



414 Nicollet Mall  
Minneapolis, Minnesota 55401

**PUBLIC DOCUMENT  
TRADE SECRET DATA EXCISED**

December 3, 2013

**--Via Electronic Filing--**

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

RE: PETITION  
APPROVAL OF TWO AFFILIATED INTEREST AGREEMENTS WITH  
NORTHERN STATES POWER COMPANY-WISCONSIN  
DOCKET NO. E002/AI-13-\_\_\_\_\_

Dear Dr. Haar:

Enclosed for filing is the Petition of Northern States Power Company requesting approval of two affiliated interest agreements with Northern States Power Company-Wisconsin. Copies of the non-public version are being filed separately.

This Petition includes copies of the two agreements for which the Company is seeking Commission approval: Wisconsin Construction Management Agreement and the CapX2020 Operating Utilities Agreement for the La Crosse Project. These agreements contain non-public trade secret and security data as defined under section 13.37 of the Minnesota State Statutes.

The redacted provisions of the contracts and certain appendices contain information that the Company requests be treated as trade secret data. The Company has maintained this information as secret. The Company believes that the release of this information may hinder the CapX2020 Owners' ability to enter into commercial agreements with contractors or other parties. Therefore, there is independent economic value from the information not being generally known or readily ascertained.

The Company requests that Appendices A, B, and C to the Wisconsin Construction Management Agreement be treated as security data. The information has been treated as Critical Energy Infrastructure Information under federal law because the transmission lines and other material shown in these appendices are facilities that are currently used for or, will be used for, the transmission, production, generation or distribution of

energy, and this material could be useful to a person planning an attack on critical infrastructure. Because disclosure of the data would be likely to substantially jeopardize the security of the transmission lines against tampering, the Company requests confidential treatment under Minnesota law.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies of the one-page Summary of Filing have been served on the parties on the attached service list.

Please contact me at [paul.lehman@xcelenergy.com](mailto:paul.lehman@xcelenergy.com) or 612-330-7529 if you have any questions regarding this filing.

Sincerely,

/s/

PAUL J LEHMAN  
MANAGER, REGULATORY COMPLIANCE AND FILINGS

Enclosures

c: Service List (Summary)

STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David Boyd	Commissioner
Nancy Lange	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF THE PETITION OF  
NORTHERN STATES POWER COMPANY  
FOR APPROVAL OF AFFILIATE  
AGREEMENTS WITH NORTHERN STATES  
POWER COMPANY-WISCONSIN

DOCKET No. E002/AI-13-\_\_\_\_\_

**PETITION**

**INTRODUCTION**

Northern States Power Company submits this Petition to the Minnesota Public Utilities Commission for approval of affiliate agreements with the Company's affiliate, Northern States Power Company, a Wisconsin corporation (NSPW). We are making this filing pursuant to Minn. Stat. § 216B.48 and Minn. Rule 7825.2200(B), which require Commission approval for affiliate transactions in excess of \$50,000.

The agreements that are the subject of this Petition relate to the construction and operation of the Wisconsin portions of the CapX2020 Hampton-Rochester-La Crosse 345 kV Transmission Project (Hampton-La Crosse Project). Specifically, we seek approval of the following agreements:

*Wisconsin CMA* - The Construction Management Agreement for the Wisconsin portion of the Hampton-La Crosse Project, through which the Company becomes the construction manager for the Wisconsin portion of the project on behalf of all of the project owners, including NSPW.

*Briggs Road Substation Agreement* - The CapX2020 Operating Utilities Agreement for the La Crosse Project, entered into specifically between the Company and NSPW so that the Company (or its contractors) can assist NSPW in the construction of the Briggs Road (Wisconsin) Substation.

Commission precedent requires that the Company make an affiliated interest filing within 30 days after an agreement is entered into. Initially, the Company believed that both agreements were exempt from an affiliated interest filing because they were

covered by an Administrative Service Agreement (ASA)<sup>1</sup> previously approved by the Commission. On further review, we found that the Wisconsin CMA and the Briggs Road Substation Agreement should have been filed. As a result, this filing is being made after the Commission's 30-day filing requirement. We apologize for the oversight and delay in submitting these agreements to the Commission.

The applicable standard governing the Commission's review of these agreements is whether the contract is reasonable and consistent with the public interest. We note that these agreements are reasonable and in the public interest for the following reasons:

- There are efficiencies gained by NSPM being the Construction Manager;
- The payment provisions are reasonable and will only reimburse the Company for its costs of providing services;
- Project accounting ensures that the Company is not being unduly burdened or unjustly enriched by providing this service; and
- The terms of the agreements were negotiated at arm's length.

The Company believes we satisfy the applicable standard and requests that the Commission grant a one-time variance to its rules by allowing this late-filed Petition and further, approve the Wisconsin CMA and the Briggs Road Substation Agreement.

## **I. SUMMARY OF FILING**

A one-paragraph summary is attached to this filing pursuant to Minn. R. 7829.1300, subp. 1.

## **II. SERVICE ON OTHER PARTIES**

Pursuant to Minn. R. 7829.1300, subp. 2, the Company has served a copy of this filing on the Office of the Attorney General – Antitrust and Utilities Division. A summary of the filing has been served on all parties on the enclosed service list.

## **III. GENERAL FILING INFORMATION**

Pursuant to Minn. R. 7829.1300, subp. 3, the Company provides the following information.

### **A. Name, Address, and Telephone Number of Utility**

Northern States Power Company, doing business as:

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<sup>1</sup> The ASAs previously approved by the Commission are described in more detail in Section V.B. of this Petition.

Xcel Energy  
414 Nicollet Mall  
Minneapolis, MN 55401  
(612) 330-5500

**B. Name, Address, and Telephone Number of Utility Attorney**

Mara N. Koeller  
Associate Attorney  
Xcel Energy  
414 Nicollet Mall, 5<sup>th</sup> Floor  
Minneapolis, MN 55401  
612-215-4605

**C. Date of Filing**

The date of this filing is December 3, 2013. The Wisconsin CMA was signed on December 21, 2012 between the Company (acting as Construction Manager) and the Owners of the Wisconsin portion of the Hampton-La Crosse project, including NSPW. The Briggs Road Substation Agreement was signed June 6, 2013 between the Company and NSPW.

**D. Statute Controlling Schedule for Processing the Filing**

Minn. Stat. § 216B.48 and Minn. Rule 7825.2200 (B) govern the Affiliated Interest substantive criteria related to the Wisconsin CMA and the Briggs Road Substation Agreement. These provisions do not establish an explicit time deadline for Commission action.

