent were satisfied or waived shall enter into negotiations with the CUU Transmission Owners and the Transmission Provider to amend the Agreement on mutually acceptable terms and if such amendments are not agreed to the Agreement shall terminate; and
- (b) If 6690271 conditions precedent applicable to the Certification Phase or Construction Phase are not satisfied or waived in accordance with this

Section 1.8: (i) 6690271 shall be terminated as a party to this Agreement; (ii) 6690271's Transmission Line Payers Associated TSR's shall be withdrawn from the Transmission Provider's transmission queue; and (iii) the Transmission Line Payers whose conditions precedent were satisfied or waived shall enter into negotiations with the CUU Transmission Owners and the Transmission Provider to amend the Agreement on mutually acceptable terms and if such amendments are not agreed to the Agreement shall terminate.

**Multi-Party Facilities Construction Agreement**  
**APPENDIX B**  
**NOTIFICATION OF COMPLETED CONSTRUCTION**

This Appendix B is a part of the Multi-Party Facilities Construction Agreement among Transmission Line Payers, CUU Transmission Owners, and Transmission Provider. When CUU Transmission Owners have completed construction of the CUU, CUU Transmission Owners shall send notice to Transmission Line Payers, the CUU Transmission Customers and the Transmission Provider, in substantially the form following:

[Date]

MISO, Inc.

Attn: Director, Transmission Access Planning

P.O. Box 4202

Carmel, IN 46082-4202

*for overnight deliveries:*

720 City Center Drive

Carmel, IN 46032

Transmission Line Payer and CUU Transmission Customer contact information: please see Article 15 of the Agreement.

Re: Completion of Common Use Upgrades (“CUU”)

Dear [Name or Title]:

This letter is sent pursuant to the Multi-Party Facilities Construction Agreement among [CUU Transmission Owners ], [Transmission Line Payers], and the MISO, dated \_\_\_\_\_, 20\_\_.

On [Date], CUU Transmission Owners completed to their satisfaction all work on the CUU described in the \_\_\_\_\_, 20\_\_ Multi-Party Facilities Construction Agreement by and among \_\_\_\_\_ . Further, CUU Transmission Owners confirms that the CUU have been placed “in service.”

Thank you.

[Signature]

[CUU Transmission Owners Representative]

**Multi-Party Facilities Construction Agreement**

**APPENDIX C**

This Appendix C is a part of the Multi-Party Facilities Construction Agreement among Transmission Line Payers, CUU Transmission Owners, and Transmission Provider.

The following exhibits are part of this report and are attached at the end of this document.

