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April 22, 2015

**VIA E-FILING**

Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of Minnesota Power's Petition for Approval of Transfers  
Pursuant to the Edison Electric Institute Spare Transformer Sharing Agreement  
Docket No. E015/M-15-\_\_\_

Dear Mr. Wolf:

Minnesota Power hereby respectfully submits, via electronic filing, its Petition to the Minnesota Public Utilities Commission ("Commission") for an Order approving asset transfers pursuant to the Edison Electric Institute ("EEI") Spare Transformer Sharing Agreement ("Agreement") in conjunction with the EEI Spare Transformer Equipment Program ("STEP").

Please contact me at the number above if you have any questions regarding this filing.

Yours truly,

Christopher D. Anderson

CDA:sr  
Attachment

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

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In the Matter Minnesota Power's  
Petition for Approval of Transfers  
Pursuant to the Edison Electric Institute  
Spare Transformer Sharing Agreement

Docket No. E015/M -15 - \_\_\_\_\_

**PETITION FOR APPROVAL**

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**SUMMARY OF FILING**

Minnesota Power hereby petitions the Minnesota Public Utilities Commission ("Commission") for an Order approving asset transfers pursuant to the Edison Electric Institute ("EEI") Spare Transformer Sharing Agreement ("Agreement") in conjunction with the EEI Spare Transformer Equipment Program ("STEP").

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**PETITION FOR APPROVAL**

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**I. INTRODUCTION**

Minnesota Power (or “the Company”) hereby petitions the Minnesota Public Utilities Commission for an Order approving asset transfers pursuant to the Edison Electric Institute Spare Transformer Sharing Agreement (“STEP Agreement”) in conjunction with the EEI Spare Transformer Equipment Program. The STEP is designed to increase the Nation’s inventory of spare electric transformers. This collaboration of industry participants ensures that service will be restored in the event of a “Triggering Event”, defined as an act of terrorism that destroys or disables one or more substations and results in the declared state of emergency by the President of the United States.

In 2006, federal energy regulators [(“FERC”)] approved the Spare Transformer Equipment Program (STEP<sup>1</sup>), an electric industry program that strengthens the sector's ability to restore the nation's transmission system more quickly in the event of a terrorist attack. STEP represents a coordinated approach to increasing the electric power industry's inventory of spare transformers and streamlining the process of transferring those transformers to affected utilities in the event of a transmission outage caused by a terrorist attack.<sup>2</sup>

Minnesota state statute requires prior Commission authorization before a public utility makes a transfer of property. "Transfer of property" means the sale or acquisition of an operating unit or system for a consideration valued at greater than \$100,000. Without advance Commission approval of the STEP Agreement, Minnesota Power would be hard pressed to efficiently acquire or sell a transformer during a Triggering Event.

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<sup>1</sup> Docket Nos. EC06-140-000 and EL06-86-000

<sup>2</sup>“Spare Transformers” Retrieved from:

<http://www.eei.org/issuesandpolicy/transmission/Pages/sparetransformers.aspx>

Any investor-owned utility, government-owned utility or rural electric cooperative in the United States or Canada that owns transformers may participate in the Program. There are currently fifty-five Participating Utilities, including Xcel Energy. As the number of Participating Utilities grows, the more economical and efficient the STEP becomes. Minnesota Power has been evaluating the benefits of participating in the STEP program for a number of years. Incidents such as the April 16, 2013 attack on Pacific Gas and Electric's Metcalf substation highlight the continuing need for programs such as the STEP. Program participation is also a portion of Minnesota Power's strategic response to physical security threats. The STEP Agreement will serve to foster the ability to collaborate and plan with fellow utilities for disastrous events.

## **II. PROCEDURAL MATTERS**

### **A. General Filing Information**

Pursuant to Minn. Rule 7829.1300, Minnesota Power provides the following required general filing information.

#### **1. Summary of Filing (Minn. Rule 7829.1300, subp.1)**

A one-paragraph summary accompanies this Petition.

#### **2. Service on Other Parties (Minn. Rule 7829.1300, subp. 2)**

Pursuant to Minn. Stat. § 216.17, subd. 3 and Minn. Rules 7829.1300, subp. 2, Minnesota Power eFiles the Petition on the Department and the Residential Utilities Division of the Office of Attorney General. A summary of the filing prepared in accordance with Minn. Rules 7829.1300, subp. 1 is being served on Minnesota Power's general service list.

#### **3. Name, Address and Telephone Number of Utility (Minn. Rule 7829.1300, subp. 4(A))**

Minnesota Power  
30 West Superior Street  
Duluth, MN 55802  
(218) 722 – 2641

**4. Name, Address and Telephone Number of Utility Attorney (Minn. Rule 7829.1300, subp. 4(B))**

Christopher D. Anderson  
Associate General Counsel  
Minnesota Power  
30 West Superior Street  
Duluth, MN 55802  
(218) 355 – 3961  
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**5. Date of Filing and Date Proposed Rate Takes Effect (Minn. Rule 7829.1300, subp. 4(C))**

This Petition is being filed on April 22, 2015. The Spare Transformer Agreement, which governs the STEP Agreement, was effective for the initial Participating Utilities on November 1, 2006. Individual Participating Utility participation is subject to required regulatory approvals, and Minnesota Power proposes implementation of the program immediately following Commission approval.

**6. Statute Controlling Schedule for Processing the Filing Minn. Stat. § 216B.50 (Minn. Rule Part 7825.1600-1800)**

This Petition is being submitted pursuant to Minn. Stat. § 216B.50 and Minn. Rule Part 7825.1600-. 1800. Minn. Stat. § 216B.50 requires prior Commission authorization for a public utility to "Transfer of property" means the sale or acquisition of an operating unit or system for a consideration valued at greater than \$100,000; or if a rental or lease, for consideration greater than \$100,000 over the life of the rental or lease. Minn. Stat. § 216B.50 does not provide for a specific schedule for processing an asset exchange filing. This filing falls within the definition of a "miscellaneous tariff filing" under Minn. Rule 7829.0100, subp. 11. Pursuant to Minn. Rule 7829.1400, subps. 1 and 4, initial comments on a miscellaneous tariff filing are due within 30 days of filing, with replies due 10 days thereafter.

**7. Utility Employee Responsible for Filing (Minn. Rule 7829.1300, subp. 4(E))**

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**8. Impact on Rates and Services (Minn. Rule 7829.1300, subp. 4(F))**

This Agreement in and of itself will have no effect on Minnesota Power's base rates.

**9. Service List (Minn. Rule 7829.0700)**

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**III. OVERVIEW OF THE AGREEMENT**

The Agreement specifies the number and voltage classes of each transformer that Minnesota Power is required to maintain going forward and allows for renegotiation if needs change over time. Under the Agreement, Minnesota Power will be obligated to sell any number of its committed spare transformers to participating utilities who experience a Triggering Event. The Agreement outlines standard provisions with which Minnesota Power will comply. There are provisions addressing basic obligations, call rights, financial obligations, etc., Minnesota Power has provided the Agreement as Exhibit A. Under the terms of the Agreement, this Agreement would be used infrequently. In fact, the STEP Agreement has not been instituted by any utility in the time since the program was initiated. Thus, it is not likely to have a significant effect on operations in Minnesota, and would provide a reasonable assurance that spare transformers could be obtained when needed during a Triggering Event.

The Agreement provides for: (a) an overall Equipment Committee, (b) an Equipment Subcommittee for each voltage class; and (c) an Executive Committee. The Equipment Committee and Equipment Subcommittees are responsible for making various technical decisions under the Agreement. The Executive Committee is responsible for addressing appeals of decisions of the Equipment Committee and Equipment Subcommittees, resolving disputes relating to call rights under the Agreement, and developing an annual budget and dues assessment.

Under section 203 of the Federal Power Act, the Commission must approve the sale or disposition of jurisdictional assets in excess of \$10 million. Noting the importance of responding quickly to an emergency and the long lead times involved in ordering new transformers, EEI, on behalf of the 41 jurisdictional participants, requested, and the FERC approved<sup>3</sup>, blanket authorizations for future transfers of transformers under the agreement. The FERC conditioned its authorization on public utility participants in the program filing the information required by the FERC's Part 33 regulations initially within 30 days of any transformer transfer and again when final sales terms have been established.

To encourage participation in STEP, the FERC also granted Applicants' requests to declare participation in the Agreement prudent, find that the costs of participation qualify for single issue rate treatment, and accords all future jurisdictional signatories to the Agreement the same benefits as current signatories. Participation in this sharing program will increase transmission owners' emergency recovery capabilities by providing access to more spare transformers at lower cost.<sup>4</sup>

#### **IV. THE AGREEMENT IS IN THE PUBLIC INTEREST**

This Agreement is in the public interest due to the guarantee that it provides with respect to Minnesota Power's continuous operation in the occurrence of a Triggering Event by being able to rely on the STEP Agreement should an event occur on Minnesota Power's system. Similarly, Commission approval of the STEP Agreement allows Minnesota Power to expedite a spare transformer to a sister utility in need without potential delays caused by advanced

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<sup>3</sup> FERC Order 116 is attached as Exhibit B.

<sup>4</sup>September 21, 2006, "Commission acts to improve security of Nation's power grid", Retrieved from: <https://www.ferc.gov/media/news-releases/2006/2006-3/09-21-06-E-13.asp>



regulatory approval requirements. The assurance that a certain number of transformers are guaranteed to be made available at the time of a Triggering Event is advantageous for the Company and its stakeholders. This Agreement supports the timely reconnection of the grid during a significant outage event and ensures that the required repairs will be made at a reasonable price due to the collective nature of the cost distribution to the Participating Utilities.

Minnesota Power is obligated to deliver written notice of the approval date (date on which the Commission provides an Order approving the Agreement) to the Equipment Committee. If the Company does not receive the required regulatory approval within eighteen months of the executed Agreement date, the Agreement will be considered null and void.

## V. CONCLUSION

Minnesota Power appreciates the Commission's attention to and consideration of this important matter. Minnesota Power believes it is in the best interest of its customers to ensure that the grid can continue to operate reliably in the instance of a major event such as a terrorist attack. The collective pooling of resources fosters an environment in which repair of the grid happens more swiftly and economically than if each utility were left to individual corrective action.

Dated: April 22, 2015

Respectfully submitted,



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Associate General Counsel  
Minnesota Power  
30 West Superior Street  
Duluth, MN 55802  
218-355-3961

CONFORMED COPY AS OF MARCH 2011

SPARE TRANSFORMER SHARING AGREEMENT

This Spare Transformer Sharing Agreement, dated as of March 15, 2006 (this "Agreement") is entered into by and among each entity that executes and delivers this Agreement, as contemplated hereby (each, a "Party").

WHEREAS, each Party owns or has rights to own or access, or intends to acquire ownership of or rights to own or access, one or more Qualified Spare Transformers (as defined below); and

WHEREAS, each Party desires to participate in an arrangement to share such Qualified Spare Transformers under certain circumstances; and

WHEREAS, each Party desires to memorialize in a written agreement such circumstances and all related rights, responsibilities and obligations associated therewith in an agreement by and among all such Parties; and

WHEREAS, each Party acknowledges that this Agreement is the written agreement so contemplated to be entered into by and among all such Parties; and

WHEREAS, this Agreement originally became effective as of March 15, 2006;

WHEREAS, by virtue of that certain Amendment No. 1 to this Agreement, entered into as of June 15, 2007, Article XI, Section 9.5 and Section 12.9 of this Agreement were duly amended, in accordance with the provisions of Section 12.3 hereof, to add a new Section 11.4, to add two new sentences to the end of Section 9.5 and to add two new sentences to the end of Section 12.9 (such amendments, collectively, the "Amendments"); and

WHEREAS, on August 7, 2007, the 345-138 Equipment Sub-Committee and the 230-138 Equipment Sub-Committee made certain modifications to their respective minimum standards originally set forth on Exhibit A hereto (such modifications, collectively, the "Minimum Standard Modifications"); and

WHEREAS, this Agreement has been conformed to incorporate herein each of the Amendments and each of the Minimum Standard Modifications.

NOW, THEREFORE, in consideration of these premises and the representations, warranties, covenants and agreements contained herein, each Party, intending to be legally bound hereby, agrees as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following capitalized terms have the meanings set forth below:

"Affiliate" means with respect to any Person, each other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, "control" means the ability to elect or appoint, directly or indirectly, a majority of the board of directors or other governing body of the relevant Person.

"Approval Date" means (i) if there are Required Regulatory Approvals set forth on a Party's signature page to this Agreement, the earliest of the date on which a Party has obtained all such Required Regulatory Approvals and the date on which a Party determines that it is no longer required to obtain any such Required Regulatory Approvals, or (ii) if there are no Required Regulatory Approvals set forth on a Party's signature page to this Agreement, the date on which such Party has executed and delivered this Agreement.

"Business Day" means any day other than Saturday, Sunday and any day which is a day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

"Call Notice" has the meaning set forth in Section 4.1.

"Call Right" has the meaning set forth in Section 4.1.

"Commit" or "Committed" or "Committing" means that a Participating Utility unconditionally commits, or has committed, subject to the terms of this Agreement, all or a portion of a specifically designated Qualified Spare Transformer that is owned by such Participating Utility, or that such Participating Utility otherwise has rights to own or access, such that if a Call Right is properly exercised pursuant to the terms of Article IV hereof, the Participating Utility, together with all other Persons that also own or have access to such Qualified Spare Transformer, is obligated to sell, or cause to be sold, such Qualified Spare Transformer pursuant to this Agreement.

"Commitment Formula" means the formula described below for calculating the MVA required to be Committed by Participating Utilities in respect of a particular Equipment Class:

In calculating the MVA required to be Committed by Participating Utilities in respect of a particular Equipment Class, each Participating Utility that is a member of such Equipment Class must provide the relevant Equipment Sub-

Committee with the following information: (i) the number of banks of spare transformers and the total MVA represented thereby ("Needed MVA") that such Participating Utility would need, in the event that it suffers an S-5 contingency in respect of such Equipment Class (i.e., it has lost five substations that utilize spare transformers in such Equipment Class), to restore its system to satisfy an N-0 Contingency, (ii) the total amount of such Participating Utility's connected MVA in such Equipment Class ("Connected MVA"), and (iii) the total number of qualified spare transformers, together with their MVA, that such Participating Utility then owns and is willing to share with others under this Agreement ("Available Spares"); provided, however, that such number of Available Spares shall in no way be deemed to limit a Participating Utility's Required Obligation in any way.

Based on the foregoing information, the relevant Equipment Sub-Committee will (i) sum the Needed MVA reported by all Participating Utilities in the subject Equipment Class (such sum, the "Aggregate Needed MVA"), (ii) sum the Connected MVA reported by all Participating Utilities in such Equipment Class (such sum, the "Aggregate Connected MVA"), and (iii) determine the "MVA Factor," which shall mean the sum of the Needed MVA reported by the Participating Utility reporting the largest Needed MVA in such Equipment Class and the amount of MVA represented by the Available Spares reported by such Participating Utility.

Then, the relevant Equipment Sub-Committee shall determine the Required Obligation for each Participating Utility in respect of such Equipment Class by calculating, with respect to each Participating Utility, the average of (i) the MVA Factor multiplied by the ratio of such Participating Utility's Needed MVA to the Aggregate Needed MVA, and (ii) the MVA Factor multiplied by the ratio of such Participating Utility's Connected MVA to the Aggregate Connected MVA. The resulting average for each Participating Utility shall be the MVA required to be Committed by it for that Equipment Class.

For illustrative purposes only, Exhibit B includes an example of the application of the foregoing Commitment Formula to determine the Required Obligation for hypothetical Participating Utilities in a hypothetical Equipment Class.

"Effective Date" has the meaning set forth in Section 2.1.

"Equipment Class" means one of the classes of spare transformers identified on Exhibit A to this Agreement, provided, however, that the Equipment Committee may revise such Exhibit A, from time to time, to add additional classes of spare transformers thereto, with any such revisions to become automatically effective for all purposes hereunder upon the affirmative action of the Equipment Committee.

"Equipment Committee" means the Equipment Committee contemplated by Article V.

"Equipment Sub-Committee(s)" means the Equipment Sub-Committee(s) contemplated by Article V.

"Estimated Purchase Price" means the Seller's good faith estimate of the Purchase Price, as contemplated by Section 4.7.

"Executive Committee" means the Executive Committee contemplated by Article VI.

"Force Majeure" means an event or circumstance that prevents a Participating Utility from performing its obligations under this Agreement, that is not within the reasonable control of, or the result of the negligence of, such Participating Utility, and that, by the exercise of due diligence, such Participating Utility is unable to overcome or avoid or cause to be avoided.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Participating Utility operates.