**E. Utility Employee Responsible for Filing**

Paul J Lehman  
Manager, Regulatory Compliance and Filings  
Xcel Energy  
414 Nicollet Mall, 7<sup>th</sup> Floor  
Minneapolis, MN 55401  
(612) 330-7529

**IV. MISCELLANEOUS INFORMATION**

Pursuant to Minn. R. 7829.0700, the Company requests that the following persons be placed on the Commission's official service list for this proceeding:

Mara N. Koeller

SaGonna Thompson

Associate Attorney  
Xcel Energy  
414 Nicollet Mall, 5<sup>th</sup> floor  
Minneapolis, MN 55401  
[mara.n.koeller@xcelenergy.com](mailto:mara.n.koeller@xcelenergy.com)

Records Analyst  
Xcel Energy  
414 Nicollet Mall, 7<sup>th</sup> Floor  
Minneapolis, MN 55401  
[regulatory.records@xcelenergy.com](mailto:regulatory.records@xcelenergy.com)

Any information requests in this proceeding should be submitted to Ms. Thompson at the Regulatory Records email address above.

## **V. DESCRIPTION AND PURPOSE OF FILING**

### **A. Background**

On May 30, 2012, in Docket No. E002/TL-09-1448, the Commission issued a route permit to the Company to construct a double-circuit capable 345 kilovolt (kV) electric transmission facilities from a new substation near Hampton, Minnesota to a new substation between Zumbrota and Pine Island, Minnesota to the Minnesota border near Kellogg, Minnesota (the Minnesota Project) that would connect with facilities in Wisconsin at the City of Alma. On the same day, in Docket No. 5-CE-136, the Public Service Commission of Wisconsin (PSCW) approved an application from NSPW, Dairyland Power Cooperative (Dairyland), and WPPI Energy (WPPI) for a Certificate of Public Convenience and Necessity to construct new 345 kV electric transmission facilities crossing the Mississippi River at Alma, Wisconsin and continuing to a new Briggs Road Substation near Holmen, Wisconsin (the Wisconsin Project).

The two project together are called the CapX2020 Hampton-Rochester-La Crosse 345 kV Transmission Project (the Hampton-La Crosse Project).<sup>2</sup> Six of the twelve CapX2020 partners are involved in the Hampton-La Crosse Project. They have agreed that the Company, Dairyland, Southern Minnesota Municipal Power Agency (SMMPA), and the City of Rochester (through its Public Utility Board) will own the Minnesota Project (Minnesota Owners). NSPW, Dairyland, and WPPI will share in the ownership of the Wisconsin Project (Wisconsin Owners). This is the first CapX2020 project where both the Company and NSPW are participating as owners.<sup>3</sup>

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<sup>2</sup> The Hampton-La Crosse Project is part of the CapX2020 Transmission Expansion Initiative. CapX2020 is a joint initiative of twelve transmission-owning utilities<sup>2</sup> in Minnesota, Wisconsin, and the surrounding region, which have developed a transmission capacity expansion plan for the area. A Joint Cooperation Agreement between the Wisconsin Owners and the Minnesota Owners bring certain aspects of the Minnesota Project and the Wisconsin Project together to ensure coordination and cooperation between the two projects and the respective owners. The Company does not believe the Joint Cooperation Agreement requires Commission approval because it does not provide for the exchange of goods or services.

<sup>3</sup> The Company is a public utility as defined in Minn. Stat. § 216B.02 with its corporate headquarters located in Minneapolis, Minnesota. NSPW is a public utility as defined in Wis. Stat. § 196.01 with corporate headquarters located in Eau Claire, Wisconsin. NSPW and the Company are wholly-owned subsidiaries of

The owners negotiated and entered into a variety of agreements regarding their respective roles and responsibilities in the Hampton-La Crosse Project. They are the: (i) Project Participation Agreements;<sup>4</sup> (ii) Construction Management Agreements (CMA); (iii) Operations and Maintenance Agreements (OMA);<sup>5</sup> and the (iv) Transmission Capacity Exchange Agreement (TCEA).<sup>6</sup> In addition, the Company and NSPW entered into the Briggs Road Substation Agreement to provide for the terms and conditions of construction of the substation making up the eastern terminus of the Hampton-La Crosse Project. The Briggs Road Substation will be wholly owned by NSPW.

The Company initially believed that all of these agreements were exempt from separate affiliate review based upon prior Commission Orders. However, upon further review, the Company believes the Wisconsin CMA and the Briggs Road Substation Agreement require Commission approval pursuant to Minn. Stat. § 216B.48 and should have been filed previously.

## **B. Existing Affiliate Interest Contracts**

The Company has two Administrative Services Agreements (ASAs), which have previously been approved by the Commission. Generally speaking, these ASAs (and Commission approval thereof) provide that some types of affiliate transactions have

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Xcel Energy Inc. (Xcel Energy), a public utility holding company and are affiliated interests as defined in Minn. Stat. § 216B.48. Certain contracts between them must be filed with the Commission for approval.

<sup>4</sup> These agreements set forth the terms and conditions for the ownership and funding of the Minnesota Project and the Wisconsin Project. The Project Participation Agreement for the Minnesota Project is among the Minnesota Owners and the Project Participation Agreement for the Wisconsin Project is among the Wisconsin Owners. As neither Project Participation Agreement has been entered into by both NSPM and NSPW, the Company does not believe that either Project Participation Agreements requires Commission approval.

<sup>5</sup> These agreements set forth the terms for the operation and maintenance of the Minnesota and Wisconsin Projects. The Project Owners have selected NSPM as the “Operations Manager” for the Minnesota Project and NSPW as “Operations Manager” for the Wisconsin Project. The Minnesota OMA is between the Minnesota Owners and the Wisconsin OMA is between the Wisconsin Owners. As neither OMA has been entered into by both NSPM and NSPW, the Company does not believe that either requires Commission approval.

<sup>6</sup> This agreement aligns the transmission capacity rights of the Minnesota Owners and the Wisconsin Owners with their overall investment in the Minnesota Project and the Wisconsin Project. Essentially, under the TCEA, each owner grants to the other owners all rights and benefits of ownership in the project and the right to use the capacity and associated transfer capability of the Project in proportion to that owner’s percentage interest. Both NSPM and NSPW are parties to the TCEA, but the agreement contemplates the rights and obligations of the signatories, it does not contemplate any exchange of goods or services. Therefore, the Company does not believe that the TCEA requires Commission approval.

been found to be in the public interest, and thus each transaction does not require Commission approval.<sup>7</sup> The two Commission-approved ASAs are:

- *XES Service Agreement* - This is an ASA between the Company and Xcel Energy Services Inc. (XES), it provides terms for the provisions of certain goods and services between XES and the Company. There is a similar XES Service Agreement between XES and each of the other Xcel Energy Operating Companies.
- *OpCo Service Agreement* - This is an ASA between the Company and the other Xcel Energy Operating Companies (the OpCo Service Agreement), it provides for the exchange of goods and services between the Xcel Energy Operating Companies.

Each of these ASAs is described further below.

1. *XES Service Agreement*

The XES Service Agreement was first approved by the Commission in Docket No. E,G002/AI-00-1251 on April 27, 2001. The most recent update to that agreement was approved by the Commission in Docket No. E,G002/AI-08-760 on January 29, 2009. In 2009, the Commission made certain changes to the agreement regarding jurisdiction, but the amendments did not affect the services authorized by the agreement.