Exhibit A1: Overall CUU One Line Diagram

Exhibit A2: 500 kV CUU Transmission Line Route Map

Exhibit A3: Draft CUU Project Schedule

**Exhibit A1 Overall CUU One Line Diagram**

**CEII MATERIAL**

Exhibit A2 500 kV CUU Transmission Line Route Map

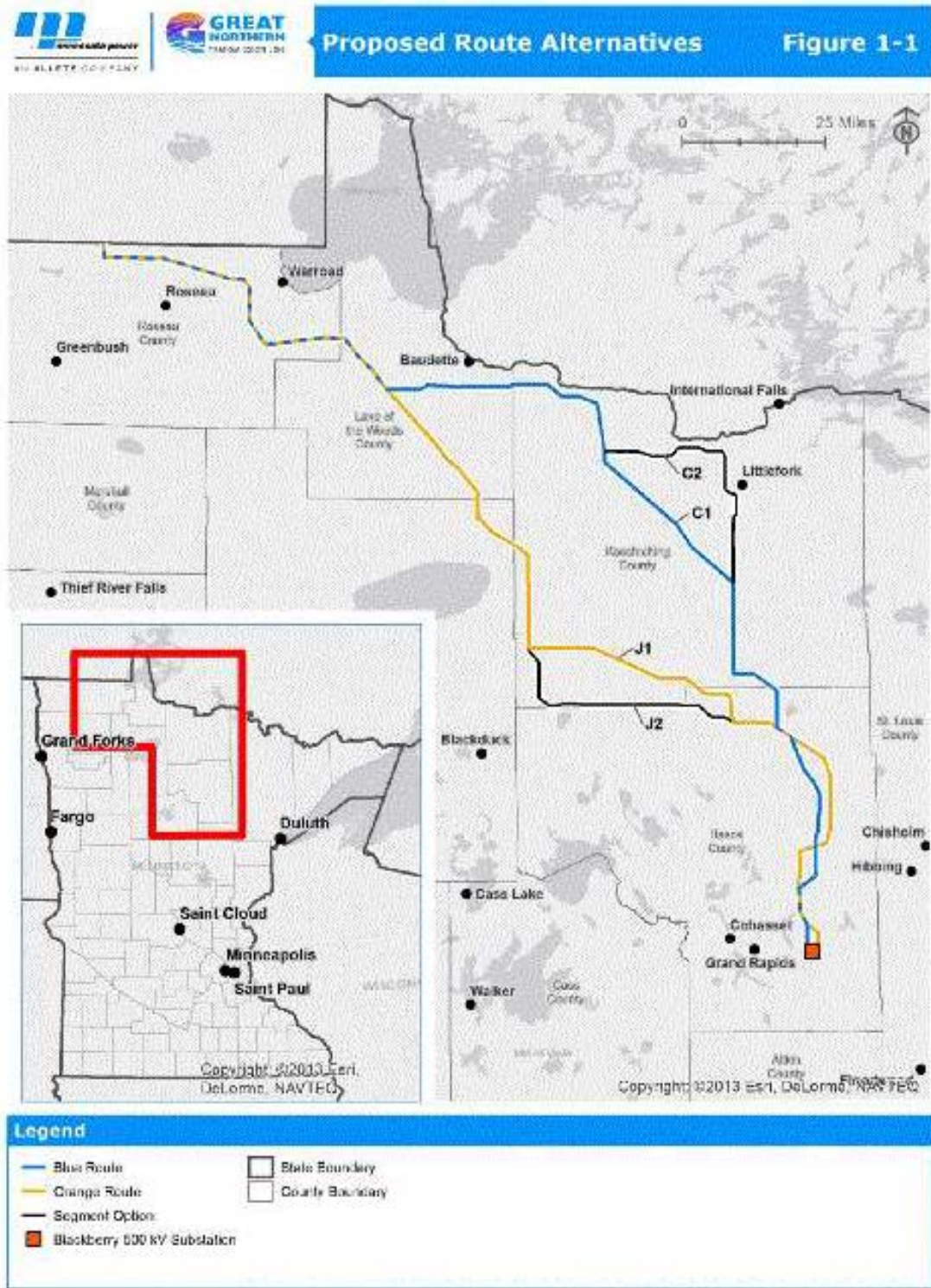
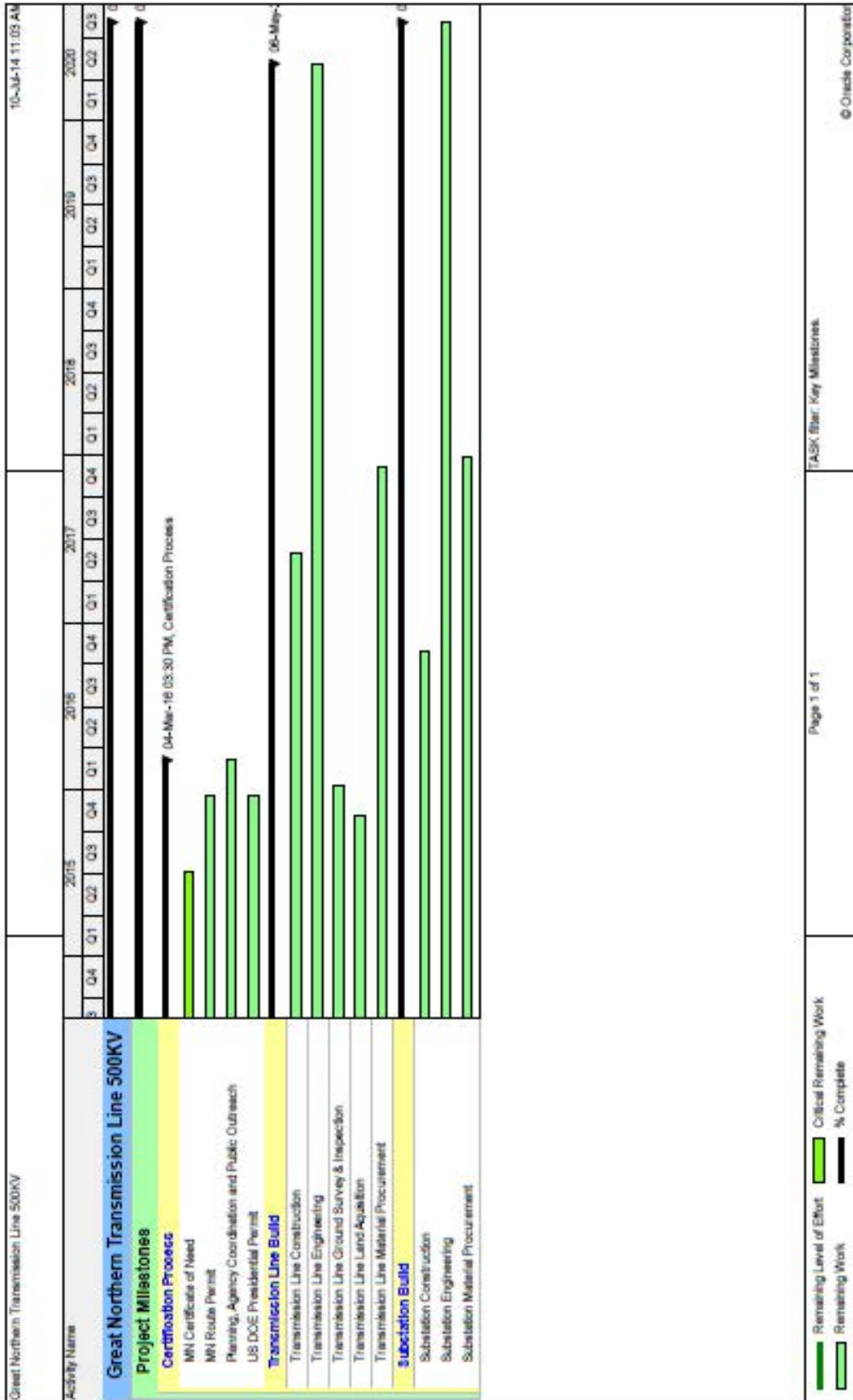