"Initial Fee" has the meaning set forth in Section 2.1.

"Initial Measurement Date" means June 30, 2008.

"Liens" means any mortgages, pledges, liens, claims, charges, security interests, conditional and installment sale agreements, activity and use limitations, easements, covenants, encumbrances, obligations, limitations, title defects and any other restrictions of any kind, including restrictions on use, transfer or the exercise of any other attribute of ownership.

"Measurement Date" means the Initial Measurement Date and each anniversary of the Initial Measurement Date.

"MVA" means megavolt amperes.

"N-0 Contingency" means, for purposes of this Agreement, a state of the bulk transmission system such that the loss of any single element (N-1), at peak-load conditions, may be expected to result in instability and/or a system in which thermal rating and voltage limits may be exceeded, provided that any such result may reasonably be contained through emergency actions of the transmission operator.

"Net Book Value" means the net book value of a particular Qualified Spare Transformer determined in the ordinary course and consistent with the past practices of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, so long as such practices conform to U.S. generally accepted accounting principles, otherwise such net book value shall be determined in accordance with U.S. generally accepted accounting principles.

"Objection" has the meaning set forth in Section 4.3.

"Participating Utility" has the meaning set forth in Section 2.1.

"Permitted Disposition" means (i) the sale of a Qualified Spare Transformer pursuant to the terms of this Agreement, (ii) the placement in service or similar disposition of a Qualified Spare Transformer not already in service by a Participating Utility for its own use in accordance with Good Utility Practice, (iii) the replacement of a Qualified Spare Transformer, due to its age, obsolescence, damage or any similar reason, in the ordinary course of business consistent with Good Utility Practice, with another Qualified Spare Transformer, (iv) the disposition of a Qualified Spare Transformer pursuant to any rule, regulation or order issued by any governmental authority requiring such disposition that is applicable to such Qualified Spare Transformer and/or the Participating Utility that Committed it hereunder, (v) the disposition of a Qualified Spare Transformer to another utility that has suffered a casualty or loss of one of its transformers pursuant to any voluntary sharing arrangement or similar arrangement or program, including any informal arrangements, in which the Participating Utility that Committed such Qualified Spare Transformer is participating, and (vi) the loss of a Qualified Spare Transformer in connection with a Triggering Event or other casualty.

"Permitted Liens" means (i) statutory Liens for current taxes, assessments or governmental charges not yet due or delinquent or the validity or amount of which is being contested in good faith by appropriate proceedings, (ii) mechanics', carriers', workers', repairers', landlords' and other similar Liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of the Participating Utility or the validity or amount of which is being contested in good faith by appropriate proceedings, (iii) pledges, deposits or other Liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), (iv) Liens arising or incurred in connection with the purchase of the subject Qualified Spare Transformer as to which there is no default on the part of the Participating Utility, (v) Liens arising or incurred in connection with any first mortgage or similar general financing instrument of the Participating Utility as to which there is no default on the part of the Participating Utility, (vi) rights reserved to or vested in a governmental entity or obligations or Liens set forth in any federal, state, local or municipal franchise, grant or license, governing ordinance or any provision of law under which any portion of the Participating Utility's business is conducted or requested, (vii) rights of condemnation, eminent domain or similar rights, and (viii) Liens created by the obligations imposed on the Participating Utility pursuant to this Agreement.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or governmental entity or any department or agency thereof.

"Project Manager" has the meaning set forth in Section 6.10.

"Purchase Price" means the sum of (x) at the Seller's sole option, either the Replacement Cost for the subject Qualified Spare Transformer or the Net Book Value of the subject Qualified Spare Transformer, plus (y) an amount equal to the sum of (i) any "load-out" costs, including any costs of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, to remove such transformer from its pad, test such transformer and empty it of oil, (ii) any freight and other transportation costs of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, associated with delivering such transformer to the Buyer, and (iii) the tax liability, if any, of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, attributable to the sale of the subject Qualified Spare Transformer at the Replacement Cost or Net Book Value, as the case may be.

"Qualified Participating Utility" means any Participating Utility that (i) on the most recent Measurement Date, had Committed a number of Qualified Spare Transformers that is at least equal to its Required Obligation as contemplated by Section 3.1 hereof in respect of each Equipment Class that such Participating Utility is then a member of, (ii) on the date on which the determination is made as to whether such Participating Utility is a Qualified Participating Utility, (x) has Committed all Qualified Spare Transformers required to be then Committed by it pursuant to Section 3.1 hereof in respect of each Equipment Class that such Participating Utility is then a member of, and (y) if applicable pursuant to Section 3.2 hereof, is, in good faith, using its commercially reasonable efforts to take or cause to be taken all actions necessary to permit such Participating Utility to Commit a number of Qualified Spare Transformers that is at least equal to its Required Obligation calculated for the next succeeding Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of as soon as practicable but in no event later than the next succeeding Measurement Date, and (iii) is not then in breach of any of its other obligations under this Agreement.

"Qualified Spare Transformer" means an electrical transformer that satisfies those minimum standards set forth on Exhibit A to this Agreement opposite the Equipment Class of such transformer, with such minimum standards to be reviewed and, as necessary, revised, from time to time, by the relevant Equipment Sub-Committee, with any such revisions to become automatically effective for all purposes hereunder upon the affirmative action of such Equipment Sub-Committee. The number of Qualified Spare Transformers that any Participating Utility shall be deemed to have Committed hereunder shall be determined in accordance with Section 3.7.

"Related Parties" has the meaning set forth in Section 9.4.

"Replacement Cost" means all reasonable costs or expenses incurred by a Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, to replace a particular Qualified Spare Transformer with another transformer of like specifications, which reasonable costs or expenses shall be deemed to include those costs and/or expenses that are appropriate and not excessive under the circumstances prevailing at the time the cost or expense is paid or incurred and may include, but are not limited to, the purchase price for such transformer, transportation costs associated with the delivery of such transformer, and other direct acquisition costs incurred by the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer; provided, however, that in the event that a Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, in connection with or following the sale of a Qualified Spare Transformer pursuant to the terms of Article IV, elects to replace such Qualified Spare Transformer with another Qualified Spare Transformer owned by such Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, or any of their respective Affiliates, or otherwise elects not to purchase a replacement transformer, the Replacement Cost shall be deemed to be, for all purposes hereunder, the Net Book Value of the Qualified Spare Transformer so sold.

"Replacement Date" means, upon any disposition of a Qualified Spare Transformer Committed hereunder, the date that is eighteen calendar months following the date of such disposition. For purposes of this definition, the phrase "date of such disposition" shall refer to the date on which title to the subject transformer is transferred, the date on which the subject transformer is replaced, the date of loss of the subject transformer, or the date on which any other disposition of the subject transformer occurs, as the case may be.

"Replacement Spare Transformer" has the meaning set forth in Section 3.3.

"Representative" means an individual appointed by a Participating Utility pursuant to Section 5.1 or Section 5.2 hereof to (i) serve as its Representative to the Equipment Committee and (ii) receive, on such Participating Utility's behalf, all information to be delivered to any Participating Utility pursuant to this Agreement, provided that any such Representative shall be required by the Participating Utility that he or she represents to observe the confidentiality provisions set forth in Article XI hereof with respect to such information. Each Representative shall also serve on those Equipment Sub-Committees corresponding to the Equipment Classes that the Participating Utility that he or she represents has joined as a member hereunder.

"Required Obligation" means, for each Participating Utility, and in respect of each Equipment Class that such Participating Utility is then a member of, that number of Qualified Spare Transformers representing the MVA required to be Committed by such Participating Utility as calculated for each Measurement Date by the relevant Equipment Sub-Committee pursuant to the Commitment Formula, with Exhibit B to this Agreement to be revised, from time to time, by the relevant Equipment Sub-Committee to reflect each such Participating Utility's Required Obligation for the Initial Measurement Date and the Required Obligation calculated for each succeeding Measurement Date, with any



such revisions to become automatically effective for all purposes hereunder upon the affirmative action of such Equipment Sub-Committee. Notwithstanding any provision of this Agreement to the contrary, a Participating Utility's Required Obligation in respect of a particular Equipment Class shall be zero until such time as such Equipment Class first has three or more members inclusive of such Participating Utility.

"Required Regulatory Approvals" means, with respect to a particular Party, those governmental or other approvals or waivers, and notices to any governmental authorities or other Persons, including any federal notices and approvals, that are (i) required to authorize, or are required in connection with, the performance of this Agreement by such Party, including its performance of the obligations of a Participating Utility hereunder, and (ii) set forth on such Party's signature page to this Agreement.

"Triggering Event" means an act or coordinated acts of deliberate, documented terrorism, as defined in the Homeland Security Act of 2002, 6 U.S.C. §101(15), as the same may be amended from time to time, resulting in (1) the destruction or long-term disabling of one or more electric transmission substations, and (2) the declaration of a state of emergency by the President of the United States pursuant to the National Emergencies Act, 50 U.S.C. §1601 et seq., as the same may be amended from time to time.

## ARTICLE II

### PARTICIPATING UTILITIES

Section 2.1 Binding Obligation. A Party is bound by this Agreement upon its execution and delivery of this Agreement, which shall be evidenced by such Party's execution and delivery of a signature page to this Agreement. An executed signature page to this Agreement shall be deemed to be delivered for all purposes hereunder if it is delivered to the Equipment Committee or, if the Equipment Committee has not yet held its first meeting, to the Project Manager. Contemporaneously with its execution and delivery of its signature page to this Agreement, each Party shall pay the sum of \$10,000 (the "Initial Fee") to an account established by the Executive Committee to be used for the administration of this Agreement, provided, that until the Executive Committee establishes any such account, the Initial Fee shall be paid to the Project Manager, which Person shall hold such funds on behalf of the Executive Committee to be deposited into such account as soon as it is established by the Executive Committee. A Party shall become a "Participating Utility" for all purposes hereunder (a "Participating Utility"), immediately and without any further action, upon the later of (i) its Approval Date, and (ii) the date on which at least one of the Equipment Classes that it joins as a member, as contemplated by Section 2.2, first has three or more members inclusive of such Party (the latest of such dates, such Party's "Effective Date"). For the avoidance of doubt, and notwithstanding any other provision of this Agreement to the contrary, except for those obligations and rights contemplated by Articles II, VII, VIII, X, XI and XII hereof, until a Party becomes a Participating Utility hereunder it shall owe no obligation hereunder and shall not be entitled to exercise any rights (including any Call Right) or remedies hereunder.

Section 2.2 Equipment Classes. Upon its relevant Approval Date, each Party shall provide a written notice to the Equipment Committee and any relevant Equipment Sub-Committee, or if the Equipment Committee has not yet held its first meeting to the Project Manager, that identifies the Equipment Class, or Equipment Classes, such Party is then joining as a member under this Agreement, following which designation, such Party shall be a member of such Equipment Class until it withdraws from such Equipment Class in strict compliance with Section 10.1 hereof. A Party may join as a member of any other Equipment Class at any time by providing written notice of its decision to become a member of any such other Equipment Class to the Equipment Committee and the relevant Equipment Sub-Committee, or if the Equipment Committee has not yet held its first meeting to the Project Manager, but in no event may a Party withdraw as a member of any Equipment Class, except in strict compliance with Section 10.1 hereof.

Section 2.3 Required Regulatory Approvals. Upon its execution and delivery of this Agreement, each Party shall set forth on its signature page to this Agreement all of its Required Regulatory Approvals. Each Party, from and after the date of its execution and delivery of this Agreement, shall promptly prepare and file all necessary applications, notices, petitions, filings and other documents, and to use all commercially reasonable efforts, to obtain all Required Regulatory Approvals; provided, however, that the sole remedy for any failure by a Party to use such efforts shall be as set forth in the last sentence of this Section 2.3. If there are Required Regulatory Approvals set forth on a Party's signature page to this Agreement, then no later than the third Business Day following such Party's relevant Approval Date, such Party shall deliver a written notice to the Equipment Committee, or if the Equipment Committee has not yet held its first meeting to the Project Manager, to the effect that it has obtained all such Required Regulatory Approvals or that it is no longer required to obtain such Required Regulatory Approvals. If the relevant Effective Date for a Party has not occurred on or before the date that is the eighteen month anniversary of the date on which such Party has executed and delivered this Agreement, this Agreement shall be null and void and of no further force or effect with respect to such Party.

## ARTICLE III

BASIC OBLIGATIONS

Section 3.1 Obligation to Commit. On each Measurement Date, each Participating Utility shall have Committed a number of Qualified Spare Transformers that is at least equal to its Required Obligation in respect of each Equipment Class that such Participating Utility is then a member of and, following such Measurement Date, such Participating Utility shall continue to Commit such number of Qualified Spare Transformers through the next succeeding Measurement Date; provided, however, that prior to the first Measurement Date following the date on which a Party becomes a Participating Utility, such Participating Utility shall be deemed to be in compliance with its obligations set forth in this sentence so long as, in the event that it then owns or otherwise has rights to own or access one or more Qualified Spare Transformers, it Commits at least one of such Qualified Spare Transformers up to its Required Obligation calculated for such Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of. On or following any Permitted Disposition by a Participating Utility, so long as such Participating Utility is in compliance with its obligations set forth in Section 3.3 hereof, such Participating Utility shall be deemed to have Committed the Replacement Spare Transformer (as defined below) as a Qualified Spare Transformer for purposes of satisfying its obligations set forth in this Section 3.1, whether or not such Participating Utility yet owns or otherwise has rights to own or access such Replacement Spare Transformer, with such Replacement Spare Transformer becoming a Qualified Spare Transformer that is Committed hereunder upon such Participating Utility's acquisition of ownership, or rights to own or access, such Replacement Spare Transformer. Upon request by the relevant Equipment Sub-Committee, each Participating Utility shall present such Equipment Sub-Committee with evidence reasonably satisfactory to such Equipment Sub-Committee of such Participating Utility's compliance with its obligations set forth in this Section 3.1.

Section 3.2 Obligation to Acquire. If, at any time prior to the next succeeding Measurement Date, a Participating Utility has not yet Committed a number of Qualified Spare Transformers that is at least equal to its Required Obligation calculated for such next succeeding Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of, such Participating Utility shall, in good faith, use its commercially reasonable efforts to take or cause to be taken all actions necessary for such Participating Utility to Commit a number of Qualified Spare Transformers that is at least equal to its Required Obligation calculated for such next succeeding Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of as soon as practicable but in no event later than such next succeeding Measurement Date, except in the case of any Qualified Spare Transformer that is Committed hereunder and is then disposed of in a Permitted Disposition, in which case, such Participating Utility shall comply with its obligations set forth in Section 3.3 in respect of a Replacement Spare Transformer. For the avoidance of doubt, such commercially reasonable efforts shall include, without limitation, executing such purchase orders and other contracts, making any necessary payments under such purchase

orders or other contracts, and taking all other reasonable action that is consistent with procuring a Qualified Spare Transformer or rights to own or access a Qualified Spare Transformer. Upon request by the relevant Equipment Sub-Committee, each Participating Utility shall present such Equipment Sub-Committee with evidence reasonably satisfactory to such Equipment Sub-Committee of such Participating Utility's compliance with its obligations set forth in this Section 3.2.

Section 3.3 Obligation to Replace. If, at any time, a Participating Utility disposes of a Qualified Spare Transformer that such Participating Utility had Committed pursuant to the terms of this Agreement in a Permitted Disposition, or any such Qualified Spare Transformer is otherwise disposed of, in each case such that the disposition causes the number of Qualified Spare Transformers Committed by such Participating Utility to be less than its current Required Obligation, then such Participating Utility shall, in good faith, use its commercially reasonable efforts to take or cause to be taken all actions necessary for such Participating Utility to Commit, in the same Equipment Class, another Qualified Spare Transformer that such Participating Utility owns or has rights to own or access (a "Replacement Spare Transformer") in place of the one so disposed of as soon as practicable but in no event later than the Replacement Date. For the avoidance of doubt, such commercially reasonable efforts shall include, without limitation, executing such purchase orders and other contracts, making any necessary payments under such purchase orders or other contracts, and taking all other reasonable action that is consistent with procuring a Qualified Spare Transformer or rights to own or access a Qualified Spare Transformer. Upon request by the relevant Equipment Sub-Committee, each Participating Utility shall present such Equipment Sub-Committee with evidence reasonably satisfactory to such Equipment Sub-Committee of such Participating Utility's compliance with its obligations set forth in this Section 3.3.