Among other things, under the XES Service Agreement, XES provides construction management services on behalf of the Company. Specifically, the XES Service Agreement contemplates, on page 7 of Appendix A, that certain aspects of transmission design and construction will be performed for the Company by XES. These construction services include, Energy Delivery Engineering/Design, Construction, and Operations & Maintenance services. These services are provided to the Company by XES pursuant to the provisions of the XES Service Agreement and the Company's Cost Allocation and Assignment Manual. A similar agreement, with substantially the same terms, exists between XES and NSPW. The Service Agreement between XES and NSPW has been approved by the Public Service Commission of Wisconsin.

In practice, XES generally provides management services to the Company with respect to budgeting, supervising, hiring, payments and other types of construction management work. For example and as described further below, XES is providing

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<sup>7</sup> See Minn. Stat. 216B.48 subdiv. 3 (providing that “[r]egular recurring transactions under a general or continuing arrangement that has been approved by the commission are valid if they are conducted in accordance with the approved terms and conditions”).

the management services on behalf of the Company and NSPW in their role as owners of the Minnesota Project and Wisconsin Project, respectively. However, for construction projects, the actual physical construction work is performed by the Company's bargaining employees or contractors to ensure compliance with our legal and contractual obligations. Consequently, to the extent that the Company provides construction services to NSPW under the agreements filed in this Petition, it does so utilizing XES personnel pursuant to the XES Service Agreement and the Company personnel pursuant to the OpCo Service Agreement, described below.

## 2. *OpCo Service Agreement*

The OpCo Service Agreement<sup>8</sup> was approved by the Commission in Docket No. E002/AI-01-493 on June 22, 2001. The Company sought approval of the OpCo Service Agreement so that an affiliated agreement is not required each time a service, lease arrangement, or piece of equipment or good is lent or sold between operating companies. The OpCo Service Agreement is intended to allow for Xcel Energy to maximize the economies of scale of its holding company structure and reduce duplication of costs between the operating companies.

With respect to construction, Section 2.01 of the OpCo Service Agreement provides that an operating company subsidiary may provide "incidental" services to any other operating utility subsidiary at cost. Such services include "construction and/or operation" services. In practice, the Company personnel, managed by XES under the XES Service Agreement, have generally provided all of the construction services (at cost) required by NSPW since the inception of the OpCo Service Agreement. The Company had identified this work as "incidental" since it was routine in nature and because no major construction projects had been undertaken in Wisconsin until the Hampton-La Crosse Project.<sup>9</sup> However, given the fact that the Hampton-La Crosse Project is a major new transmission project and that under the Wisconsin CMA, the Company will be providing services under an agency relationship with NSPW, the Company determined that the scope of services it will provide NSPW are beyond the "incidental" types of services contemplated by the OpCo Service Agreement.

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<sup>8</sup> The OpCo Service Agreement is among the Company, NSPW, Public Service Company of Colorado (PSCO), Cheyenne Light, Fuel and Power Company, Southwestern Public Service Company and Black Mountain Gas Company.

<sup>9</sup> The Company recognizes that the term "incidental" does not draw a clean line between affiliate arrangements that should be separately filed and those that fit within the OpCo Service Agreement. The Company is committed to further assess the terms of the ASAs and update them, as necessary. We welcome feedback from stakeholders on whether a threshold different than "incidental" might be preferable.

## C. Contracts Requiring Commission Approval

### 1. *Wisconsin CMA*

The Wisconsin Owners and the Company have entered into the Wisconsin CMA to engage the Company (the Construction Manager) to provide construction management services associated with the construction of those portions of the Wisconsin Project not to be individually owned and constructed by NSPW or Dairyland, such as substations. The Construction Manager will act as agent for the Wisconsin Owners in fulfillment of its duties and has the authority to bind the Wisconsin Owners (severally in proportion to their ownership percentages and not jointly) in exercising its construction management responsibilities in most circumstances. All construction services will be paid for by the Wisconsin Owners at the Company's actual cost. A public and trade secret copy of the Wisconsin CMA is provided as Attachment B to this Petition. The relevant terms and conditions of the Wisconsin CMA are described below.

#### a. Construction Services

The services provided by the Company to the Wisconsin Owners, including NSPW, are described in Article 2 of the Wisconsin CMA. Examples of the types of services that the Construction Manager will provide include the provision of overall project coordination and administration between parties, procurement management, managing and coordinating with contractors and subcontractors and managing and coordinating the construction work schedule and scope of work for the Wisconsin Project. Construction services also include procuring and managing all real estate for the Wisconsin Project. The Construction Manager will also enter into contracts on behalf of the Wisconsin Owners and act as paying agent for all third-party contracts such as for materials and third-party labor.

Pursuant to Section 2.9, NSPW will construct and own the Briggs Road Substation. The Company or contractors will perform the actual construction work under the Briggs Road Substation Agreement.

#### b. Funding, Payment and Ownership

Article 6 describes how the Wisconsin Owners will fund the Wisconsin Project. The payment methodology under the Wisconsin CMA requires the Wisconsin Owners to fund a separate trust account at the request of the Construction Manager to cover expected expenditures during the upcoming month. The Construction Manager then remits these funds from the trust account as paying agent for the Wisconsin Owners for third-party costs of other construction activities, such as material purchases, payment to third-party contractors, as well as payment to itself for its services (rendered at cost).

The rationale for this complex payment structure is to mitigate the financial risk created by the tenancy-in-common ownership structure for the CapX2020 projects. This ownership structure raises a financial risk to each owner in the event any owner goes into bankruptcy. In an effort to alleviate this risk, all project funds are segregated into a trust account that would be insulated in such an event. Under this structure, it is the Owners who incur the cost of construction for a particular month (*i.e.*, the Construction Manager's internal costs, material costs, and any third-party vendor costs, etc.) through funding the trust account and pay the costs incurred (including the Construction Manager's own costs) from the trust account upon submission of documentation of the monthly expenditures. In practice, the trust account acts a security fund from which the Company obtains reimbursement for all costs that it incurs on behalf of the project including the costs for materials and third-party labor which it funds in its role as Construction Manager.

The Company, in its capacity as Construction Manager, will furnish its services to the Wisconsin Owners on an actual cost-basis in accordance with the methodology set forth in the Wisconsin CMA Sections 2.2.1 and 2.2.2 and Appendix D. This methodology includes an overhead to reimburse the Company for a portion of its administrative and general costs incurred by business areas not direct charging the project.