Exhibit A3 Draft CUU Project Schedule





**APPENDIX D**  
**PERFORMANCE ASSURANCES**

Transmission Line Payers that are required to post performance assurance in accordance with Section 6.1, shall be responsible for providing performance assurance in accordance with the following:

Subsection 1

Transmission Line Payer will be required to post performance assurance in the amount based on the CUU Transmission Owners projected remaining costs to the day that is 20 Business Days after the last of the MPM Certification Phase Conditions Precedent and the MPM Construction Phase Conditions Precedent have been satisfied or waived by MPM (which amount is estimated to be \$16 million as of the Effective Date) multiplied by the percentage of the CUU facilities that are required to be funded by such Transmission Line Payer.

Subsection 2

Transmission Line Payer will be required to post performance assurance in the amount based on the CUU Transmission Owners projected remaining costs to the day that is 20 Business Days after all of the MPM Construction Phase Conditions Precedent and the 6690271 Certification Phase Conditions Precedent and the 6690271 Construction Phase Conditions Precedent have been satisfied or waived by the respective Party (which amount is estimated to be \$55 million as of the Effective Date) multiplied by the percentage of the CUU facilities that are required to be funded by such Transmission Line Payer minus any amount of its performance assurance held by the CUU Transmission Owner remaining from Subsection 1.

# Attachment C



(3) CEII Materials shall not include (A) any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be CEII by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Agreement. CEII Materials do include any information or document already contained in the files of the Commission that has been previously designated as CEII.

(c) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to CEII Materials shall certify their understanding that such access to CEII Materials is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Participants have read the Protective Agreement and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding officer or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. CEII Materials shall be made available under the terms of this Protective Agreement only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. CEII Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the CEII Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the CEII Materials (excluding Notes of CEII Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain CEII Materials, and Notes of CEII Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the

producing Participant an affidavit stating that, to the best of its knowledge, all CEII Materials and all Notes of CEII Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent CEII Materials are not returned or destroyed, they shall remain subject to the Protective Agreement.

6. All CEII Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any CEII Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of CEII. The Commission retains the right to make determinations regarding any claim of CEII and the discretion to release information necessary to carry out its jurisdictional responsibilities.

7. CEII Materials shall be treated as CEII by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. CEII Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of CEII Materials, but such copies become CEII Materials. Reviewing Representatives may make notes of CEII Materials, which shall be treated as Notes of CEII Materials if they disclose the contents of CEII Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any CEII Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d) above, the Participant shall seek agreement from the Participant providing the CEII Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraph 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Commission for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to CEII Materials pursuant to this Protective Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting CEII prior to disclosure of any CEII Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose CEII Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the CEII Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to CEII Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the certification.

11. Materials designated as CEII Materials shall remain protected and subject to the provisions of this Protective Agreement, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting CEII Materials, including any hearing testimony, exhibits, transcripts, briefs and other documents which refer to CEII Materials, shall be filed and served in sealed envelopes or other appropriate containers (including properly designated electronic means) endorsed to the effect that they are sealed pursuant to this Protective Agreement. Such documents shall be marked "CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE" and shall be filed under seal and served under seal upon the Presiding officer and all Reviewing Representatives who are on the service list. For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding officer. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that CEII Materials are not distributed to unauthorized persons.

13. Nothing in this Protective Agreement shall be construed as precluding any Participant from objecting to the use of CEII Materials on any legal grounds.

14. Reserved.

15. Each party governed by this Protective Agreement has the right to seek changes in it as appropriate from the Commission.

16. All CEII Materials filed with the Commission, the Presiding officer, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers (including properly designated electronic means) marked "CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE."

17. If the Commission's Critical Energy Infrastructure Information Coordinator finds at any time in the course of this proceeding that all or part of the CEII Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Agreement for three (3) business days from the date of issuance of the Critical Energy Infrastructure Information Coordinator's determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding officer's or Critical Energy Infrastructure Information Coordinator's decision respecting CEII Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for CEII Materials in the files of the Commission.

18. Reserved.

19. Reserved.

20. The contents of CEII Materials or any other form of information that copies or discloses CEII Materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System )  
Operator, Inc. )  
)

Docket No. ER14-\_\_\_\_\_-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to CEII Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the CEII Materials, any notes or other memoranda, or any other form of information that copies or discloses CEII Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Representing: \_\_\_\_\_  
Date: \_\_\_\_\_