Section 3.4 Obligation to Report. In respect of each Equipment Class that a Participating Utility is a member of, upon becoming a member of such Equipment Class, and from time to time thereafter as requested by the relevant Equipment Sub-Committee, such Participating Utility shall provide the relevant Equipment Sub-Committee with complete and accurate information necessary for such Equipment Sub-Committee to calculate Required Obligations. Exhibit C to this Agreement shall list in respect of each Participating Utility, opposite the name of such Participating Utility, all Qualified Spare Transformers, by Equipment Class, then Committed by such Participating Utility, together with such additional information regarding each such Qualified Spare Transformers as may be required, from time to time, by the Equipment Committee, with any revisions to the information required to be set forth on Exhibit C to become automatically effective for all purposes hereunder upon the affirmative action of the Equipment Committee. In Committing any Qualified Spare Transformers pursuant to the terms of this Agreement, each Participating Utility shall contemporaneously provide the Equipment Sub-Committee(s) for the Equipment Class(es) of the Qualified Spare Transformer(s) so Committed with the information contemplated by this Section 3.4, with Exhibit C to this Agreement to be updated as necessary to reflect the same. In addition, in Committing a Qualified Spare Transformer hereunder, a Participating Utility shall provide the relevant Equipment Sub-Committee with the identity of each and every

other Person that has rights to own or access such Qualified Spare Transformer, together with a description of the nature of any such rights. Each Participating Utility shall promptly, but in no event later than ten (10) Business Days following any loss, disposition or acquisition of a Qualified Spare Transformer Committed or to be Committed hereunder, deliver a written notice to the relevant Equipment Sub-Committee of any loss or disposition of a Qualified Spare Transformer Committed by such Participating Utility or any acquisition of a Qualified Spare Transformer to be Committed by such Participating Utility, together with any other information required by this Section 3.4. Each Equipment Sub-Committee shall cause Exhibit C to this Agreement to be updated on a regular basis to reflect any loss, disposition or acquisition so noticed, as well as the most current information in respect of Qualified Spare Transformers that are Committed hereunder, as contemplated by this Section 3.4, with any such revisions to become automatically effective for all purposes hereunder upon the affirmative action of such Equipment Sub-Committee and a revised copy of Exhibit C to be provided to each Participating Utility's Representative. For the avoidance of doubt, consistent with the confidentiality provisions set forth in Article XI hereof, Exhibit C shall not be made publicly available, but shall be provided only to each Participating Utility's Representative and such other Persons permitted by Section 11.1 hereof.

Section 3.5 Obligation to Maintain. Each Participating Utility shall, in respect of each Qualified Spare Transformer that it Commits hereunder, (i) store and maintain, or cause to be stored and maintained, such Qualified Spare Transformer in accordance with Good Utility Practice and with such care and in such a manner that is at least as favorable as that practiced by such Participating Utility in respect of its other assets, (ii) maintain, or cause to be maintained, such Qualified Spare Transformer with such care and in such a manner that (x) the Participating Utility is able to count it as a spare transformer on its system, (y) it is a complete transformer comprised of all of its standard parts and components, and (z) it is capable of being operated on the Participating Utility's system, (iii) maintain and store, or cause to be maintained and stored, such Qualified Spare Transformer such that it can be shipped to a Buyer as soon as practicable following its receipt of a Call Notice but in no event later than ten (10) calendar days' following its receipt of any such Call Notice, (iv) not subject such Qualified Spare Transformer to, or permit such Qualified Spare Transformer to be subject to, any Lien other than Permitted Liens, and (v) not dispose of such Qualified Spare Transformer except in a Permitted Disposition.

Section 3.6 Obligation to Certify Compliance. On or before June 30 of each calendar year, each Participating Utility shall deliver to the Equipment Committee a certificate executed on behalf of such Participating Utility by a duly authorized executive officer thereof certifying that such Participating Utility is in compliance with its obligations set forth in Article III of this Agreement.

Section 3.7 Determining Number of Qualified Spare Transformers Committed. For purposes of determining the number of Qualified Spare Transformers (and the MVA represented thereby) that a Participating Utility shall be deemed to have Committed hereunder, the following rules shall apply: (i) if a Participating Utility owns 100% of a Qualified Spare Transformer and no other Person has rights to own or access

such Qualified Spare Transformer, such Participating Utility must Commit its entire interest in such Qualified Spare Transformer in order for such Qualified Spare Transformer (and the MVA represented thereby) to be counted hereunder and such Qualified Spare Transformer (and the MVA represented thereby) shall be multiplied by a factor of 1.0, (ii) if a Participating Utility owns a percentage less than 100% of a Qualified Spare Transformer (or owns 100% of a Qualified Spare Transformer but has granted any other Person rights to own or access such Qualified Spare Transformer), or otherwise has rights to own or access less than 100% of such Qualified Spare Transformer, each Person that owns, or has rights to own or access, a percentage of such Qualified Spare Transformer must also be a Participating Utility that Commits its interest in or rights to such Qualified Spare Transformer in order for such Qualified Spare Transformer (and the MVA represented thereby) to be counted hereunder and, with respect to each such Participating Utility, such Qualified Spare Transformer (and the MVA represented thereby) shall be multiplied by a factor the numerator of which is the percentage of such Participating Utility's ownership or rights to own or access such Qualified Spare Transformer (or, if such Participating Utility owns 100% of such Qualified Spare Transformer but has granted any other Person rights to own or access such Qualified Spare Transformer, 100 minus the aggregate percentage of such rights granted to all such Persons) and the denominator of which is 100, (iii) if a Participating Utility owns or has rights to own or access a Qualified Spare Transformer as a tenant in common or pursuant to any contract, instrument, agency relationship or other arrangement with one or more other Persons, each such Person must also be a Participating Utility that Commits (or in the case of ownership or other rights as a tenant in common or similar nature, each such Person must have executed an instrument satisfactory to the relevant Equipment Sub-Committee pursuant to which such Person, without being granted any rights whatsoever under this Agreement, including Call Rights, grants such Participating Utility the legal right to Commit) its interest in or rights to such Qualified Spare Transformer in order for such Qualified Spare Transformer (and the MVA represented thereby) to be counted hereunder and, with respect to each such Participating Utility, such Qualified Spare Transformer (and the MVA represented thereby) shall be multiplied by a factor the numerator of which is 1 and the denominator of which is that number of Persons (including such Participating Utility) that owns or has rights to own or access such Qualified Spare Transformer as a tenant in common or pursuant to such contract, instrument, agency relationship or other arrangement. A Qualified Spare Transformer that is then in service on a particular Participating Utility's system may be Committed and counted hereunder as a Qualified Spare Transformer, as contemplated by this Section 3.7; however, it is anticipated that any Participating Utility that Commits a Qualified Spare Transformer that is then in service on its system will do so with due regard to all applicable reliability standards of the electric reliability organization and such Participating Utility's respective regional entity.

## ARTICLE IV

CALL RIGHTS

Section 4.1 Exercise of Call Right. In the event that a Participating Utility is a Qualified Participating Utility and suffers the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice), (i) such Participating Utility shall first take all actions necessary to use any and all spare transformers that it may own or otherwise have rights to own or access in the Equipment Class with respect to which the destruction or long-term disabling occurred in an effort to remedy such destruction or long-term disabling to the extent necessary to satisfy an N-0 Contingency, and (ii) if, following such actions, such Participating Utility has not been able to remedy such destruction or long-term disabling to the extent necessary to satisfy an N-0 Contingency, such Participating Utility (the "Buyer") shall have the right, subject to the terms of this Article IV, and only to the extent necessary to provide such Participating Utility with a sufficient number of transformers in service on its system to satisfy an N-0 Contingency, to purchase, in its sole discretion, any Qualified Spare Transformer that all or a portion of which is Committed hereunder in an Equipment Class that the Buyer has joined as a member and with respect to which such destruction or long-term disabling occurred in consideration for the applicable Purchase Price (the "Call Right"), by delivering a written notice (the "Call Notice") to any Participating Utility that has Committed such Qualified Spare Transformer hereunder (the "Seller") certifying that it (x) is a Qualified Participating Utility, (y) has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) and (z) has complied with its obligations set forth in clause (i) of this Section 4.1 and nevertheless is unable to satisfy an N-0 Contingency (collectively, the "Prerequisites") and identifying the Qualified Spare Transformer with respect to which the Call Right is being exercised.

Section 4.2 Execution of Call Right. Upon receipt of a Call Notice, the Seller shall, unless it asserts in good faith an Objection (as defined below), sell, or cause to be sold, the Qualified Spare Transformer that is the subject of the Call Notice to the Buyer free and clear of all Liens, other than Permitted Liens, in consideration for the applicable Purchase Price, with such sale to be consummated on the following terms: (i) no later than three (3) calendar days following its receipt of a Call Notice, the Seller shall deliver a written notice to the Buyer setting forth the Estimated Purchase Price, (ii) the Buyer shall deliver the Estimated Purchase Price to the Seller, or such other Person as the Seller may designate, by wire transfer in immediately available funds to an account or accounts designated by the Seller or, if acceptable to the Seller, in its sole discretion, by delivering a promissory note, in form and substance satisfactory to the Seller, made payable to the Seller, or such other Person as the Seller may designate, in the principal amount of the Estimated Purchase Price or by such other means as are mutually acceptable to the Buyer and the Seller, (iii) the Buyer shall purchase the Qualified Spare Transformer subject to the disclaimers set forth in Section 4.6, and the Buyer and the Seller shall provide those indemnities in respect of the purchase of such Qualified Spare

Transformer that are contemplated by Section 9.5, (iv) unless the Buyer and the Seller agree otherwise, the Buyer shall purchase the Qualified Spare Transformer, and title thereto shall transfer, at the location at which the Seller is then maintaining, or causing to be maintained, such Qualified Spare Transformer, with the Buyer responsible for any and all transportation costs, and the Buyer to bear the risk of loss, from such point of sale, (v) the Buyer and the Seller shall execute and deliver, or cause to be executed and delivered, such documents or instruments as either the Buyer or the Seller shall reasonably request in connection with evidencing the sale of the subject Qualified Spare Transformer to the Buyer or the vesting of title thereto in the Buyer, (vi) upon and following the consummation of any such sale, the Seller shall use all commercially reasonable efforts to cancel, satisfy or otherwise remove, or cause to be cancelled, satisfied or otherwise removed, any and all Liens to which the Qualified Spare Transformer may be subject at the time of sale to the Buyer or otherwise as a result of any acts or omissions of the Seller or any other Person having rights to own or access such Qualified Spare Transformer, and (vii) following the consummation of any such sale, the Buyer and the Seller shall determine and make, or cause to be made, any payments in respect of the Purchase Price that are required pursuant to Section 4.7.

Section 4.3 Objection to Call Right. In the event that, upon receipt of a Call Notice, the Seller has a good faith basis to assert that (i) the Prerequisites have not been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, or (iii) it would be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice because the Seller has received more than one Call Notice for the same Qualified Spare Transformer or the Seller has received multiple Call Notices in respect of the same Triggering Event while other Participating Utilities in the same Equipment Class have not received any Call Notices in respect of such Triggering Event, the Seller may make any such assertion by delivering to the Buyer and the Executive Committee, no later than one (1) calendar day following the Seller's receipt of a Call Notice, a written notice making such an assertion (an "Objection"), upon receipt of which the Buyer may refer the matter immediately to the Executive Committee, in which case the Executive Committee shall promptly convene to determine whether or not (i) the Prerequisites have been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, or (iii) it would be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice. In the event the Executive Committee determines that (i) the Prerequisites have been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, has not suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer,



and/or (iii) it would not be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice, as applicable, the Seller shall proceed to consummate, or caused to be consummated, the sale of the Qualified Spare Transformer indicated in the Call Notice pursuant to the terms of Section 4.2. In the event the Executive Committee determines that (i) the Prerequisites have not been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, and/or (iii) it would be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice, as applicable, the Seller shall be under no obligation to consummate, or cause to be consummated, the sale of the Qualified Spare Transformer indicated in the Call Notice, but the Buyer shall be free to deliver another Call Notice to any Participating Utility, including the Seller, at such time, and in such event, as the Buyer in good faith believes that the Prerequisites have been satisfied and that the Participating Utility to which such Call Notice is to be delivered has no good faith basis to assert an Objection.

Section 4.4 Disputes Concerning Call Rights. In the event of any dispute between the Buyer and the Seller concerning any Call Notice, the satisfaction of the Prerequisites, any Objection, the refusal, for any reason, by the Buyer or the Seller to consummate, or cause to be consummated, a sale pursuant to the terms of this Agreement, or any other matter relating to the consummation of a sale pursuant to the terms of this Agreement shall first be referred to the Executive Committee, by written notice delivered by the Buyer or the Seller, for resolution prior to either the Buyer or the Seller pursuing any remedies set forth in Article IX. In the event the Executive Committee fails to propose a resolution to the matter within three (3) Business Days of such matter being referred to it, or in the event the Buyer or the Seller disagree with the Executive Committee's proposed resolution of the matter, the Buyer and the Seller shall be free to exercise any and all available remedies as contemplated by Article IX.

Section 4.5 Qualified Spare Transformers with Multiple Owners. Each Participating Utility that owns, or has rights to own or access, together with one or more other Participating Utilities, any portion of a particular Qualified Spare Transformer that is Committed hereunder hereby appoints each other Participating Utility that owns, or has rights to own or access, any portion of such Qualified Spare Transformer as its true and lawful agent and attorney-in-fact for purposes of consummating, or causing to be consummated, the sale of such Qualified Spare Transformer in strict compliance with this Article IV such that if any Participating Utility that owns or has rights to own or access any portion of such Qualified Spare Transformer receives a Call Notice in respect of such Qualified Spare Transformer it shall have sufficient authority, rights and powers to consummate, or cause to be consummated, the sale of such Qualified Spare Transformer as a Seller hereunder, without any further action required by any other Participating Utility that owns or has rights to own or access such Qualified Spare Transformer, with each such Participating Utility declaring that the foregoing powers are coupled with an interest and are irrevocable.

Section 4.6 Certain Disclaimers. For the avoidance of doubt, each Participating Utility acknowledges and agrees that any Qualified Spare Transformer purchased pursuant to the terms of this Agreement is, and shall be, sold subject to the following disclaimers:

EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES OF THE SELLER SET FORTH IN ARTICLE VIII and EXCEPT FOR THOSE COVENANTS OF THE SELLER SET FORTH IN SECTION 4.2 AND SECTION 9.5 OF THIS AGREEMENT, SUCH QUALIFIED SPARE TRANSFORMER IS SOLD "AS IS, WHERE IS" AND THE SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITY OF SUCH QUALIFIED SPARE TRANSFORMER, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

Section 4.7 Determination of Purchase Price. No later than six (6) calendar months following any sale consummated pursuant to the terms of this Agreement, the Seller shall deliver to the Buyer a written notice prepared in good faith and setting forth the Seller's calculation of the Purchase Price, together with written documentation of the Seller's actual costs and expenses incurred in respect of any costs or expenses included in the Purchase Price and of the Seller's tax liability, if any, attributable to the sale of the subject Qualified Spare Transformer at the Replacement Cost or the Net Book Value, as the case may be. If the Buyer in good faith objects to the Seller's calculation of the Purchase Price, it may object to such calculation by delivering a written notice to the relevant Equipment Sub-Committee and the Seller requesting that such Equipment Sub-Committee review the Seller's calculation of the Purchase Price. For the avoidance of doubt, any dispute concerning the Purchase Price shall first be so referred to the relevant Equipment Sub-Committee prior to either the Buyer or the Seller pursuing any remedies set forth in Article IX. Upon receipt of any such notice, the relevant Equipment Sub-Committee shall promptly convene to determine the Purchase Price of the subject Qualified Spare Transformer. In connection with the foregoing, each of the Buyer and the Seller shall fully cooperate with any such review by such Equipment Sub-Committee, including by providing such books and records, and such other information available to it, as is necessary for such Equipment Sub-Committee to conduct such review. In the event that such Equipment Sub-Committee fails to determine the Purchase Price within twenty (20) Business Days of such matter being referred to it, or in the event the Buyer or the Seller disagree with such Equipment Sub-Committee's determination of the Purchase Price, the Buyer and the Seller shall be free to exercise any and all available remedies as contemplated by Article IX. In the event that the Buyer and the Seller agree on the amount of the Purchase Price, the Buyer and the Seller agree with the relevant Equipment Sub-Committee's determination of the Purchase Price or the Purchase Price is finally determined by a court of competent jurisdiction, (i) if the Purchase Price exceeds the Estimated Purchase Price actually paid, the Buyer shall within

ten (10) Business Days of such agreement or determination pay to the Seller the amount by which the Purchase Price exceeds the Estimated Purchase Price, and (ii) if the Estimated Purchase Price actually paid exceeds the Purchase Price, the Seller shall within ten (10) Business Days of such agreement or determination refund to the Buyer the amount by which the Estimated Purchase Price exceeds the Purchase Price.