As management agent, the Company takes no ownership interest in the Wisconsin Project. All rights and responsibilities under third-party contracts for things like materials belong to the Wisconsin Owners. The Wisconsin Owners have all ownership rights in the construction work in progress and materials purchased but not yet installed. The Company provides its services at cost for the convenience of the Wisconsin Owners, but does not receive a return on its services.

c. Competitive Bidding Requirements

Pursuant to Article 3, the Company is required to bid, negotiate, enter into contracts for, and otherwise arrange for the resources necessary to complete most of the Wisconsin Project. The Company must engage in a bidding process for all Construction Contracts and Subcontracts, unless an exception applies. As described in Section 2.4, the Company may act as a contractor, but only if a separate contract is negotiated and approved by a project management committee, with representatives from each of the Owners of the Hampton-La Crosse Project.

d. Owner Oversight

Article 9 sets forth the Wisconsin Owners' rights and duties. The Wisconsin Owners have formed, and act through, a Management Committee, and oversight and management of matters arising under the CMA is generally determined by the Management Committee. The Management Committee is comprised of

representatives from each of the Owners of Hampton-La Crosse Project. An XES employee, from the Transmission business unit, represents NSPW and the Company on the Management Committee.

In carrying out its duties and responsibilities, the Management Committee, among other things, has (i) the right to provide direction to, and develop policies for, the Construction Manager's authority to act as an agent, (ii) develop policies for the Construction Manager for any matter under the CMA, (iii) inspect the construction work at reasonable times, and (iv) the right to issue Wisconsin Owner-directed project change requests. Article 9 also sets forth restrictions on the rights and responsibilities of the Management Committee. The Management Committee does not have the authority to direct the Construction Manager or any contractor to carry out the construction management services or real property management services in a particular manner or any third-party contractor to carry out construction work. Each Wisconsin Owner has agreed to be bound by the decisions of the Management Committee.

e. Other CMA Provisions

There are other CMA provisions that govern general contracting matter such as representations and warranties (Article 10), indemnification (Article 13), liability limitations (Article 16) and other miscellaneous provisions (Article 17). The Wisconsin CMA will be in effect until construction of the Wisconsin Project is complete or until earlier terminated by the Parties or by its terms.

f. Schedule and Appendices

The Wisconsin CMA includes a Schedule 1, which is a set of Generally Applicable Provisions shared with the other project agreements entered into among the Wisconsin Owners. In addition, the Wisconsin CMA includes Appendices providing for:

- Appendix A: The Wisconsin Project Plan (CapX La Crosse);
- Appendix B: Design;
- Appendix C: CapX Design Criteria;
- Appendix D: The methodology for Reimbursement of Costs For Services;
- Appendix E: Pre-effective Approved Construction Management Costs;
- Appendix F: Various forms;
- Appendix G: Identification of the Project Manager and alternate project managers;
- Appendix H: Additional Required Provisions;
- Appendix I: Insurance;
- Appendix J: Underlying System Improvements;
- Appendix K: Administrative Documentation; and

Appendix L: Sales and Use Tax Obligations.

The Appendices are subject to being updated and refined as the construction of the Wisconsin Project progresses.

2. *Briggs Road Substation Agreement*

As described above, NSPW will be the sole owner of the Briggs Road Substation and the Company (or its contractors) will provide construction services to NSPW for this portion of the Wisconsin Project. The Briggs Road Substation Agreement defines the roles and responsibilities of NSPW and the Company in the construction of the Briggs Road Substation. NSPW and the Company have agreed that the Company (or its contractors) will construct the Briggs Road Substation on NSPW’s behalf and that the charges between the two companies will be at cost and according to the same methodology as agreed to by the Wisconsin Owners in Appendix D of the Wisconsin CMA. Attachment C is an executed version of the Briggs Road Substation Agreement.

**D. Public Interest**

Minn. Stat. § 216B.48, subdivision 3 explains that “[n]o contract or arrangement . . . made or entered into . . . between a public utility and any affiliated interest as defined in subdivision 1, . . . is valid or effective unless and until the contract or arrangement has received the written approval of the commission.” The Wisconsin CMA and the Briggs Road Substation Agreements are contracts between the Company and its affiliate, NSPW, and therefore are not valid or effective unless and until the contracts have received approval from the Commission.

When the Company requests approval of an affiliate contract, statutes require the Company to “file with the Commission a verified copy of the contract or arrangement . . . and also of all the contracts and arrangements, whether written or unwritten, entered into . . . and in force and effect at that time.” Minn. R. 7825.2200(B)(3), requires the Company to provide additional information. Below is a table explaining where these filing requirements are located throughout the petition:

A verified copy of the contract[s].	Minn. Stat. 216B.48, subvid. 3	Attachment B and Attachment C
All the contracts or arrangements, whether written or unwritten, entered into . . . and in force and effect at that time	Minn. Stat. 216B.48, subvid. 3	Attachment A
A descriptive title of each contract or arrangement	Minn. R. 7825.2200, subp. B(1)	Attachment A
A copy of the contract or agreement.	Minn. R. 7825.2200, subp. B(2)	Attachment B and Attachment C

A list and the past history of all contracts or agreements outstanding between the Company and affiliate interest, the consideration received by the affiliate interest for such contracts or agreements, and a verified summary of the relevant cost records	Minn. R. 7825.2200, subp. B(3)	Attachment A
A descriptive summary of the pertinent facts and reasons why such contract or agreement is in the public interest.	Minn. R. 7825.2200, subp. B(4)	Summarized in Attachment A; detailed in the remainder of this section of the Petition
Competitive Bidding	Minn. R. 7825.2200, subp. B(5)	Summarized in Attachment A; detailed in the remainder of this section of the petition.

Minn. Stat. § 216B.48 then provides the standard of review and burden of proof:

The commission shall approve the contract or arrangement made or entered into after that date only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest. No contract or arrangement may receive the commission’s approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest or rendering the services or of furnishing the property or service to each public utility. Proof is satisfactory only if it includes the original or verified copies of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract or summary as the commission may deem adequate, properly identified and duly authenticated, provided, however, that the commission may, where reasonable, approve or disapprove the contracts or arrangements without the submission of cost records or accounts. The burden to establish the reasonableness of the contract or arrangement is on the public utility.

The Wisconsin CMA and the Briggs Road Substation Agreements are in the public interest and should be approved by the Commission for the following reasons:

- There are efficiencies gained by NSPM being the Construction Manager;
- The payment provisions are reasonable and will only reimburse the Company for its costs of providing services;
- Project accounting ensures that the Company is not being unduly burdened or unjustly enriched by providing this service; and
- The terms of the agreements, being amongst more parties than just NSPW and the Company, were negotiated at arm’s length.

We discuss each of these concepts in further detail below.

## 1. *The Company as Construction Manager*

The Owners of the Minnesota Project and the Wisconsin Project recognized that both projects are necessary to provide the anticipated benefits. The Hampton-La Crosse Project will be owned through a co-tenancy, with each Owner having an individual undivided interest in its portion of the project without the right to partition. As the owners of a tenancy-in-common, the Wisconsin Owners collectively decided that it would be in their interests that one utility manage the construction of both the Minnesota Project and the Wisconsin Project in order to maintain the efficient and cost-effective construction of the Hampton-La Crosse Project. A Construction Manager was therefore selected to manage the construction on behalf of the Wisconsin Owners much like any utility would manage the construction of its own project. Because the Construction Manager was selected by the Hampton-La Crosse Project Owners to oversee the construction process competitive bidding was not conducted. These services would be performed by any utility overseeing the construction of its own facilities. The current situation only differs because the Wisconsin Project has multiple owners.