## ARTICLE V

### EQUIPMENT COMMITTEE

Section 5.1 Composition of Equipment Committee. Each Participating Utility shall be entitled to appoint one individual who qualifies as a Representative hereunder to serve as its Representative on the Equipment Committee and on those Equipment Sub-Committees corresponding to the Equipment Classes that such Participating Utility has joined as a member hereunder. In order for an individual to qualify as a Representative hereunder, he or she must (i) have engineering and utility operation experience, (ii) be authorized by the Participating Utility that it represents to bind such Participating Utility in any matters to be acted upon by the Equipment Committee or any Equipment Sub-Committee hereunder, and (iii) be required by such Participating Utility to observe the confidentiality provisions set forth in Article XI hereof. No later than three (3) Business Days following its relevant Effective Date, each Participating Utility shall name its initial Representative, and provide the contact information required by this Agreement for such Representative, by delivering to the Equipment Committee, or if the Equipment Committee has not yet held its first meeting, the Project Manager, a notice setting forth such name and such contact information. The chairperson of the Equipment Committee shall, from time to time, provide all Representatives to the Equipment Committee with an updated list of the names and contact information for all other Representatives to the Equipment Committee.

Section 5.2 Subsequent Representatives; Proxies. Each Participating Utility shall be entitled to remove and replace its Representative at any time, in its discretion, and to fill any vacancy in its Representative, in any case so long as (i) the Representative appointed as a replacement or to fill any vacancy is qualified as a Representative under Section 5.1 hereof and (ii) such Participating Utility provides notice to the Equipment Committee that the Representative so appointed is the current Representative of such Participating Utility. A Representative may execute one or more proxies for purposes of being represented and voting at any meeting of the Equipment Committee or any Equipment Sub-Committee so long as any such proxy is in writing, is signed by the Representative granting the proxy, and the proxy is granted in favor of an employee of the Participating Utility represented by the Representative who would otherwise meet the qualifications of a Representative under Section 5.1 hereunder. Notwithstanding the foregoing, any Representative removed by a Participating Utility, and any Person who is granted a proxy, through such proxy's duration and following its expiration or termination, shall continue to be required by the Participating Utility that he or she represents or represented to observe the confidentiality provisions set forth in

Article XI hereof, with such Participating Utility responsible for any failure by any such Person to comply with such provisions.

Section 5.3 Equipment Sub-Committees. The Equipment Committee shall be divided into a number of Equipment Sub-Committees corresponding to the Equipment Classes of Qualified Spare Transformers that have been Committed hereunder, with each Representative serving on those Equipment Sub-Committees that correspond to the Equipment Class or Equipment Classes of any Qualified Spare Transformers that the Participating Utility that he or she represents has Committed hereunder.

Section 5.4 Responsibilities. The Equipment Committee shall meet, from time to time, to consider and act upon the following matters: (i) elect its chairperson, (ii) elect Participating Utilities for the purpose of appointing members of the Executive Committee, as contemplated by Section 6.2 hereof, (iii) take such other action contemplated by this Agreement to be taken by the Equipment Committee. Each Equipment Sub-Committee shall meet, from time to time, to consider and act upon the following matters: (i) elect its chairperson, (ii) calculate Required Obligations as contemplated by this Agreement, and (iii) take such other action contemplated by this Agreement to be taken by such Equipment Sub-Committee. Each Equipment Sub-Committee shall, as soon as practicable following such time as its Equipment Class first has three or more members, calculate the Required Obligation for each of its members in respect of the Initial Measurement Date, and, as soon as practicable following the Initial Measurement Date and each Measurement Date thereafter, calculate the Required Obligation for each of its members in respect of the next succeeding Measurement Date. In addition, in the event that, following the calculation of any such Required Obligation, one or more additional Participating Utilities joins a particular Equipment Class, the relevant Equipment Sub-Committee may, upon the affirmative action of the members of such Equipment Class, recalculate the Required Obligation for each of its members for the next succeeding Measurement Date.

Section 5.5 Meetings. At its first meeting of each calendar year, the Equipment Committee and each Equipment Sub-Committee, respectively, shall meet to elect its respective chairperson and transact such other business as shall properly come before it under this Agreement. The chairpersons of the Equipment Committee and each Equipment Sub-Committee, as the case may be, shall call a meeting of the Equipment Committee and such Equipment Sub-Committee, respectively (i) within 45 days following the beginning of each calendar year, provided, however, that during calendar year 2006, the initial meeting of the Equipment Committee shall be called as soon as practicable following the date hereof, (ii) as necessary to perform the function of the Equipment Committee and such Equipment Sub-Committee, as the case may be, under this Agreement, (iii) at the request of twenty percent of the members of the Equipment Committee or the Equipment Sub-Committee, as the case may be, and (iv) as the chairperson, in his or her discretion, otherwise deems necessary.

Section 5.6 Notice of Meetings. The chairpersons of the Equipment Committee and each Equipment Sub-Committee shall deliver, or cause to be delivered, to

each Representative serving on the Equipment Committee and such Equipment Sub-Committee, respectively, a notice, delivered to such Representative's email address, containing the date, place, time of, and dial-in instructions for telephone conference participation in, any meeting of the Equipment Committee or such Equipment Sub-Committee, as the case may be, on or before two (2) Business Days prior to such meeting, or on such shorter notice as the chairperson deems necessary under the circumstances. Each Representative is responsible for providing the Equipment Committee with a current email address to use for notice purposes hereunder.

Section 5.7 Telephonic Meetings. The Equipment Committee and each Equipment Sub-Committee may meet in person or by telephone conference call, so long as each member of the Equipment Committee or Equipment Sub-Committee, as the case may be, is able to hear and speak to all other members in attendance at such meeting. Any meeting that is held in person shall also provide adequate means for Representatives to participate by telephone conference as well, as contemplated by the immediately preceding sentence.

Section 5.8 Quorum; Required Vote. A majority of the members of the Equipment Committee or any Equipment Sub-Committee shall constitute a quorum for the conduct of business at any meeting of the Equipment Committee or an Equipment Sub-Committee, respectively. A decision by a simple majority of the votes cast by members of the Equipment Committee or any Equipment Sub-Committee present and voting at any such meeting of the Equipment Committee or such Equipment Sub-Committee at which a quorum is present, respectively, shall constitute the action of the Equipment Committee or such Equipment Sub-Committee, as the case may be. A Representative may be represented and vote at any meeting by means of a proxy, as provided in Section 5.2. In acting upon any matter brought before the Equipment Committee, including the election of any Participating Utility by the Equipment Committee for purposes of appointing a member of the Executive Committee pursuant to Section 6.2 hereof, each Representative shall be entitled to cast a number of votes equal to the amount of MVA represented by the number of Qualified Spare Transformers then deemed to be Committed hereunder by the Participating Utility that such Representative represents, as determined in accordance with Section 3.7. In acting upon any matter brought before any Equipment Sub-Committee, each Representative shall be entitled to cast a number of votes equal to the amount of MVA represented by the number of Qualified Spare Transformers then deemed to be Committed hereunder in the relevant Equipment Class by the Participating Utility that such Representative represents, as determined in accordance with Section 3.7.

Section 5.9 Notices to Equipment Committee or Equipment Sub-Committee. All notices required to be given hereunder to the Equipment Committee or any Equipment Sub-Committee shall be given to the Project Manager until the Equipment Committee or Equipment Sub-Committee, as the case may be, holds its first meeting and elects its first chairperson, and thereafter shall be given to the current chairperson of the Equipment Committee or Equipment Sub-Committee, as the case may be, at such email address as such chairperson may provide upon his or her election and from time to time thereafter.

Section 5.10 Disputes. Any dispute involving any decision of the Equipment Committee or any Equipment Sub-Committee shall first be referred to the Executive Committee, by written notice delivered to the Executive Committee by any affected Participating Utility, for resolution prior to any such Participating Utility pursuing any remedies set forth in Article IX. In the event the Executive Committee fails to propose a resolution to the matter within ten (10) Business Days of such matter being referred to it, or in the event any affected Participating Utility disagrees with the Executive Committee's proposed resolution of the matter, any such affected Participating Utility shall be free to exercise any and all available remedies as contemplated by Article IX.

## ARTICLE VI

### EXECUTIVE COMMITTEE

Section 6.1 Composition of Executive Committee. The Executive Committee shall be comprised of eleven (11) members appointed by those eleven (11) Participating Utilities elected by the Equipment Committee for the purpose of appointing a member of the Executive Committee pursuant to Section 6.2 hereof; provided, however, that (i) one of such Participating Utilities so elected shall be a Participating Utility whose annual peak load is such that seventy-five percent of all other Participating Utilities have annual peak loads greater than the annual peak load of such Participating Utility, (ii) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the FRCC region as of the date hereof, (iii) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the SERC region as of the date hereof, (iv) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the WECC region as of the date hereof, (v) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the ERCOT region as of the date hereof, (vi) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the SPP region as of the date hereof, (vii) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the NPCC region as of the date hereof, (viii) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the MRO region as of the date hereof, and (ix) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the Reliability First region as of the date hereof.

Section 6.2 Selection of Executive Committee. At the first meeting of the Equipment Committee of each calendar year (or, during calendar year 2006, at such time as the Equipment Committee deems appropriate), the Equipment Committee shall elect eleven (11) Participating Utilities, in strict compliance with the provisions of Section 6.1 hereof, with each Participating Utility so elected entitled to each appoint one member of the Executive Committee to serve a term commencing on the date of such meeting until his or her successor is appointed and duly qualified at the first meeting of

the Equipment Committee of the next succeeding calendar year. Each Participating Utility so elected to appoint a member of the Executive Committee shall appoint its chief executive officer or such other senior officer of such Participating Utility as its chief executive officer may designate. No Participating Utility may be elected to appoint more than one member of the Executive Committee during any calendar year, no Participating Utility may be elected to appoint a member of the Executive Committee for more than two (2) consecutive years, and at no time shall two or more Participating Utility's that are Affiliates be elected to appoint a member of the Executive Committee during the same calendar year unless, in each case, there are no other Participating Utilities that would otherwise qualify for election pursuant to this Section 6.2.

Section 6.3 Vacancies. Each Participating Utility that is entitled to appoint a member of the Executive Committee shall be entitled to remove and replace the member it so appointed at any time. In the event of a vacancy, for any reason, in any member of the Executive Committee, the Participating Utility that originally appointed such member shall be entitled to fill such vacancy by naming a new member of the Executive Committee so long as (i) the member appointed to fill any such vacancy is the chief executive officer of such Participating Utility or such other senior officer of such Participating Utility as its chief executive officer may designate and (ii) such Participating Utility provides notice to the Executive Committee that it has filled such vacancy.

Section 6.4 Responsibilities. The Executive Committee shall meet, from time to time, to consider and act upon the following matters: (i) to elect its chairperson, (ii) to develop a budget, and determine the dues to be paid by Participating Utilities, for the next succeeding calendar year, as contemplated by Section 7.2 hereof, and (iii) to take such other action contemplated by this Agreement to be taken by the Executive Committee.

Section 6.5 Meetings. The first meeting of the Executive Committee of each calendar year shall be held as soon as practicable following the first meeting of the Equipment Committee of such calendar year, upon at least two (2) Business Days' prior notice to the members of the Executive Committee delivered by the chairperson of the Equipment Committee, for the purpose of electing the chairperson of the Executive Committee and transacting such other business as shall properly come before it under this Agreement. Thereafter, the chairperson of the Executive Committee shall call a meeting of the Executive Committee (i) as necessary to perform the function of the Executive Committee under this Agreement, (ii) at the request of twenty percent of the members of the Executive Committee, and (iii) as the chairperson, in his or her discretion, otherwise deems necessary.

Section 6.6 Notice of Meetings. Except with respect to the first meeting of the Executive Committee of each calendar year, which shall be noticed as contemplated in Section 6.5 hereof, the chairperson of the Executive Committee shall deliver, or cause to be delivered, to each member of the Executive Committee a notice delivered to such member's email address, containing the date, place, time of, and dial-in instructions for telephone conference participation in, any meeting of the Executive

Committee on or before one calendar day prior to such meeting, or on such shorter notice as the chairperson deems necessary under the circumstances. Each member is responsible for providing the Executive Committee with a current email address to use for notice purposes hereunder, as well as such member's work, home and cellular telephone contact information.

Section 6.7 Telephonic Meetings. The Executive Committee may meet in person or by telephone conference call, so long as each member of the Executive Committee is able to hear and speak to all other members in attendance at such meeting. Any meeting that is held in person shall also provide adequate means for members to participate by telephone conference as well, as contemplated by the immediately preceding sentence.

Section 6.8 Quorum; Required Vote. A majority of the members of the Executive Committee shall constitute a quorum for the conduct of business at any meeting of the Executive Committee. A decision by a simple majority of the votes cast by members of the Executive Committee present and voting at any such meeting of the Executive Committee at which a quorum is present shall constitute the action of the Executive Committee. No member of the Executive Committee may vote or be represented at any meeting by means of a proxy. In acting upon any matter brought before the Executive Committee, each member shall be entitled to cast one vote.

Section 6.9 Notices to Executive Committee. All notices required to be given hereunder to the Executive Committee shall be given to the chairperson of the Equipment Committee until the Executive Committee holds its first meeting and elects its first chairperson, and thereafter shall be given to the current chairperson of the Executive Committee, at such email address as such chairperson may provide upon his or her election and from time to time thereafter.

Section 6.10 Project Manager. The Executive Committee is authorized to enter into such arrangements as it deems necessary and appropriate to retain one or more qualified Persons to serve as the project manager of this Agreement (the "Project Manager"). Any such Project Manager shall be reasonably compensated, and reimbursed for its expenses, by the Executive Committee, with such compensation and expenses to be taken into account by the Executive Committee in preparing the budget and determining dues as contemplated by Section 7.2 hereof. Each Participating Utility acknowledges and agrees that Edison Electric Institute shall, until the Initial Measurement Date or such earlier date as the Executive Committee may determine, serve as the Project Manager and, in such capacity, shall (i) oversee the development of a database of Qualified Spare Transformers that are Committed hereunder, (ii) develop and deliver summary reports on the status of such database, industry participation in this Agreement, and such other matters as may be requested by the Executive Committee or the Equipment Committee, (iii) assist the Executive Committee, the Equipment Committee, and the Equipment Sub-Committees with their respective administrative responsibilities as contemplated by this Agreement, including the coordination of their respective meetings, and the preparation of, and revisions to, the Exhibits to this Agreement as contemplated hereby.



## ARTICLE VII

### FINANCIAL MATTERS

Section 7.1 Cost Sharing. Each Party recognizes and agrees that all Parties are responsible for sharing the costs associated with the administration of this Agreement, as provided in this Article VII.

Section 7.2 Budget; Dues. Beginning with the calendar year 2006, and continuing each calendar year thereafter, the Executive Committee shall adopt a budget, and determine the dues to be paid by Parties, for the next succeeding calendar year. Dues shall be paid by each Party, on or before the date set by the Executive Committee for the payment of dues for such calendar year, to an account established by the Executive Committee to be used for the administration of this Agreement, provided, that until the Executive Committee establishes any such account, all dues shall be paid to the Project Manager, which Person shall hold such funds on behalf of the Executive Committee to be deposited into such account as soon as it is established by the Executive Committee. Notwithstanding any other provision of this Agreement to the contrary, a Party shall be excused from paying dues as contemplated by this Section 7.2 during the calendar year in which such Party executes and delivers its signature page to this Agreement and pays the Initial Fee contemplated by Section 2.1.

## ARTICLE VIII

### REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to all other Parties that:

Section 8.1 Organization. On the date that such Party executes and delivers this Agreement, on the Effective Date, and on the date of any sale consummated pursuant to the terms of this Agreement, such Party is duly organized, validly existing and in good standing under the laws of the state of its organization or by federal statute and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

Section 8.2 Authorization. On the date that such Party executes and delivers this Agreement, on the Effective Date, and on the date of any sale consummated pursuant to the terms of this Agreement, the execution and delivery of this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary action on the part of such Party and do not, and will not, violate, conflict with or give rise to a breach or event of default under any of such Party's constituent documents or any agreement by which such Party or any Qualified Spare Transformer that it Commits hereunder may be bound.

Section 8.3 Binding Obligation. On the date that such Party executes and delivers this Agreement, on the Effective Date, and on the date of any sale consummated pursuant to the terms of this Agreement, this Agreement is a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies hereunder may become subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 8.4 No Approvals Necessary. On the date that such Party executes and delivers this Agreement, except for those Required Regulatory Approvals set forth on its signature page to this Agreement, such Party has obtained any and all Required Regulatory Approvals. On the Effective Date and on the date of any sale consummated pursuant to the terms of this Agreement, such Party has obtained any and all Required Regulatory Approvals.

Section 8.5 Title to Qualified Spare Transformer. On the Effective Date and on the date of any sale consummated pursuant to the terms of this Agreement, with respect to each Qualified Spare Transformer that it Commits, or purports to Commit, hereunder, such Party owns or has rights to own or access, directly or indirectly, such Qualified Spare Transformer free and clear of any Liens, except for Permitted Liens, such that in the event such Qualified Spare Transformer is sold to a Buyer pursuant to the terms of this Agreement, upon the consummation of any such sale, subject only to clause (vi) of Section 4.2 hereof, the Buyer shall have good and valid title to such Qualified Spare Transformer.

Section 8.6 Condition of Qualified Spare Transformer. On the Effective Date and on the date of any sale consummated pursuant to the terms of this Agreement, with respect to each Qualified Spare Transformer that it Commits, or purports to Commit, hereunder, such Party has maintained each such Qualified Spare Transformer in strict compliance with Section 3.5.

## ARTICLE IX

### REMEDIES; INDEMNIFICATION

Section 9.1 Specific Performance. Each Participating Utility acknowledges and agrees that all other Participating Utilities that have Committed or plan to Commit a Qualified Spare Transformer in the Equipment Class or Equipment Classes to which it has Committed a Qualified Spare Transformer are relying on it to consummate, or cause to be consummated, the sale of such Qualified Spare Transformer upon the proper exercise of a Call Right under this Agreement, that each such Qualified Spare Transformer is unique, that it would be virtually impossible to quickly obtain a fully adequate substitute for any such Qualified Spare Transformer in the event that it

fails to consummate, or cause to be consummated, the sale of a Qualified Spare Transformer pursuant to a properly exercised Call Right under this Agreement, and that the award of damages at law may not be an adequate remedy. Accordingly, each Participating Utility agrees that in the event that it fails to consummate, or cause to be consummated, the sale of a Qualified Spare Transformer pursuant to a properly exercised Call Right under this Agreement, and in addition to any other remedy contemplated hereby, a court of competent jurisdiction shall have the power and authority to grant a request made by the Buyer for specific performance, including, without limitation, a request for specific performance to enforce the powers granted in Section 4.5 hereof, where such specific performance is an appropriate remedy under applicable law or applicable equitable principles. Notwithstanding any provision of this Agreement to the contrary, if any Participating Utility resorts to legal proceedings to specifically enforce this Agreement, the Participating Utility that is the prevailing party in such proceedings will be entitled to recover from the Participating Utility that is not the prevailing party in such proceedings all costs incurred by the prevailing party, including reasonable attorney's fees, in addition to any other relief to which it may be entitled under the terms hereof; provided, however, that the foregoing recovery of costs shall at all times be subject to the limitations set forth in Section 9.4.

Section 9.2 Other Remedies. For the avoidance of doubt, the remedy provided for in Section 9.1 is not exclusive and is not intended to preclude any Participating Utility from pursuing any other right or remedy that may be available to such Participating Utility at law or in equity, including any such right to recover direct damages or pursue such other legal or equitable relief as may be available under applicable law or applicable equitable principles.

Section 9.3 Cumulative Remedies. For the avoidance of doubt, all rights and remedies of any Participating Utility under this Agreement are cumulative of every other right or remedy that such Participating Utility may otherwise have at law or in equity and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

Section 9.4 Limitation on Damages. Notwithstanding any other provision of this Agreement to the contrary, (i) no Participating Utility, nor any of its officers, directors, agents, employees, parents, Affiliates, successors, assigns, contractors or subcontractors (collectively, "Related Parties") shall be liable to any other Participating Utility or its Related Parties for any liabilities, damages, obligations, payments, losses, costs, or expenses under this Agreement in any amount in excess of the actual compensatory damages, court costs and reasonable attorneys' fees suffered by such other Participating Utility or its Related Parties in connection with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, (ii) each Participating Utility waives any right to recover incidental, punitive, exemplary, special, indirect, multiple, or consequential damages (including attorneys' fees or litigation costs to recover the same and lost profits) in connection with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including any such damages which are based upon causes of action for

breach of contract, tort (including negligence and misrepresentation), breach of warranty, or strict liability, and (iii) in no event shall any Participating Utility, in connection with any single event or series of related events, be liable to any other Participating Utility hereunder in any amount in excess of 150% of the Purchase Price for the relevant Qualified Spare Transformer.

Section 9.5 Indemnification. In respect of any purchase and sale consummated as a result of a Call Right exercised under this Agreement, the Buyer and the Seller shall make the following indemnities:

Subject at all times to the limitations set forth in Section 9.4, the Seller agrees to indemnify, defend and hold the Buyer harmless from and against any loss, damage, expense (including reasonable attorneys' fees) or claim, whether direct or indirect, known or unknown, absolute or contingent, that relates to, results from, or arises in connection with (i) any breach of the Seller's representations and warranties contained in Article VIII, and (ii) any and all Liens to which the subject Qualified Spare Transformer may be subject at the time of sale to the Buyer or otherwise as a result of any acts or omissions of the Seller or any other Person having rights to own or access such Qualified Spare Transformer; and

Subject at all times to the limitations set forth in Section 9.4, the Buyer agrees to indemnify, defend and hold the Seller harmless from and against any loss, damage, expense (including reasonable attorneys' fees) or claim, whether direct or indirect, known or unknown, absolute or contingent, that relates to, results from, or arises in connection with (i) any breach of the Buyer's representations and warranties contained in Article VIII, (ii) any and all liabilities and obligations in respect of the subject Qualified Spare Transformer that are attributable to the period of time on and following the time of sale to the Buyer (other than liabilities and obligations attributable to any breach of the Seller's representations and warranties set forth in Article VIII or the Seller's covenants set forth in Section 4.2), and (iii) any claims made by any third party for personal injury, death, property damage or otherwise arising from or incidental to the sale of the subject Qualified Spare Transformer to the extent such loss, damage, expense, or claim is caused by any act or omission of the Buyer.

Notwithstanding any provision of this Section 9.5 to the contrary, (i) no Party that is the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing (a "Governmental Entity") shall be obligated to defend or to accept defense from any Buyer or Seller, as the case may be, in connection with such Governmental Entity's or such Buyer's or Seller's indemnification obligations contemplated by this Section 9.5, and (ii) each Party acknowledges and agrees that the indemnity obligations of a Governmental Entity pursuant to this Section 9.5 may be limited to the extent that the principle of sovereign immunity is applicable. Except as expressly limited by the immediately preceding sentence; a

Governmental Entity shall indemnify and hold harmless Buyers and Sellers, as the case may be, as contemplated in this Section 9.5.

Section 9.6 Survival of Representations and Warranties. For purposes of the indemnities contemplated by Section 9.5, the representations and warranties set forth in Article VIII shall survive the consummation of any sale pursuant to the terms of Article IV until the second anniversary of the consummation of such sale, except for those representations and warranties set forth in Sections 8.2 and 8.5, which representations and warranties shall survive indefinitely.

## ARTICLE X

### WITHDRAWAL

Section 10.1 Withdrawal Procedure. On and following such time as a Party becomes a member of a particular Equipment Class, a Party may withdraw as a member of such Equipment Class under this Agreement only if on or before the date that is two (2) years prior to the date of such Party's desired date of withdrawal it delivers to the Equipment Committee and the relevant Equipment Sub-Committee a written notice of its intention to withdraw as a member of such Equipment Class; provided, however, that following its Effective Date, a Party may withdraw as a member of a particular Equipment Class without notice, by delivering a written notice to such effect to the Equipment Committee and the relevant Equipment Sub-Committee, in the event that, prior to such Party's withdrawal, such Equipment Class does not have at least three members, inclusive of such Party.

Section 10.2 Effectiveness of Withdrawal. A Party shall be deemed to have withdrawn from this Agreement only after it has withdrawn from each Equipment Class in which it was a member pursuant to the provisions of Section 10.1 hereof. Notwithstanding a Party's withdrawal from an Equipment Class or this Agreement, as contemplated hereby, such Party shall continue to enjoy any rights, and shall remain liable for any obligations, that arose or accrued to it under this Agreement prior to the date of any such withdrawal.

## ARTICLE XI

### CONFIDENTIALITY

Section 11.1 Confidentiality Obligation. Each Party (i) shall maintain the confidentiality of all information provided to it pursuant to the terms of this Agreement, including the information set forth on Exhibit C, and shall take all actions reasonably necessary to ensure that only its Representative, and such other Persons directly involved in the administration and performance of this Agreement by such Party, has access to such information, except as otherwise necessary to enforce its rights or comply with its obligations hereunder, and that its Representative, and such other

Persons, shall comply with the provisions of this Article XI, (ii) shall not disclose any such information to any other third parties, unless otherwise provided hereunder, and (iii) agrees to use such information only for such purposes and in such manner as is contemplated by the terms of this Agreement. Notwithstanding the foregoing, each Party shall be permitted to use any information provided to it under the terms of this Agreement in support of any claim or counterclaim respecting an alleged breach of any other Party's obligations under this Agreement.

Section 11.2 Permitted Disclosures. In the event that a Party is required to provide information that was provided to it in respect of another Party under the terms of this Agreement to the Federal Energy Regulatory Commission, state public utility commission or public service commission, a court, or other governmental authority, such Party shall (i) promptly notify each affected Party, (ii) reasonably cooperate with any such affected Party's request to object to the disclosure of the requested information (unless the disclosing Party is advised by legal counsel that any such request to object would materially prejudice its interest before such governmental authority), and (iii) seek confidential treatment for any such information disclosed. Notwithstanding any other provision of this Agreement to the contrary, each Party acknowledges and agrees that this Agreement and its Exhibits may be filed with any state or federal regulatory agency or commission in connection with securing any Required Regulatory Approvals of any Party hereunder; provided, however, that a Party making any such filing seeks from the applicable agency or commission confidential treatment of the information contained in Exhibit C.

Section 11.3 Exceptions. Notwithstanding any other provision of this Agreement to the contrary, the confidentiality obligations set forth in this Article XI shall not apply to information that (i) is already known or in the possession of the Party receiving such information at the time of disclosure, as evidenced by written documentation, without such Party being bound by a pre-existing, confidentiality agreement or secrecy obligation in respect thereof, (ii) after the time of its disclosure hereunder, becomes subsequently available to such Party on a non-confidential basis from a source not known by such Party to be bound by a confidentiality agreement or secrecy obligation in respect thereof, (iii) is or becomes generally available to the public other than as a result of a breach of the confidentiality obligations set forth in this Article XI, or (iv) is independently developed by a Party without use, directly or indirectly, of any information disclosed under this Agreement, as evidenced by written documentation.

Section 11.4 FOIA Matters.

To the extent that a Party is or may be subject to the provisions of the Freedom of Information Act, 5 U.S.C. section 552 (as amended from time to time, "FOIA" and any such Party, a "FOIA Party"), the following additional provisions of this Agreement shall apply:

(a) Notwithstanding any provision of this Agreement to the contrary, the confidentiality obligations set forth in this Article XI shall not apply to information that a

FOIA Party is required to disclose pursuant to any applicable provisions of FOIA, so long as any such disclosure is limited to only that information that is required to be so disclosed under the applicable provisions of FOIA after taking into consideration such exemptions from the FOIA publication and disclosure requirements as may be applicable;

(b) Each FOIA Party hereby expressly acknowledges and agrees that:

(i) the Project Manager shall post all information provided under this Agreement by any other Party to this Agreement or by the Project Manager on a secure web-site (the "Web-site") that is designed to afford each FOIA Party the opportunity to view such information relating to its Equipment Class(es) by read-only means. Each FOIA Party shall have read-only access to the Web-site at all times and may view such information relating to its Equipment Class(es) at any time. Each FOIA Party acknowledges and agrees that its right to use any such information is strictly limited to enforcing its rights or complying with its obligations under this Agreement;

(ii) it will not disclose any information provided by any other Party to this Agreement or by the Project Manager, except as permitted under this Article XI, including this Section 11.4 (provided, however, that such FOIA Party shall notify such other Party or the Project Manager, as the case maybe, as far in advance of the FOIA Party's disclosure of any such information as is reasonably practicable under the circumstances);

(iii) it will not physically possess or retain (including by electronic means) any information provided by any other Party to this Agreement or by the Project Manager and under no circumstances will it integrate in any way such information into its own record system or files; and

(iv) it will not rely on any information provided by any other Party to this Agreement or by the Project Manager to develop any policy or for any other purposes, except for the limited purpose of enforcing its rights (including the exercise of Call Rights pursuant to Article IV of this Agreement) or complying with its obligations under this Agreement; and

(c) The Project Manager shall provide each FOIA Party secure, dedicated space in the Web-site for use by each such FOIA Party to copy and store records available on the Web-site relating to its Equipment Class(es) into its workspace in connection with enforcing its rights and complying with its obligations under this Agreement.

(d) In the event that FOIA is amended after the date of this Agreement in such a manner as to materially impact the applicability or effect of the foregoing provisions, the Parties shall cooperate in good faith to negotiate such additional amendments to this Agreement as may be necessary to preserve, to the greatest extent

possible, the applicability and effect of the foregoing provisions in view of any such amendments to FOIA.

## ARTICLE XII

### GENERAL PROVISIONS

Section 12.1 Force Majeure. To the extent that a Party is prevented by an event of Force Majeure from carrying out, in whole or part, any of its obligations under this Agreement, then to the extent of, and only for so long as the duration of, such Force Majeure event, such Party shall be excused from the performance of those of its obligations under this Agreement so affected by such Force Majeure event, provided, that such Party claiming Force Majeure hereunder promptly gives notice and details of such Force Majeure event to the Equipment Committee and uses all commercially reasonable efforts to remedy such Force Majeure event with all reasonable dispatch.

Section 12.2 Assignment. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns. No Party shall assign this Agreement in whole or in part, or any of the rights, interests, or obligations hereunder, without the prior written consent of all other Parties that are members of the Equipment Class or Equipment Classes that such Party is then a member of hereunder, except pursuant to the merger, consolidation or sale of all or substantially all of the assets of such Party. No assignment (including by reason of a merger, consolidation or sale of all or substantially all of the assets of any Party), transfer, conveyance, pledge or disposition of rights, interests, duties or obligations under this Agreement by any Party shall relieve such Party from liability and financial responsibility for the performance thereof after any such transfer, assignment, conveyance, pledge or disposition unless and until the transferee or assignee shall agree in writing to assume the obligations and duties of such Party under this Agreement.

Section 12.3 Amendments. This Agreement may be amended, modified or supplemented only by a written instrument executed and delivered by at least two-thirds (66 2/3%) of all Parties that are then parties to this Agreement; provided, however, that any amendment or modification to the terms of Articles III, IV, VIII and IX, Section 2.3, this Section 12.3, and any definitions used in such Articles or Sections, including the definition of Triggering Event and Commitment Formula, may be so amended or modified only by a written instrument executed and delivered by all Parties that are then parties to this Agreement. Any written instrument contemplated by this Section 12.3 may be executed in more than one (1) counterpart, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12.4 Notices to Parties. All notices and other communications required to be delivered in writing hereunder to a Party shall be deemed given if delivered personally or by facsimile transmission (with confirmation of delivery), or mailed by overnight courier or registered or certified mail (return receipt requested),



postage prepaid, or by email transmission (with confirmation of delivery) to the recipient Party at its contact information set forth under its signature on its signature page to this Agreement (or at such other address, facsimile number, or email address, for a Party as shall be designated by such Party in a notice delivered hereunder; provided however, that notices of a change of address, facsimile number, or email address, shall be effective only upon receipt thereof); and provided, further, that in the event of a Triggering Event, a Party may provide notices otherwise required to be delivered hereunder in writing by telephonic means if, to the extent that, and only for so long as, the other means of notice contemplated by this Section 12.4 are unavailable to such Party.

Section 12.5 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any Person, other than the Parties, any rights, interests, obligations or remedies hereunder.

Section 12.6 Interpretation of Agreement. In this Agreement, unless otherwise specified or the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term "includes" or "including" shall mean "including without limitation." Unless otherwise specified or the context otherwise requires, references to a Section, Article or Exhibit mean a Section, Article or Exhibit of this Agreement and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made. The Article, Section and Exhibit headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement

Section 12.7 Waiver. A waiver of any failure of a Party to comply with any obligation, covenant, agreement, or condition herein by any Party entitled to the benefits thereof shall be effective only by a written instrument signed by such Party granting such waiver, provided, however, that such waiver shall be effective only as between such Parties. In no event shall any such waiver of such obligation, covenant, agreement, or condition operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

Section 12.8 Severability. Each covenant, condition, restriction and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction and other term. If any covenant, condition, restriction or other term of this Agreement is held to be invalid by any court of competent authority or governmental authority with appropriate jurisdiction, the invalidity of such covenant, condition, restriction or other term shall not affect the validity of the remaining covenants, conditions, restrictions or other terms hereof. In such an event, the Parties shall, to the extent possible, negotiate an equitable adjustment to any provision of this Agreement as necessary to effect the purposes of this Agreement.