The collective decision of the Wisconsin Owners to select the Company as the Construction Manager for the Wisconsin Project is consistent with general CapX2020 practice. The Company was selected as the construction manager for the Minnesota Project. It will own the Hampton Substation (the northern terminus) and has the largest stake of any of the owners. The Company has ample experience in managing large transmission construction projects and currently plays the same role with regard to the CapX2020 Fargo – St. Cloud 345 kV Transmission Project. The Hampton-La Crosse Project is located mostly within the Xcel Energy service territories. Thus for ease of project oversight by the Minnesota and Wisconsin Owners, it was determined that the Company would maintain its role as Construction Manager for the Wisconsin Project.

Utilization of the Company as the Construction Manager is also consistent with the way the Company manages construction and is therefore appropriate for the construction of the Wisconsin Project and the Briggs Road Substation. Pursuant to the XES Service Agreement, XES personnel, in the Transmission business unit and on behalf of the NSP Companies, will manage the services that the Company will provide under the Wisconsin CMA and Briggs Road Substation Agreement just as it would if NSPW were selected as the Construction Manager. Consequently, the costs incurred and reimbursed for the provision of construction management service would appropriately be borne and remitted to the Company.

## 2. *Use of Company Labor for Construction Activities*

In addition to the construction management services which the Company is providing in its role as Construction Manager, Company labor will be utilized for actual construction work to be performed only under the Briggs Road Substation Agreement. As described above, the Wisconsin CMA provides bidding requirements for the provision of construction services. The Company can provide actual physical construction services only in circumstances where it has entered into a separate agreement negotiated and approved by the Management Committee (which has representatives from all the Project Owners). Should the Company enter into an agreement for construction services, the Project Owners, at their option, may utilize the services of an Independent Engineer in lieu of the Construction Manager to: (i) review Payment Requests, Change Orders, contract amendments and associated documentation and determine the Project Owners' funding obligations; (ii) inspect and determine whether the construction work has been properly performed in accordance with the applicable construction contract; and (iii) enforce the obligations of the Construction Manager as a Contractor under the applicable project construction contract.

With respect to the actual construction of the Wisconsin Project (excluding the Briggs Road Substation), the Company has elected not perform physical construction work.

With respect to the Briggs Road Substation, NSPW will discreetly own the entirety of the substation and the other Wisconsin Owners will own no portion of the substation. Consequently, NSPW has treated this project as it would any other project it would develop as a sole owner. It has usually been NSPW practice to utilize XES and the Company to construct Wisconsin based projects. This includes the use of XES management services as well as the Company labor. Generally, the Company has considered this to be the "incidental" type goods and services contemplated under the OpCo Service Agreement. For the Briggs Road Substation, however, given the formalities and contractual obligations that NSPW has undertaken for the Wisconsin Project, it was determined to formalize the Company's role with respect to the Briggs Road Substation through the Briggs Road Substation Agreement. That agreement provides continuity for management services by the Company throughout the entirety of the Wisconsin Project as well as transparency with respect to the work being done and payment.

## 3. *Project Accounting Ensures No Double Recovery*

Affiliate interest requirements exist, in part, to ensure that transactions amongst affiliated interests are transparent. The Company's accounting procedures governing this relationship ensures no double recovery.

First, the Company budgets how much of its construction time will be spent on capital projects versus operations and maintenance. When the work is performed, NSPW (as well as Dairyland and WPPI) will pay the Company at cost for the services it provides under the Wisconsin CMA and Briggs Road Substation Agreement pursuant to the terms of those agreements. Further, to the extent that the Company has purchased materials or third-party labor through its own account, it will be reimbursed at cost for those costs.

Once the project is in service, the Company will pay NSPW for its load ratio share of the use of the Wisconsin Project and receive its share of the associated transmission revenues, pursuant to the terms of the Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (the Interchange Agreement) on file with the Federal Energy Regulatory Commission.

a. Budgeting for Construction Services

The Company recognizes that stakeholders have an interest in ensuring that the labor utilized for capital projects is not already being recovered through base rates. The Company consistently utilizes its internal labor resources and allocated sufficient Company resources to the Wisconsin Project in the budgeting process to eliminate the risk of recovery of these costs through base rates. Attachment D shows the trend of consistent budget and actual amounts of the Company internal labor costs allocated to O&M activities (and included in base rates) and the amount of costs allocated to capital activities (and not included in base rates) which includes the capital costs charged to the Wisconsin Project work orders.

b. Payment for Construction Services

For the Wisconsin Project, any payment made to the Company is to cover the Company's actual costs of acting as construction manager.<sup>10</sup> Accordingly, all payments are "at cost" with no profit margin. By providing services at cost, the Company will not earn a margin on its construction services and consequently, there will be no effect on the ratemaking treatment of the Wisconsin Project.

The Company will be paid for its actual costs through the funding mechanisms established in the Wisconsin CMA and the Xcel Energy intercompany billing practices. As described above, the CMA funding mechanism, the Company, acting as Construction Manager, will forecast the expected project expenditures for the upcoming month and request that all of the Wisconsin Owners make a deposit into

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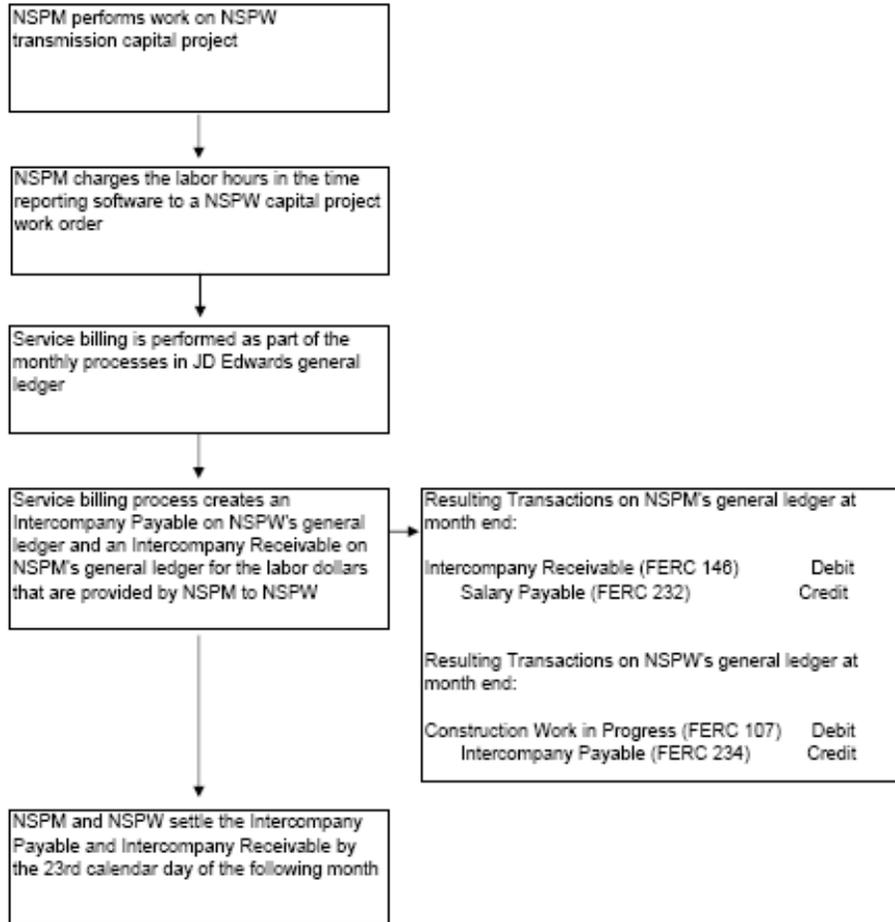
<sup>10</sup> See Wisconsin CMA Article 2, Section 2.2.1 (stating that "[t]he Construction Manager shall furnish to the Owners, at no charge in excess of its actual cost as provided in Section 5.4, its services"); CMA Article 5, Section 5.4 (describing specific costs chargeable and not chargeable to the project).