Section 12.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of law principles thereof (except to the extent that such law is

preempted by federal law). Notwithstanding any provision of this Section 12.9 to the contrary, the Parties acknowledge and agree that with respect to the rights and obligations of a Governmental Entity that is the United States or any agency, authority or instrumentality of the United States or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, this Agreement shall be governed by and construed in accordance with Federal law.

Independent Parties; No Agency. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among or between the Parties or to impose any partnership or fiduciary obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party, except as expressly provided in this Agreement, including as expressly provided in Section 4.5.

Section 12.10 Counterparts. This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12.11 Entire Agreement. This Agreement, including the Exhibits attached hereto, embodies the entire agreement and understanding of the Parties in respect of the obligations and requirements set forth in this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter contained herein.

IN WITNESS WHEREOF, the Party set forth below has caused this Agreement to be executed and delivered on its behalf by a duly authorized officer as of the date indicated below.

Dated: 12/23/14

By: Christopher E. Fleege  
Name: Christopher E. Fleege  
Title: VP Transmission & Distribution

The foregoing Party hereby sets forth its Required Regulatory Approvals as required by Section 2.3 of this Agreement:

Minnesota Public Utilities Commission (MPUC)

The foregoing Party hereby provides its contact information as required by Section 12.4 of this Agreement:

Christopher E. Fleege  
VP Transmission & Distribution  
Minnesota Power  
30 W Superior Street  
Duluth MN 55802  
[cfleege@mnpower.com](mailto:cfleege@mnpower.com)  
(218) 355-2695 (office)  
(218) 355-2685 (fax)

**EXHIBITS**

Exhibit A      Equipment Classes and Certain Minimum Standards

Exhibit B      Required Obligations of Participating Utilities

Exhibit C      Committed Qualified Spare Transformers

## EXHIBIT A

Equipment Classes and Certain Minimum Standards

Set forth below is a list of all Equipment Classes. In respect of Qualified Spare Transformers Committed in any Equipment Class, each such Qualified Spare Transformer must satisfy the following two minimum standards: (i) the Qualified Spare Transformer must be an autotransformer (wye to wye), and (ii) the Qualified Spare Transformer must not be Committed in more than one Equipment Class at any one time. In addition, Qualified Spare Transformers must also satisfy the minimum standards, if any, set forth below opposite the Equipment Class in which it is Committed.

<u>Equipment Class</u>	<u>Minimum Standard</u>
500-345	Must be either (i) a three-phase transformer with MVA of 400 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 400 or greater.
500-230	Must be either (i) a three-phase transformer with MVA of 392 or greater, or (ii) a single-phase transformer with MVA of 167 or greater that, when aggregated with any other two single-phase transformers with MVA of 167 or greater Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers.
500-161	To be determined by Equipment Sub-Committee.
500-138	To be determined by Equipment Sub-Committee.
500-115	To be determined by Equipment Sub-Committee.
500-069	To be determined by Equipment Sub-Committee.
345-230	Must be either (i) a three-phase transformer with MVA of 336 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 336 or greater.
345-161	Must be either (i) a three-phase transformer with MVA of 400 or greater, or (ii) a single-phase transformer that, when aggregated

with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 400 or greater.

- 345-138 Must be either (i) a three-phase transformer with MVA of 200 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 200 or greater.
- 345-115 If a three-phase transformer, must have MVA of 224 or greater. Single-phase transformer minimum standards are to be determined by Equipment Sub-Committee.
- 230-161 To be determined by Equipment Sub-Committee.
- 230-138 Must be either (i) a three-phase transformer with MVA of 100 or greater, or (ii) any single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 100 or greater. Transformer(s) must be either wye-to-wye autotransformer(s), or two- or three-winding wye-to-wye transformer(s) with no phase shift between the different windings.
- 230-115 Must be either (i) a three-phase transformer with MVA of 100 or greater, or (ii) any single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 100 or greater.
- 230-069 If a three-phase transformer, must have MVA of 50 or greater. Single-phase transformer minimum standards are to be determined by Equipment Sub-Committee.
- 161-138 To be determined by Equipment Sub-Committee.
- 161-115 To be determined by Equipment Sub-Committee.
- 161-069 To be determined by Equipment Sub-Committee.
- 138-115 To be determined by Equipment Sub-Committee.

- 138-069                    Must be either (i) a three-phase transformer with MVA of 50 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 50 or greater.
- 115-069                    To be determined by Equipment Sub-Committee.

EXHIBIT B

Required Obligations of Participating Utilities

[Calculated by Equipment Sub-Committees and Maintained by Project Manager]



EXHIBIT C

Committed Qualified Spare Transformers

[Provided by Participating Utilities following Calculation of Required Obligations and  
Maintained by Project Manager]

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116 FERC ¶61,280  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Jon Wellinghoff.

Edison Electric Institute on behalf of the Jurisdictional      Docket Nos. EC06-140-000  
Signatories to the Spare Transformer Sharing                      EL06-86-000  
Agreement

ORDER ON APPLICATION FOR BLANKET AUTHORIZATION  
FOR TRANSFERS OF JURISDICTIONAL FACILITIES  
AND PETITION FOR DECLARATORY ORDER

(Issued September 22, 2006)

1. On July 18, 2006, the Edison Electric Institute (EEI), on behalf of 41 jurisdictional signatories<sup>1</sup> (collectively, Applicants) to a Spare Transformer Sharing Agreement

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<sup>1</sup> The jurisdictional signatories are: Allegheny Power; Ameren Services Company on behalf of Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; American Electric Power Service Corporation; American Transmission Company LLC; Arizona Public Service Company; Atlantic City Electric Company (Pepco Holdings, Inc.); Avista Utilities; Baltimore Gas & Electric (Constellation Energy); Cinergy Corporation (now part of Duke Energy Corporation); Commonwealth Edison Company (Exelon Corporation); Consolidated Edison Company of New York, Inc.; Delmarva Power and Light Company (Pepco Holdings, Inc.); Duke Power, a division of Duke Energy Corporation (now Duke Power Company LLC); FirstEnergy Corporation on behalf of Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and The Cleveland Electric Company; Florida Power & Light Company; Indianapolis Power and Light Company; International Transmission Company d/b/a ITC Transmission; Kansas City Power and Light Company; Michigan Electric Transmission Company, LLC (A Trans-Elect Enterprise); MidAmerican Energy Company; New England Power Company (National Grid); Niagara Mohawk Power Corporation (National Grid);

(continued)

(Agreement) filed with the Commission an application for blanket authorization under section 203 of the Federal Power Act (FPA)<sup>2</sup> for any jurisdictional public utility party to the Agreement to engage in future transfers of transformers pursuant to the Agreement, including transfers of transformers by public utilities to their affiliates. Applicants also request that the Commission issue a declaratory order granting certain assurances with respect to the recovery in transmission rates of the costs that Applicants will incur in connection with participation in the Agreement. As discussed in greater detail below, we find that the industry's efforts to voluntarily coordinate the sharing of spare transformers will enhance the reliability of the transmission system and security of our energy supply infrastructure in the event of an act of deliberate destruction. Accordingly, the Commission conditionally grants the Application in part.

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Northeast Utilities Service Company on behalf of Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire; Oklahoma Gas and Electric Company; Pacific Gas and Electric Company; PECO Energy Company (Exelon Corporation); Potomac Electric Power Company (Pepco Holdings, Inc.); PPL Electric Utilities Corporation; Progress Energy Carolinas; Progress Energy Florida; Public Service Company of New Mexico (PNM Resources); Public Service Electric and Gas Company; Puget Sound Energy, Inc.; San Diego Gas & Electric Company; Sierra Pacific Resources; Southern California Edison Company (An Edison International Company); Southern Company as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Georgia Transmission Company, City of Dalton, Georgia, and Municipal Electric Authority of Georgia; Tampa Electric Company; Texas-New Mexico Power Company (PNM Resources); Virginia Electric and Power Company; Xcel Energy Services Inc. as agent for Northern States Power Company Minnesota, Northern States Power Company Wisconsin, Public Service Company of Colorado, and Southwestern Public Service Company.

Applicants state that Center Point Energy Houston Electric LLC, and TXU Electric Delivery Company have executed the Agreement and share in the benefits and responsibilities of the Agreement, but do not join in the Application because they are not “public utilities” under the Federal Power Act, “but instead are subject to limited [Commission] jurisdiction and do not require section 203 authorization or rate approvals from the Commission with respect to their actions under the Spare Transformer Agreement.” Application at 1, n.1.

<sup>2</sup> 16 U.S.C. §824b (2000), *amended by* Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58, §1289, 119 Stat. 594, 982-93 (2005).

## **I. Background**

2. As part of EEI initiatives, a group of transmission owners has established the Spare Transformer Equipment Program (STEP). STEP is a “coordinated, industry-wide program [designed] to increase the electric industry’s inventory of spare transformers in order to ensure that the electric industry has sufficient capability to restore service in the event of coordinated, deliberate destruction of utility substations.”<sup>3</sup> Applicants state that any electric utility that owns transformers in the United States or Canada, including an investor-owned utility, a government-owned utility or a rural electric utility, is eligible to participate in the program.

3. The Agreement is “a binding contract that was negotiated through a six-month open and collaborative process by representatives of more than 50 utilities, including EEI member companies and representatives from the American Public Power Association, the National Rural Electric Cooperative Association, the North American Electric Reliability Council, the Electric Power Research Institute, and Federal Power Marketing Administrations.”<sup>4</sup> Forty-three entities have executed the Agreement so far (hereinafter referred to as Participating Utilities).<sup>5</sup> Applicants state that these Participating Utilities own more than 60 percent of the jurisdictional bulk-power transmission system.

4. Applicants maintain that STEP and the Agreement can enhance the reliability of the nation’s transmission system. They state that the Agreement “is a prudent approach to making efficient use of the industry’s existing spare transformers and fairly allocating the responsibility to acquire a limited number of additional spares, while minimizing duplicative purchases of these costly assets.”<sup>6</sup>

5. The Agreement provides for: (a) an overall Equipment Committee, (b) an Equipment Subcommittee for each voltage class; and (c) an Executive Committee. The Equipment Committee and Equipment Subcommittees are responsible for making various technical decisions under the Agreement. The Executive Committee is responsible for addressing appeals of decisions of the Equipment Committee and Equipment

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<sup>3</sup> Application at 3-4.

<sup>4</sup> *Id.* at 4-5.

<sup>5</sup> *Id.* at Attachment A.

<sup>6</sup> Transmittal Letter at 2.

Subcommittees, resolving disputes relating to call rights under the Agreement, and developing an annual budget and dues assessment.<sup>7</sup>

6. Under the Agreement, each Participating Utility is required to maintain, and if necessary, acquire, a specific number of transformers in various voltage classes. The Agreement requires each Participating Utility to sell its spare transformers to any other Participating Utility in its voltage class if there is a Triggering Event.<sup>8</sup> Each Participating Utility is required to maintain a share of the required number of transformers in each voltage class in which it participates. That share is based on the participant's share of the megavolt-amperes (MVA) of all transformers in use in that class and its share of the transformer MVA that is needed to restore the systems of all participants.

7. As described in the Application, the number of spare transformers needed in each of nine voltage classes will be determined by a formula measuring the number needed "to restore the most vulnerable system to an 'N-0' status, in the event that its five most critical substations in any voltage class in which it chooses to participate are inoperable."<sup>9</sup> N-0 status describes a transmission system configuration where the loss of any single element, at peak load conditions, may result in system instability. Applicants state that, with unanimous consent, Participating Utilities may adjust the methodology that establishes each entity's equipment obligation.

8. According to the Agreement, the Equipment Subcommittee for each voltage class will determine the number of spare transformers required for that class, referred to as the "Required Obligations." Then, from the class Required Obligations, the Subcommittee will derive the required obligation of each Participating Utility. Applicants state that the precise total number of transformers needed in each voltage class has not yet been established, but that based on present projections, the current Participating Utilities collectively will need to acquire between 21 and 31 transformers to meet their Agreement obligations. Applicants state that the costs of transformers range from approximately \$500,000 for 200 MVA 138 kV transformers to approximately \$11,000,000 for 2,000 MVA 500 kV transformers; therefore, compliance with STEP will require an expenditure of \$50 million to \$75 million, spread among the program participants.

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<sup>7</sup> Agreement at Art. V (Equipment Committee) and Art. VI (Executive Committee).

<sup>8</sup> A Triggering Event is defined as an act of terrorism that destroys or disables one or more substations and results in a declaration of a state of emergency by the President of the United States. Agreement at § 1.1 (Definitions).

<sup>9</sup> Application at 6.

Applicants state that the number of spare transformers each Participating Utility is required to maintain will be recalculated each year to account for changes in load, changes in the transmission system, the addition of new participants, and the withdrawal of existing participants. Applicants maintain that because some utilities that join may already maintain more spare transformers than are required under the agreement, the addition of Participating Utilities will not always increase the obligation to purchase transformers, and in some cases it may reduce the group's purchase obligation.

9. The Agreement also permits Participating Utilities to voluntarily transfer spare transformers to other utilities that have lost transformers and with whom they have formal or informal sharing or mutual assistance agreements, regardless of whether the transferee is a Participating Utility or the loss was caused by a Triggering Event.<sup>10</sup> Each

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<sup>10</sup> The Agreement contemplates a broader category of transfers beyond just those prompted by a Triggering Event. The Agreement defines a "Permitted Disposition" as:

- (1) the sale of a Qualified Spare Transformer [spare transformers that meet the minimum technical standards required by the Agreement] pursuant to the terms of this Agreement,
- (2) the placement in service or similar disposition of a Qualified Spare Transformer not already in service by a Participating Utility for its own use in accordance with Good Utility Practice,
- (3) the replacement of a Qualified Spare Transformer, due to its age, obsolescence, damage or any similar reason, in the ordinary course of business consistent with Good Utility Practice,
- (4) the disposition of a Qualified Spare Transformer pursuant to any rule, regulation or order issued by any governmental authority requiring such dispositions that is applicable to such Qualified Spare Transformer and/or the Participating Utility that Committed it hereunder,
- (5) the disposition of a Qualified Spare Transformer to another utility that has suffered a casualty or loss of one of its transformers pursuant to any voluntary sharing arrangement or similar arrangement or program, including any informal arrangements, in which the Participating Utility that Committed such Qualified Spare Transformer is participating,

(continued)



Participating Utility that disposes of a spare transformer through such a voluntary “Permitted Disposition” is obligated to replace the transformer as soon as practicable, but no later than 18 months after the disposition.

10. The Agreement establishes June 30, 2008 as the initial measurement date, with annual recalculations to account for changes in load or to the transmission system or the addition or withdrawal of Participating Utilities. A utility wishing to withdraw from the Agreement must provide two years’ notice to give the remaining participants time to replace any spare transformers that no longer would be available due to the withdrawal.

11. Applicants state that “[i]n order to cost-effectively improve reliability, utilities with transformers of the same voltage class sometimes agree to share the cost of acquiring and maintaining spare transformers.”<sup>11</sup> The Participating Utilities have decided to extend and formalize this practice by developing a more formal joint acquisition program for spare transformers. Applicants state that the Pooled Inventory Management program (PIM), a program currently managing joint equipment acquisitions for the nuclear power industry, has agreed to extend the scope of its spare parts program to include transformers. Applicants state that “[t]hrough PIM, a utility can join with a group of other utilities to acquire a spare transformer. Each participant in the joint acquisition would pay for a portion of the acquisition costs and would pay PIM a fee for maintenance and administrative costs.”<sup>12</sup> Applicants state that PIM participants can use the transformers they jointly own under the PIM program to meet their obligations under the Agreement.

12. As discussed in greater detail below, Applicants seek blanket authorization under section 203 to engage in certain future transfers of jurisdictional facilities under the Agreement and a declaratory order concerning the rate treatment of costs that Applicants incur to implement the Agreement. Applicants state that this “is necessary to give the Applicants the regulatory certainty they need to begin undertaking the financial

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and

(6) the loss of a Qualified Spare Transformer in connection with a Triggering Event or other casualty.

Agreement at § 1.1 (Definitions).

<sup>11</sup> Application at 8-9.