the project trust fund for their share of such expected expenditures. NSPW is required to make this payment as full funding of the trust fund protects all owners from bankruptcy risk of the other. The trust fund will then act as a security fund to ensure that the Company will be able to recover all of its costs acting on behalf of the Wisconsin Owners. These costs include the Company's loaded labor costs, costs of materials, and any third-party labor costs that the Company has incurred on behalf of the Wisconsin Owners. From the trust fund, the Company ultimately covers its management and other costs including overheads, at cost, including reimbursement for payments to third parties. The Wisconsin Project (like all capital projects) utilizes a work order system to segregate and track costs by legal entity and state. Unique work orders are established for the purpose of billing amounts due from the Wisconsin Owners, and state specific capital work orders are used to record NSPW's respective share of the Wisconsin Project cost, including overheads. By charging to the capital work orders, NSPW can account for all capital costs of the project and capitalize the Company's work for the Wisconsin Project.

To ensure that the Company does not subsidize the costs charged to NSPW capital work orders, the Company bills NSPW through the Xcel Energy intercompany billing system. Under this system, receivable and payable amounts are recorded on the Company's and NSPW's books (in specific intercompany accounts), and the balances are settled by Cash Management the following month. This mechanism ensures that the Company labor and other costs which are capitalized to a NSPW project are actually paid for by NSPW to ensure no double counting. Please note that XES can also charge costs to NSPW capital work orders in accordance with the XES Service Agreement. Table 1 below illustrates the intercompany work order and billings process.

**Table 1**

**Intercompany Billing Process**



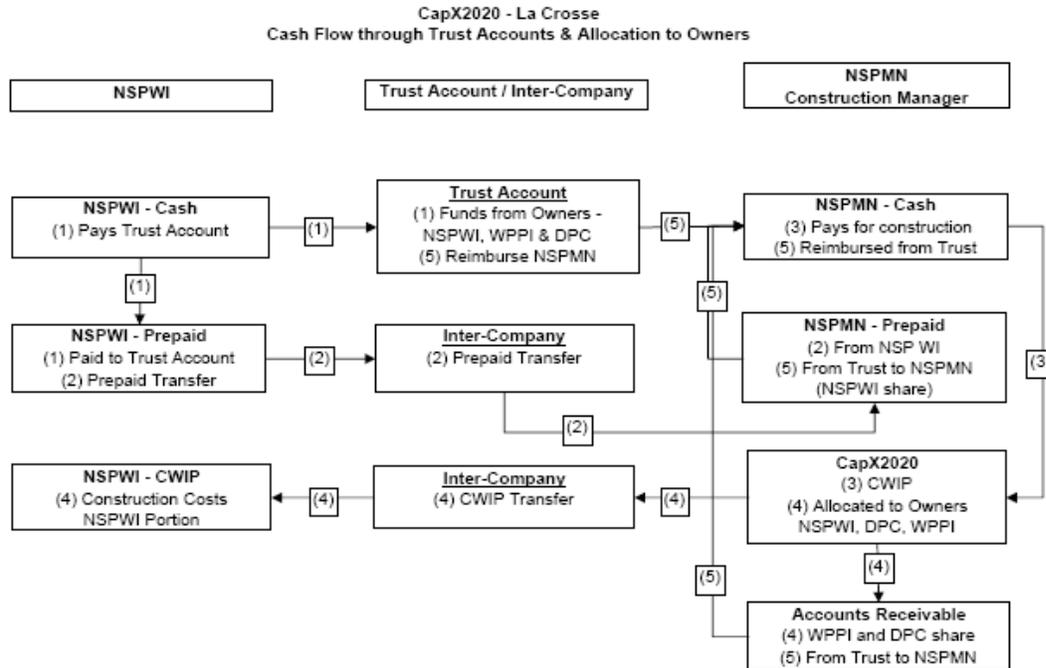
The Wisconsin Project presents a unique situation. The Wisconsin CMA’s funding provisions protect all of the Wisconsin Owners to ensure that money dedicated for the construction of the project is not redirected away from its intended purpose. With respect to the relationship between the Company and NSPW, this funding mechanism also creates a payment stream for the project outside of the usual Xcel Energy practices. Without proper oversight, this could lead to NSPW paying twice and the Company receiving twice the payment for its work; once through the CMA funding mechanism and a second time through the Xcel Energy intercompany billing practices.

To ensure no double payment, the Company has integrated the CMA payment mechanisms into its intercompany accounting procedures for the project. Under these procedures, when NSPW makes a deposit into the trust account, it is recorded as a “prepaid transfer” to the Company for the work to be performed or other costs incurred by the Company on behalf of NSPW and the other Wisconsin Owners. The

funds in the trust account ensure that the Company will be paid for services it performs and other costs it incurs. In reliance on the prepaid transfer and the other owners' deposits into the project trust fund, NSPM performs work and incurs other costs on behalf of NSPW and the other Wisconsin Owners.

The work and other costs are charged to a separate general ledger company (Company 72) established for the CapX2020 project in order to capture total project costs and then allocate them to the owners according to their ownership percentage of the project. Please note that the Service Company also charges costs to Company 72 to be allocated to the owners in addition to the Company. Once the actual costs are allocated on Company 72 and booked to each owner's receivable account, NSPW's portion is then transferred to NSPW's capital work orders. The actual costs are offset with the prepaid transfer on each Wisconsin Owner's billings, and NSPM is reimbursed from the trust fund. Adjustments are made to the intercompany accounts at month-end in order for the Company to reimburse Service Co. for its capital costs and to receive reimbursement from NSPW for its share of actual costs. Attachment E provides the accounting flow of these transactions using actual project costs through July 31, 2013. Please note that in Attachment E, the credit balance for NSP-MN Cash (reflecting higher payments for capital costs than reimbursements from the trust) is due to receiving reimbursement for July expenses in August. Also note that the NSP-MN Prepaid account does not net to zero since the amount paid by NSPW to the trust account is based on forecasted costs for July and August to ensure adequate funds are available to reimburse the Company timely. Attachment E includes the accounting for the labor load described in Appendix D of the Wisconsin CMA and illustrates that NSPW is charged the same as the other owners for this cost. Since NSPW is charged this labor load, the capital overheads normally applied to NSPW's capital work orders for similar administrative and general costs will not be charged to these Wisconsin Project work orders. However these work orders will continue to receive capital overhead costs pertaining to engineering and supervision. Through this process, the Company is able to maintain the economies of scale derived from the holding company structure of Xcel Energy Inc. and ensure that funds are not spent twice or double recovered through this process. Table 2 below graphically demonstrates the cash flow of Project funds.

**Table 2**



By reimbursing the Company’s costs, and only its costs, the Company is made whole for the provision of service without earning any margin for its services. Therefore, it is as if the Company did not participate financially in the Wisconsin Project. Consequently, from a funding perspective, the Company has made no contribution to the Wisconsin Project and all costs of the Wisconsin Project are therefore appropriately capitalized by NSPW. NSPW will earn its appropriate return on the Wisconsin Project through the Interchange Agreement and the Company will earn no return on its construction management services. The Wisconsin CMA and Briggs Road Substation Agreement will therefore ensure the Company does not over-recover any costs of the Wisconsin Project with respect to NSPW’s payment for services rendered.

c. Recovery of Project Costs

As an NSPW capital asset, NSPW will charge users of the asset a rate to earn its revenue requirement for the Project. Under the Interchange Agreement, the Company will be billed for approximately 85 percent of the revenue requirement for the Wisconsin Project. the Company will then seek to recover the Minnesota jurisdictional portion of that charge from our Minnesota customers. This is the same process used for every NSPW owned transmission asset under the Interchange Agreement. As demonstrated above, the Company is made whole but earns no

margin on any of the construction services provided under both the Wisconsin CMA and the Briggs Road Substation Agreement. Consequently, recovering costs billed through the Interchange Agreement will not result in double recovery.

4. *Agreements Are “Arms-Length” Transactions*

In order to facilitate efficient project management, a single utility—the Company—was selected as the Construction Manager of the Hampton-La Crosse Project. The arms length nature of the agreements with respect to the Wisconsin Owners who are not affiliated with the Company ensures that the agreements do not represent any inappropriate intra-Xcel Energy dealings and are therefore in the public interest.

Indeed, the terms of the agreements show that they are “arms-length transactions” between the Company and the Wisconsin Owners, including NSPW. In the case of the Wisconsin CMA, the agreement has been approved by, and applies equally to, all the other Owners, which are non-affiliated utilities, involved in the Wisconsin Project. In the case of the Briggs Road Substation Agreement, the cost charges are the same agreed-upon charges that arose in the Wisconsin CMA. In other words, the two contracts work together to ensure an arms-length relationship between the Company and NSPW.

## **VI. REQUEST FOR RULE VARIANCE**

1. *Need for a Variance*

The Company respectfully requests that the Commission vary its rules to allow this late-filed Petition. The Company is required to make an affiliated interest filing within 30 days after an agreement is entered into.<sup>11</sup> The Wisconsin CMA is dated December 21, 2012, and the Briggs Road Substation Agreement is dated June 6, 2013. The date of this filing is December 3, 2013, more than 30 days after execution for each contract.

The Company believed that one of the ASAs, which had been previously approved by the Commission, provided the appropriate Commission approval for the Wisconsin CMA and Briggs Road Substation Agreement. The Company only recently identified that the OpCo Service Agreement did not provide sufficient authority for the Company to undertake the role of Construction Manager on behalf of NSPW.

Once we identified this error we realized that these agreements should have been filed long before now. We apologize for this oversight and commit that we will work to improve our internal contracting processes to avoid this type of error in the future. In

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<sup>11</sup> Minn. Public Utilities Commission Order, Docket No. E,G999/CI-98-651, September 14, 1998.

any case, we believe that a rule variance is appropriate to allow for the Company to seek approval of these agreements under the present circumstances.

2. *Criteria for a Variance*

The Commission has the authority to vary a rule if the following criteria are met:

- (a) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (b) granting the variance would not adversely affect the public interest; and
- (c) granting the variance would not conflict with standards imposed by law. Minn. R. 7829.3200.

Denying this Petition at this juncture would impose an excessive burden on the Company, NSPW, and the other Wisconsin Owners by causing delay and added expense to the Wisconsin Project. Granting the variance would be in the public interest; in fact, as discussed above, the agreements are in the public interest by providing the efficient and cost-effective construction of the Hampton-La Crosse Project. Finally, granting the variance would not conflict with other standards imposed by law. The Commission has previously granted similar requests.<sup>12</sup>

### CONCLUSION

Xcel Energy respectfully requests that the Commission grant a one-time rule variance and accept this late-filed Petition more than 30 days after execution of the contracts at hand. We believe this variance is appropriate because denying the Petition would impose an excessive burden on the parties by causing delay and added expense, the variance would not negatively affect the public interest, and the variance would not conflict with other legal standards.

The Company further requests approval of the Wisconsin CMA and the Briggs Road Substation Agreement. The agreements are reasonable and satisfy the public interest by: providing efficiency, ensuring reasonable payment provisions and appropriate project accounting, and finally noting the contracts were negotiated at arm's length.

Dated: December 3, 2013

Northern States Power Company

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<sup>12</sup> See In the Matter of Otter Tail Corporation d/b/a Otter Tail Power Company's Petition for Approval of Tax Agreement with its Subsidiaries, Docket No. E-017/AI-05-131, Order Dated August 11, 2005 (granting variance from 30-day affiliated interest filing requirement after company's failure to file agreements was discovered through internal review process and concluding that late filing "did not impact customer rates and did not create any real problems from a public interest prospective").

Respectfully submitted by:

/s/

PAUL J LEHMAN  
MANAGER, REGULATORY COMPLIANCE AND FILINGS

STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David Boyd	Commissioner
Nancy Lange	Commissioner
J. Dennis O'Brien	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF THE PETITION OF  
NORTHERN STATES POWER COMPANY  
FOR APPROVAL OF AFFILIATE  
AGREEMENTS WITH NORTHERN STATES  
POWER COMPANY-WISCONSIN

DOCKET No. E002/AI-13-\_\_\_\_\_

**PETITION**

**SUMMARY OF FILING**

Please take notice that on December 3, 2013, Northern States Power Company, doing business as Xcel Energy, submitted to the Minnesota Public Utilities Commission a Petition for approval of affiliate agreements with the Company's affiliate, Northern States Power Company, a Wisconsin corporation, relating to the CapX2020 Hampton-Rochester-La Crosse Project. This filing was made pursuant to Minn. Stat. § 216B.48 and Minn. Rule 7825.2200(B), which require Commission approval for affiliate transactions in excess of \$50,000.

## REQUIRED FILING INFORMATION

Pursuant to Rule 7825.2200, subp. B, and the filing guidelines for affiliated interest agreements adopted in Docket No. E,G999/CI-98-651,<sup>1</sup> the Company provides the following information.