<sup>12</sup> *Id.* at 9.

commitments and to seek the state and local regulatory approvals needed to implement the Agreement.”<sup>13</sup>

## **II. Notice of Filing and Responsive Pleadings**

13. Notice of Applicants’ filing was published in the *Federal Register*, 71 Fed. Reg. 43,145 (2006), with interventions, comments, and protests due on or before August 8, 2006. Motions to intervene were filed by: the City of Santa Clara, California and the City of Redding, California; Modesto Irrigation District; and the Northeast Utilities Companies.<sup>14</sup> Exelon Corporation (Exelon) filed a timely intervention and comments. An untimely motion to intervene was filed by CenterPoint Energy Houston Electric, LLC (CenterPoint).

14. Exelon filed comments in support of the Application. Exelon states that “[t]he advance approval of transfers, cost recovery assurances, clarification and other relief requested in the Filing are important to provide regulatory certainty to utilities with respect to the implementation of the program and Agreement.” Exelon argues that “[a] Declaratory Order providing the cost recovery assurances and other relief requested in the Filing will provide the requested certainty and enable the program and Agreement to build broad support across the industry.”<sup>15</sup>

## **III. Commission Determinations**

### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the motion for late intervention of CenterPoint, given the early stage of this proceeding and the absence of any undue delay, prejudice, or burden to the parties.

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<sup>13</sup> *Id.* at 16.

<sup>14</sup> The Northeast Utilities Companies include: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire.

<sup>15</sup> Exelon Comments at 3.

## **B. Discussion**

16. We applaud the industry's efforts to voluntarily coordinate the sharing of spare transformers in the event of an act of deliberate destruction, and appreciate the thoughtful approach in the Agreement. The integrity of the transmission system is an issue of critical importance; we agree with Applicants that STEP and the Agreement can enhance the reliability of the transmission system. While we find this program to be a good first step, we think that it is vitally important for EEI and Participating Utilities to continue working to improve the program, including the method of calculating spare transformer requirements. We also encourage other entities owning high-voltage transformers to participate in STEP so that the benefits may be spread to more of the bulk power system. Accordingly, as discussed in greater detail below, the Commission conditionally grants the Application in part.

17. The Agreement only *requires* a Participating Utility to transfer transformers upon receipt of a call notice from another Participating Utility who suffers a Triggering Event.<sup>16</sup> However, it is not clear if the Applicants are requesting to have the Commission extend its authorizations and approvals to other transfers *permitted* by the Agreement, *i.e.*, all categories of "Permitted Dispositions."<sup>17</sup> The authorizations contained in this order apply only to required transfers. If Applicants seek broader authorizations, they must file a supplemental application with justification for such authorizations. We note, however, that there are other emergency circumstances under which the quick transfer of spare transformers might be beneficial. We encourage Applicants to expand the emergency situations under which the transfer of spare transformers will be required under the Agreement. The Commission is willing to consider whether additional blanket authorizations may be appropriate under such circumstances.

### **1. Section 203 Authorization**

#### **a. Request for Blanket Section 203 Authorization for Transfers of Jurisdictional Facilities**

##### **i. Application**

18. Section 203 approval is required for public utility dispositions of jurisdictional transmission facilities of a value in excess of \$10 million. Jurisdictional transmission

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<sup>16</sup> See Agreement at §4.1 (Exercise of Call Right).

<sup>17</sup> See *supra* note 10.

facilities include transformers used for transmission of electric energy in interstate commerce. Applicants state that jurisdictional Participating Utilities will not be able to quickly transfer transformers at prices that exceed the \$10 million jurisdictional minimum without prior authorization under section 203. They also argue that section 203 does not apply to all transfers of transformers contemplated by the Agreement because the cost of most transformers does not exceed the \$10 million jurisdictional minimum. Applicants are concerned, however, that the \$10 million jurisdictional minimum may be met when a public utility disposes of a large transformer or disposes of several smaller transformers that together cost more than \$10 million.

19. Applicants argue that the time required for a Participating Utility to prepare and file a section 203 application and receive authorization could significantly delay its ability to place its transmission system back in operation after a Triggering Event occurs. Applicants maintain that “preauthorization of the transfer of spare transformers will . . . ensure that a disabled utility can restore its system operation as quickly as possible.”<sup>18</sup> Applicants also argue that granting advance approval of jurisdictional transfers of transformers “will provide regulatory certainty that will encourage additional utilities to join the program.”<sup>19</sup>

20. Applicants commit to making informational filings to provide the information required by Part 33 of the Commission’s regulations within 30 days of closing of any jurisdictional transfer under the Agreement, and further informational filings within six months after the closing of such transactions, when the final terms of the sales have been established consistent with the terms of the Agreement.<sup>20</sup>

## ii. Commission Determination

21. Section 203(a) of the FPA provides that the Commission must approve a disposition of facilities if it finds that the disposition “will be consistent with the public interest.”<sup>21</sup> The Commission’s analysis of whether a disposition is consistent with the public interest generally involves consideration of three factors: (1) the effect on

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<sup>18</sup> Application at 11.

<sup>19</sup> *Id.* at 12.

<sup>20</sup> *Id.* at 12-13.

<sup>21</sup> 16 U.S.C. §824b (2000), *amended by* EPA Act 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005).

competition; (2) the effect on rates; and (3) the effect on regulation.<sup>22</sup> In addition, EAct 2005 amended section 203 to specifically require that the Commission also determine that the disposition will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.<sup>23</sup> As discussed below, we find that the proposed transactions meets these statutory standards, and therefore approve the request for blanket authorizations.

22. We condition this authorization upon public utility participants in the program filing within 30 days of closing of any transfer involving the public utility, and within six months after the closing of such transactions (when the final terms of the sales have been established), the information identified in Part 33. This reporting requirement is being imposed on each public utility participant with respect to all transfers of transformers committed to the program that involve the public utility participant, including transfers from the public utility to a non-public utility participant and vice versa. Such information is required for the Commission to ensure that public utility participation in STEP pursuant to the Agreement is consistent with the public interest.<sup>24</sup>

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<sup>22</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001); see also *Transactions Subject to Federal Power Act Section 203*, Order No. 669, 71 Fed. Reg. 1,348 (2006), FERC Stats. & Regs. ¶31,200 (2006), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (2006), FERC Stats. & Regs. ¶31,214 (2006), *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (2006), FERC Stats. & Regs. ¶31,225 (2006) (to be codified at 18 C.F.R. pt. 33).

<sup>23</sup> EAct 2005, Pub. L. No. 109-58, §1289, 119 Stat. 594, 982-83 (2005), to be codified at 16 U.S.C. §824b(a)(4).

<sup>24</sup> This information is also necessary for the Commission's determination that the sharing arrangement pursuant to the Agreement is prudent. See discussion *infra* section III.B.2.a.

(a) **Effect on Competition**

23. Applicants state that the requested authorizations will have no adverse effect on competition. They assert that the transactions have neither horizontal nor vertical competitive effects. Applicants state that the Agreement does not involve the sale of generation facilities and therefore will not increase the market share of generation facilities for any Participating Utility. Applicants also assert that because all Applicants provide transmission service pursuant to their own Open Access Transmission Tariffs (OATTs) or pursuant to RTO/ISO tariffs, the transfer of transformers will not affect transmission service. Applicants also state that transfers will simply restore the status quo by allowing the purchasers to expedite the process of placing their transmission systems back in service.<sup>25</sup>

24. We find that the proposed transactions will have no adverse effect on competition. Applicants have shown that the transfers do not raise market power concerns, as the transactions do not affect generation assets. The transfers do not increase Applicants' ability or incentive to use control over their transmission facilities to harm competition in the wholesale markets because Participating Utilities provide transmission service pursuant to open access transmission tariffs. We note further that no party in this proceeding claims that the requested authorizations will have an adverse effect on competition.

(b) **Effect on Rates**

25. Applicants state that although they seek a Commission order declaring that the costs incurred under the Agreement are prudently incurred and recoverable in rates,<sup>26</sup> the requested section 203 authorizations will not have an adverse effect on rates. The recovery of the costs associated with the Agreement will be addressed in separate rate filings under section 205 of the FPA. Applicants further argue that these expenditures are in the public interest because they enhance system reliability. Finally, Applicants assert that any rate impacts under the Agreement are "more than offset by the value of the reliability gains provided" because Participating Utilities "share the burden of acquiring and making available transformers" thus achieving greater reliability at a lower cost.<sup>27</sup>

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<sup>25</sup> Application at 13-14.

<sup>26</sup> See discussion *infra* section III.B.2.

<sup>27</sup> Application at 14.

26. As noted in the Commission's *Merger Policy Statement*,<sup>28</sup> the Commission primarily examines a transaction's effect on rates in order to protect wholesale power and transmission service customers. Applicants have stated that the Agreement will allow Participating Utilities the benefits of acquiring spare transformers more quickly and at a lower cost than if they were to purchase the equipment without the Agreement. Thus, we are satisfied that the proposed transactions will not adversely affect rates.

**(c) Effect on Regulation**

27. Applicants state that the requested authorization will have no adverse effect on regulation because the transfer of transformers does not affect any Participating Utility's jurisdictional status and all jurisdictional Applicants will continue to be subject to the Commission's regulation after the proposed transactions. Applicants state that the proposed transactions also do not affect state regulatory authorities' regulation of Applicants and their affiliates.<sup>29</sup>

28. We find that the proposed transactions will not impair federal or state regulation. We note that no party has requested that the Commission address the effect of the transactions on state regulation.

**(d) Cross-subsidization**

29. Applicants state that the proposed transactions present no opportunity for affiliate abuse because the Agreement establishes that the sales price is, at the seller's election, either the net book value of the spare transformer or its replacement cost, plus the seller's loadout and transportation costs and tax liability attributable to the sale. Applicants state that it is reasonable for purchasers to pay the replacement cost of the transformer, if elected by the seller, because, as beneficiaries of the transaction, the purchaser's ratepayers should bear the costs of replacing the transformer. Applicants also state that the Agreement does not place any encumbrance on utility assets because utilities are free to use their transformers themselves or to voluntarily transfer them to another utility with which they have a formal or informal sharing or mutual assistance agreement as needed, subject to the obligation to replace the transformers consistent with each Participating Utility's Required Obligation under the Agreement.<sup>30</sup> Applicants thus argue that the

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<sup>28</sup> *Merger Policy Statement*, FERC Stats. & Regs. ¶31,044 at 30,126.

<sup>29</sup> Application at 14-15.

<sup>30</sup> *Id.* at 15.

transactions do not raise affiliate issues or present opportunities for cross-subsidization or pledges or encumbrance of assets for the benefit of an associate company. Moreover, Applicants state that Exhibit M<sup>31</sup> information concerning jurisdictional transactions will be included in their post-closing informational filings.<sup>32</sup>

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<sup>31</sup> Exhibit M requires an explanation, with appropriate evidentiary support:

(1) Of how applicants are providing assurance, based on facts and circumstances known to them or that are reasonably foreseeable, that the proposed transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

(i) Disclosure of existing pledges and/or encumbrances of utility assets; and

(ii) A detailed showing that the transaction will not result in:

(A) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or

(continued)



30. EAct 2005 amended section 203 of the FPA to provide that the Commission is not to approve a proposed disposition of jurisdictional facilities absent the finding that the proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company unless the Commission determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest.<sup>33</sup> In Order Nos. 669, 669-A, and 669-B,<sup>34</sup> the Commission established specific filing requirements requiring applicants to demonstrate whether or not the prohibited activities will occur, which are to be in Exhibit M to the application.<sup>35</sup> As noted above, Applicants indicate that this information will be filed after the transactions are completed.

31. The concern about cross-subsidization is principally a concern over the effect of the transaction on rates of captive customers. The concern is preventing a transfer of benefits from a traditional public utility's cost-based customers to shareholders of the public utility holding company due to an intrasystem transaction that involves power or

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(D) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act;  
or

(2) If no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

Order No. 669-A, FERC Stats. & Regs. ¶31,214, at P 144-46, *amended by* Order No. 669-B, FERC Stats. & Regs. ¶31,225, at P 49 (to be codified at 18 C.F.R. §33.2(j)).

<sup>32</sup> Application at 21.

<sup>33</sup> EAct 2005, Pub. L. No. 109-58, §1289, 119 Stat. 594, 982-83 (2005), to be codified at 16 U.S.C. §824b(a)(4).

<sup>34</sup> *See supra* note 22.

<sup>35</sup> *See supra* note 31.

energy, generation facilities, or non-power goods and services.<sup>36</sup> Here, the proposed transactions are unlikely to provide the opportunity for cross-subsidization of a non-utility affiliate of the Participating Utilities. The Agreement establishes specific conditions under which transfers are to occur (the Triggering Event) and sets the price at which transformers are to be sold (at either net book value or replacement cost, by choice of the seller). Moreover, Participating Utilities must submit requests for recovery of costs related to the transactions in separate rate filings under section 205.<sup>37</sup>

32. Given the unique nature of the proposed transactions, we find that Applicants have provided adequate assurance that the transactions will not result in cross-subsidization of a non-utility associate company in the same holding company as the Participating Utility or an encumbrance or pledge of utility assets. Our decision on this matter applies only to the facts in this case and in no way implies that future 203 applications may defer filing the required Exhibit M information.

**b. Additional Clarifications Sought as to Section 203 Authorization**

**i. Application**

33. As part of their petition for declaratory order, Applicants seek clarifications regarding the scope of the Commission's jurisdiction under section 203. First, Applicants seek confirmation that transfers by jurisdictional public utilities of transformers that have not been energized do not require section 203 authorization. They argue that such transformers are not subject to the Commission's jurisdiction because they do not provide transmission service in interstate commerce. Applicants specifically state that "[s]ince the Commission's jurisdiction is defined by the flow of energy through electric transmission facilities, it follows that the Commission's jurisdiction does not extend to facilities through which no electric energy flows."<sup>38</sup> Applicants state that because the Commission routinely approves transfers of transformers as part of larger transactions and has explicitly approved the transfer of spare transformers (noting, however, that such

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<sup>36</sup> Order No. 669, FERC Stats. & Regs. ¶31,200, at P 147.

<sup>37</sup> See discussion *infra* section III.B.2.

<sup>38</sup> Application at 33.

orders did not address whether the spare transformers had been energized),<sup>39</sup> Applicants seek this clarification from the Commission.

34. Applicants also seek confirmation that jurisdictional public utilities do not need section 203 authorization to acquire transformers from non-jurisdictional utilities under the Agreement because such transfers do not merge or consolidate the public utility's facilities with those of the selling utility. Applicants argue that FPA section 203(a)(1)(A) does not apply to this scenario because it only applies to dispositions by public utilities. As to FPA section 203(a)(1)(B), Applicants argue that the acquisitions anticipated by the Agreement "would not consolidate or integrate the operation of transmission facilities since the transformers will be moved from the non-public utility's system and installed in new locations on the systems of public utilities."<sup>40</sup>

## ii. Commission Determination

35. As indicated above, we are conditionally granting Applicants' request for blanket authorization for the transfer of facilities under section 203. Because we are granting the blanket authorization for all required transactions under Agreement, we need not address the specific requests for clarification on these points. Even if the transactions Applicants ask about are jurisdictional, they are pre-approved. Accordingly, we decline to rule on the points for which Applicants seek clarification.

## 2. Petition for Declaratory Order Regarding Rate Treatments

36. Applicants request that the Commission issue a declaratory order granting certain assurances with respect to the recovery in transmission rates of the costs that Participating Utilities will incur in connection with participation in the Agreement. The requests are discussed in greater detail below.

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<sup>39</sup> *Id.* at 33-34 (citing *Central Hudson Gas & Electric Corporation*, 115 FERC ¶62,255 (2006); *Xcel Energy Services, Inc., Northern States Power Company*, 110 FERC ¶62,132, at 64,271 (2005); *New England Power Company*, 93 FERC ¶61,023, at 61,043 (2000)).

<sup>40</sup> *Id.* at 35.

a. **Whether the sharing arrangement under the Agreement is prudent**

i. **Application**

37. Applicants request that the Commission find that the sharing arrangement of the Participating Utilities under the Agreement and their participation in the PIM is a prudent approach to enhancing the reliability of the electric grid.<sup>41</sup> Applicants argue that the program improves the recovery capability of all Participating Utilities while reducing the burden on any single utility to acquire spare transformers. Applicants also argue that the Agreement makes efficient use of the industry's existing spare transformers and allocates fairly the responsibility to acquire a limited number of additional spares, while minimizing duplicative purchases of the costly assets. Applicants claim that the Agreement provides considerable flexibility for utilities to operate and to use assets as they would normally do during the course of business, while at the same time binding utilities to share their committed transformers if a Triggering Event should occur. Applicants argue that the Agreement and the PIM program provide substantial cost savings over alternative methods of achieving similar system restoration capability.

38. Applicants also ask the Commission to make a finding of prudence in the case where the transfer of transformers occurs between affiliates because the Agreement does not provide any opportunity for affiliate abuse. Applicants note that the Agreement imposes obligations to sell spare transformers in the case of a Triggering Event, and therefore, does not give a Participating Utility the option to refuse to sell to an affiliate. Applicants further argue that, in the absence of the Agreement, a Purchasing Utility would have to purchase a new transformer at market price, and therefore, under the

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<sup>41</sup> We note that the Application is not consistent in its description of the requested authorization regarding prudence. In two locations, Applicants request a declaratory order holding that “[t]he decisions by each FERC-jurisdictional public utility to the Spare Transformer Agreement to enter into the Agreement, to purchase or sell transformers to meet its obligations under the Agreement, and to purchase or sell transformers in response to a Triggering Event, including decisions to make transfers between affiliates, all are prudent.” Application at 22, 37. At other times, however, Applicants describe their petition as a request that the Commission finds “the *costs* that Applicants incur in implementing the Spare Transformer Agreement and in participating in the PIM program are prudently incurred.” *Id.* at 25 (emphasis added). We are granting herein only Applicants’ explicit request as stated in the list of specific relief sought, that the decision to participate in the Agreement and PIM is prudent. The costs will be reviewed in a subsequent section 205 filing as discussed in P52 below.

Agreement, the purchaser will not benefit unduly from purchasing a transformer from an affiliate instead of from an unaffiliated utility.

**ii. Commission Determination**

39. We agree that the Agreement makes efficient use of both the industry's existing spare transformers and additional spares by minimizing duplicative spare transformer replacements. We also agree that the Agreement improves Participating Utilities' recovery capability if there is a Triggering Event, with a reduced burden on any single utility to acquire spare transformers. We applaud the efforts of Participating Utilities to use the existing PIM program and to extend its spare parts program to include transformers. Through PIM, a small utility can join with a group of other utilities to acquire a spare transformer, thus making the Agreement practical for a larger number of Participating Utilities. Without the Agreement, utilities would have to purchase substantially more transformers to achieve the same recovery capability, incurring substantially higher costs, or experience the inherent time delay associated with finding, negotiating for, ordering, transporting, and testing a replacement transformer. Furthermore, the Agreement establishes the obligation to share spare transformers with Participating Utilities if there is a Triggering Event. Accordingly, we find that the sharing arrangement in the Agreement is prudent.

40. We also agree that the transfer of transformers between affiliates when there is a Triggering Event is prudent because it makes efficient use of the industry's existing spare transformers in order to ensure the reliability of the transmission grid. We find that these transfers will be prudent because the Agreement requires that the transfers occur after a Triggering Event and sets the price at which transformers are to be sold (at either net book value or replacement cost, by choice of the seller). In addition, as discussed above, the transactions will not result in cross-subsidization or encumbrance or pledging of utility assets.

41. Finally, if a jurisdictional Participating Utility wishes to recover the costs related to a transfer, the Commission will require it to seek recovery in a new section 205 filing. We encourage Participating Utilities to purchase energy efficient transformers for STEP.<sup>42</sup>

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<sup>42</sup> In its review of future section 205 filings, the Commission will consider incentive-based rate treatments (in addition to single-issue rate treatment, as discussed in section III.B.2.b of this order) that parties may propose in connection with the use of advanced transmission technologies that increase efficiency. Such consideration is consistent with section 219(b)(3) of the FPA, 16 U.S.C. § 824s(b)(3) (2005), which

(continued)

**b. Whether the recovery of Agreement costs through single-issue ratemaking should be permitted**

**i. Application**

42. Applicants request that the costs that each jurisdictional Participating Utility incurs to comply with its obligations under the Agreement be recoverable through single-issue filings. Such costs include the initial costs to purchase transformers to meet obligations under the Agreement and the costs incurred to purchase transformers if there is a Triggering Event, including the costs of transfers between affiliates. Applicants argue that this approach is consistent with Commission policy.<sup>43</sup>

**ii. Commission Determination**

43. We find that recovery of Agreement costs through single-issue ratemaking should be permitted. In a Policy Statement issued on September 14, 2001,<sup>44</sup> the Commission stated that a company may propose a separate rate recovery mechanism in order to recover the expenses necessary to safeguard our energy infrastructure. The Application is designed to assist transmission systems to restore electric service if there is an act of deliberate destruction. Further, in our *Pricing Reform Order*,<sup>45</sup> the Commission stated

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requires the Commission to “encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities,” and with the Commission’s implementation of that provision. *See Promoting Transmission Investment through Pricing Reform*, 71 Fed. Reg. 43,294, at 43,305, 43,326-27 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222, at P 80-82, 288-92 (2006), *reh’g pending* (Pricing Reform Order). ¶

<sup>43</sup> Application at 27-29 (citing *Extraordinary Expenditures Necessary to Safeguard National Energy Supplies*, 96 FERC ¶61,299 (2001); *Policy Statement on Matters Related to Bulk Power System Reliability*, 107 FERC ¶61,052, at P 28 (2004); *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶61,272, at 61,969, *further order*, 95 FERC ¶61,225, at 61,766 (2001); *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, 113 FERC ¶61,182, FERC Stats. & Regs. ¶32,593, at P 54 (2005)).

<sup>44</sup> *Extraordinary Expenditures Necessary to Safeguard National Energy Supplies*, 96 FERC ¶61,299 (2001).

<sup>45</sup> *Pricing Reform Order*, FERC Stats. & Regs. ¶31,222, at P 191.

that single-issue ratemaking can provide a significant incentive for achieving infrastructure goals because it assures that the decision to construct new infrastructure is evaluated on the basis of the risks and returns of that decision. It removes from that decision the uncertainty associated with re-opening the applicant's entire rate. Therefore, consistent with these prior Commission decisions, we find that each jurisdictional Participating Utility may seek to recover its costs through a single-issue ratemaking proceeding. An Applicant's filing for single-issue ratemaking is only required to address cost and rate issues associated with the Agreement in a section 205 proceeding to approve those rates. Such Applicant will be required to fully develop and support any rate designed to recover those costs, including cost allocation and rate design. However, the Commission will not, in any such subsequent section 205 proceeding, revisit its decision that STEP costs qualify for single-issue ratemaking.

c. **Whether the recovery of an acquisition premium for transformers purchased in response to a Triggering Event is just and reasonable**

i. **Application**

44. Applicants ask the Commission to find that jurisdictional Participating Utilities may recover in their rates the costs they incur to buy transformers in response to a Triggering Event, including costs in excess of the net book value of the purchased transformers.

45. Applicants argue that, without the Agreement, a purchaser would have to pay the market price to acquire a new transformer, accept the long lead time associated with ordering a new transformer, and experience degraded system reliability in the meantime. Applicants assert that the Commission permits a purchaser of utility assets to recover in rates purchase costs in excess of the net book value of the assets where the purchase price provides benefits to customers.<sup>46</sup> Accordingly, Applicants maintain that the Agreement enables the purchaser "to avoid the delay in replacing its damaged transformers while paying no more than the same price – the cost of a new transformer – that it would have to pay if the Agreement were not in place."<sup>47</sup> Applicants further assert that if the

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<sup>46</sup> Application at 29 (citing *UtiliCorp United Inc. and Centel Corp.*, 56 FERC ¶ 61,031, at 61,120 & nn.26-28, *reh'g denied*, 56 FERC ¶ 61,427, at 62,528-29 (1991) and *Minnesota Power & Light Co.*, 43 FERC ¶ 63,104, at 61,341-42, *reh'g denied*, 43 FERC ¶ 61,502 (1989)).

<sup>47</sup> *Id.* at 30.

Agreement set the purchase price at the transformer's net book value even though the replacement cost is higher, the purchaser will receive a windfall. According to Applicants, permitting recovery of this acquisition premium appropriately allocates the costs to the utility that receives the benefits from the transfer.

46. Applicants also argue that payment for a spare transformer in excess of net book value is reasonable because the selling utility does not receive any undue benefit from the sales price. The selling utility typically must buy a new transformer to replace the one it sold to maintain its share of the inventory of spare transformers. Applicants assert that it will be a major disincentive to participation in the Agreement if the selling utility's customers were required to incur additional costs to buy a new transformer to replace the one being sold. Applicants further argue that the selling utility's customers should not have to do this because they do not receive any benefit from the sale.

**ii. Commission Determination**

47. We agree with Applicants that what would be most important after a Triggering Event is replacing destroyed transformers and quickly restoring the transmission system. We also agree that in this situation it is reasonable for a purchaser to pay and a seller to charge the replacement cost of the spare transformer, since this is the price that the purchaser would otherwise have had to pay and the price the seller would have to pay in the marketplace. Therefore, we find that, subject to the Commission's review of the section 205 filing, Applicants may recover in their rates the costs they incur to purchase spare transformers in response to a Triggering Event, including costs in excess of net book value of the purchased transformers.

48. We also agree with Applicants that the selling utility's customers should not be required to incur any additional costs to buy a new transformer to replace the one being sold. Therefore, we will require that any acquisition premium paid by the purchaser (that is, the difference between the actual sales price and net depreciated original cost) be credited against the seller's cost of the replacement transformer. This will ensure that the selling utilities' customers are not burdened by additional costs of a new transformer. Similarly, if, for a Permitted Disposition other than a Triggering Event, a Participating Utility sells a transformer that it has committed to meet its obligations under the Agreement, then the Participating Utility should credit against the cost of a replacement transformer the difference between the revenue received for the sale and the transformer's net book value.



d. **Whether jurisdictional public utilities that are subject to retail rate freezes should be able to defer recovery of the costs of complying with the Agreement**

i. **Application**

49. Applicants argue that each jurisdictional Participating Utility that is under a retail rate moratorium should be permitted to use a deferred cost recovery mechanism that allows it to begin recovering the costs associated with the Agreement in jurisdictional rates at the end of the retail rate moratorium. Applicants maintain that this is consistent with the Commission's policy.<sup>48</sup>

ii. **Commission Determination**

50. In the *Pricing Reform Order*, the Commission found that permitting public utilities under retail rate freezes to defer recovery of new transmission costs will help facilitate investment.<sup>49</sup> The Commission also stated that deferred cost recovery mechanisms should be available to all public utilities when such initiatives reduce congestion and increase reliability, and recognized the importance of ensuring that federal and state ratemaking policies align to not only reduce regulatory lag, but facilitate transmission development. We find that Applicants have sufficiently demonstrated a nexus between the proposal for deferred cost recovery and the goals of STEP. Therefore, we find that each jurisdictional Participating Utility may seek to defer until after a retail rate moratorium the recovery of the costs of complying with the Agreement in its rates. To do so, a utility should submit a section 205 filing. We expect that in most cases, we will approve as just and reasonable deferred rate recovery of the costs of complying with the Agreement until the end of any retail rate freeze. If a state regulator believes that this conflicts with a state goal or undermines a state settlement with an applicant, the Commission will consider objections by state regulators on a case-by-case basis and will seek to avoid inconsistencies between state and federal regulation.

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<sup>48</sup> *Id.* at 31 (citing *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, 113 FERC ¶61,182, FERC Stats. & Regs. ¶32,593, at P 35 (2005)).

<sup>49</sup> *Pricing Reform Order*, FERC Stats. & Regs. ¶31,222, at P 175.

e. **Whether the Commission’s review of the inclusion in rates of costs incurred under the Agreement should be limited to whether public utility incurred the costs and whether the rates are properly designed to recover those costs**

i. **Application**

51. Applicants seek a declaratory order establishing that the Commission’s review of any section 205 rate filing to recover costs associated with the Agreement will be limited to review of: (1) whether the public utility has actually incurred the costs claimed and (2) whether the filing is properly designed to recover the revenue requirement. Applicants argue that if the Commission determines now that costs incurred under the Agreement will be prudently incurred, that the recovery of the purchase cost (*i.e.*, the acquisition premium) will be just and reasonable, and that the recovery of the costs through single-issue rate making is reasonable, then intervenors should not be permitted to raise these issues again in subsequent section 205 proceedings in which the Participating Utilities seek to recover these costs in their rates.

ii. **Commission Determination**

52. We have found that: (1) the decisions to participate in STEP and acquire and sell transformers as required are prudent; (2) subject to the Commission’s review of the section 205 filing, a Participating Utility may recover in its rates the cost to purchase a spare transformer from another Participating Utility at replacement cost; and (3) the costs that a Participating Utility incurs to meet its obligations under the Agreement qualify for single-issue rate treatment. We have not, however, made any predetermination regarding the costs incurred pursuant to the Agreement. Therefore, we will not limit the Commission’s review of any future section 205 filing as requested by the Applicants. In the prudence review process, it is well-settled that “the initial burden of proof as to whether a utility’s costs are excessive rests with the party making the allegation. Only when an opposing party raises ‘serious doubts’ does the burden shift to the utility to dispel those doubts.”<sup>50</sup> Consistent with the process outlined in the *Pricing Reform Order*, we will not revisit the decisions already made in this proceeding and listed above.

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<sup>50</sup> *Indiana and Michigan Municipal Distributors Association and City of Auburn, Indiana v. Indiana Michigan Power Company*, 62 FERC ¶61,189, at 62,239, order on reh’g, 65 FERC ¶61,087 (1993), *aff’d sub nom. Indiana Municipal Power Agency v. FERC*, 56 F.3d 247 (D.C. Cir. 1995); *Public Service Company of Colorado*, 90 FERC ¶ 61,285, at 61,960 (2000) (finding “our historical prudence standards” are that “costs are presumed prudent unless someone raises a reasonable doubt about them”); *New England*

**3. Whether the Commission's Findings Should Apply To Future Signatories**

**a. Application**

53. Applicants seek to have future signatories to the Agreement granted the same blanket section 203 authorization and rate treatment as granted to the Applicants. Applicants state that any public utility that signs the Agreement in the future will provide the Commission with notice of such event and pledge to abide by the commitments made by the Applicants in this proceeding. Applicants request that the Commission hold that, upon receiving such notice, the new utility participant will be authorized under section 203 to transfer transformers pursuant to the Agreement and will be entitled to the same rate treatment as the Applicants. Applicants argue that the extension of the Commission's order to future participants is in the public interest because it will encourage additional utilities to execute the Agreement but avoid the time and expense required to file duplicate pleadings.

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*Power Company*, Opinion No. 231, 31 FERC ¶61,047, at 61,084, *reh'g denied*, Opinion No. 231-A, 32 FERC ¶61,112 (1985), *aff'd sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986) (“[M]anagers of a utility have broad discretion in conducting their business affairs and incurring costs necessary to provide service to their customers. In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management (or that of another jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time. We note that while in hindsight it may be clear that the management decision was wrong, our task is to review the prudence of the utility's actions and the costs resulting therefrom based on the particular circumstances existing either at the time the challenged costs were actually incurred, or the time the utility became committed to incur those expenses.”); *Minnesota Power & Light Company*, Opinion No. 86, 11 FERC ¶61,312, at 61,645, *order on reh'g*, Opinion Nos. 86-A and 87-A, 12 FERC ¶61,264 (1980) (“As a matter of practice, utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent unless the Commission's filing requirements, policy or precedent otherwise require. However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.”).

**b. Commission Determination**

54. We find that expansion of STEP to include additional participants is in the public interest. Expansion of the program will extend the reliability benefits of spare transformers to a greater portion of the bulk power system, and will do so in a cost-efficient manner. Therefore, we agree to Applicants' request and declare that, upon receiving notice from a new participant that it has signed the Agreement and will comply with the commitments made by Applicants in this proceeding, the Commission will consider such participant authorized to transfer transformers under section 203 under the Agreement and entitled to the same rate treatment as Applicants are granted herein.

The Commission orders:

(A) Applicants' request for blanket authorizations under section 203 is hereby conditionally granted, as discussed in the body of this order.

(B) Applicants' petition for a declaratory order is hereby granted in part, as discussed in the body of this order.

(C) The proposed transactions are authorized upon the terms and conditions and for the purposes set forth in the Application, as discussed in the body of this order.

(D) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA as necessary to implement the proposed transactions.

By the Commission. Commissioner Moeller not participating.

( S E A L )

Magalie R. Salas,  
Secretary.

STATE OF MINNESOTA     )  
  ) ss  
COUNTY OF ST. LOUIS     )

AFFIDAVIT OF SERVICE VIA  
ELECTRONIC FILING

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Susan Romans of the City of Duluth, County of St. Louis, State of Minnesota, says that on the 22<sup>nd</sup> day of April, 2015, she served Minnesota Power's Petition for Approval of Asset Transfers on the Minnesota Public Utilities Commission and the Energy Resources Division of the Minnesota Department of Commerce of via electronic filing.



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Susan Romans

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