### A. Description of the Agreements

#### **Construction Management Agreement for Wisconsin Project**

The Construction Management Agreement for the Wisconsin Project sets forth the terms for the management of construction of the Wisconsin Project. Under the CMA, the Project Owners select a “Construction Manager” to manage project construction on their behalf. NSPM has been selected as the Construction Manager for both the Minnesota Project and Wisconsin Project. The Wisconsin CMA is between the Wisconsin Owners and NSPM.

#### **Operating Utilities Agreement for the La Crosse Project - Briggs Road Substation**

The Briggs Road Substation Agreement defines the roles and responsibilities of NSPW and NSPM in the construction of the Briggs Road Substation. NSPW and NSPM have agreed that NSPM (or its contractors) will construct the Briggs Road Substation on NSPW’s behalf and that the charges between the two companies will be at cost and according to the same methodology as agreed to by the Wisconsin Owners in Appendix D of the Construction Management Agreement.

### B. Copies of the Agreements

- A copy of the Construction Management Agreement for the Wisconsin Project is attached as Attachment B.
- A copy of the Operating Utilities Agreement for the La Crosse Project - Briggs Road Substation is attached as Attachment C.

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<sup>1</sup> Docket No. E,G999/CI-98-651, ORDER INITIATING REPEAL OF RULE, GRANTING GENERIC VARIANCE, AND CLARIFYING INTERNAL OPERATING PROCEDURES, dated September 14, 1998.

**C. Other Agreements between Petitioner and Affiliated Interest**

**1. List of Outstanding Contracts or Agreements**

- OpCo Service Agreement
- Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (the Interchange Agreement) (FERC jurisdictional)

**2. Consideration Received by Affiliated Interest**

Pursuant to Section 3.01 of the OpCo Service Agreement, the consideration paid to any OpCo providing goods or services shall be the actual costs for goods and actual costs for labor, transportation and employee expenses, materials and supplies, and other expenses.

Pursuant to Article X of the Interchange Agreement, the objective of the charges is to compensate the Party selling power and energy for its full fixed costs including return and its full variable costs of producing and transmitting power and energy.

**3. Summary of Relevant Costs**

A summary of the relevant costs are provided in the Electric Jurisdictional Annual Report at Section E-13.

**D. Summary of Facts and Reasons Why the Agreement is in the Public Interest**

The Wisconsin CMA and Briggs Road Substation Agreement are reasonable and consistent with the public interest. The selection of NSPM as the Construction Manager for the Wisconsin Project and construction of the Briggs Road Substation was reasonable, in part because of the efficiencies gained by one entity being the Construction Manager for both the Minnesota Project and the Wisconsin Project, and did not require competitive bidding. The payment provisions are reasonable and will only reimburse NSPM for its costs of providing services and thereby not impact rate

treatment for the Wisconsin Project. And, the terms of the agreements, being amongst more parties than just NSPW and NSPM, were negotiated at arm's length.

**E. Competitive Bidding**

Because the Construction Manager was selected by the Hampton-La Crosse Project Owners, competitive bidding was not necessary. The selection of NSPM as the Construction Manager for the Wisconsin Project and construction of the Briggs Road Substation was reasonable, in part because of the efficiencies gained by one entity being the Construction Manager for both the Minnesota Project and the Wisconsin Project.

**F. Access to Customer Information**

The Agreement does not give Northern States Power Company-Wisconsin access to Northern States Power Company, a Minnesota corporation, customer information.

**SOUTHEAST TWIN CITIES ROCHESTER – LA CROSSE TRANSMISSION PROJECT  
(WISCONSIN)**

**WISCONSIN CONSTRUCTION MANAGEMENT AGREEMENT**

**Dated as of December 21, 2012**

**PUBLIC VERSION**

**THIS DOCUMENT HAS HAD PRIVILEGED AND CRITICAL ENERGY  
INFRASTRUCTURE INFORMATION (CEII) REDACTED**

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**WISCONSIN CONSTRUCTION MANAGEMENT AGREEMENT**

**THIS WISCONSIN CONSTRUCTION MANAGEMENT AGREEMENT** (this “**Agreement**”) is entered into and effective at 12:01 a.m. Central Time as of December 21, 2012 (the “**Effective Time**”), by and among **Dairyland Power Cooperative** (“**DPC**”), a cooperative association incorporated under the laws of the State of Wisconsin; **WPPI Energy**, a municipal electric company, political subdivision, and body politic and corporate of the State of Wisconsin; and **Northern States Power Company**, a Wisconsin corporation (“**NSP, WI**”); **Northern States Power Company**, a Minnesota corporation (“**NSP, MN**”), in its capacity as Construction Manager; and each Owner in any other capacity in which it has agreed to be bound under this Agreement from time to time.

**RECITALS**

A. The Owners have determined that the Wisconsin Project is necessary to (i) enhance service reliability for electric customers in Wisconsin, Wisconsin and the surrounding region; (ii) strengthen the transmission network to meet additional demands for electric power; and (iii) enhance transmission system capacity to support the installation of renewable energy resources;

B. The Wisconsin Project will entail the construction of transmission assets and improvements in Wisconsin, some of which will be individually owned and some of which will be owned by the Owners as tenants-in-common;

C. Development of the Wisconsin Project also will require, among other things, the construction of other transmission assets including new substations, improvements to existing substations, underlying system improvements, underbuild lines; the relocation of existing distribution and transmission lines; and the establishment co-located transmission line capacity, each of which will be owned individually by an Owner or a Third Party;

D. The Minnesota Project will entail construction of transmission assets and improvements in Minnesota, some of which will be owned by Minnesota Owners individually and some of which will be owned by the Minnesota Owners as tenants-in-common. The completion of the Wisconsin Project and the Minnesota Project (the “**Coordinated Projects**”) is anticipated to deliver the benefits contemplated by the Owners and the Minnesota Owners (the “**Coordinated Owners**”);

E. The Coordinated Owners will apportion transmission capacity rights across the Coordinated Projects by Integrated Percentage Interest and because all Coordinated Project decisions have an effect on transmission capacity rights, all Coordinated Project governance decisions will be based on each Coordinated Owner’s Integrated Percentage Interest; and

F. The Management Committee has determined that Development Work has progressed to a point where, in accordance with **Section 6.1.2** of the **Project Development Agreement**, the Services with respect to the Wisconsin Project should be commenced;

G. Contemporaneously herewith, the Owners have entered into: (i) the Wisconsin Project Participation Agreement; (ii) the Transmission Capacity Exchange Agreement; (iii) the Wisconsin Operation and Maintenance Agreement; and (iv) such other agreements as the Owners have deemed necessary;

H. Contemporaneously herewith, the Owners have entered into the Joint Cooperation Agreement for the purpose of coordinating the development, construction, integration and decision-making associated with the Coordinated Projects; and

I. Each Owner (in its applicable capacities) desires to enter into this Agreement with the Construction Manager to facilitate the completion of the Wisconsin Project.

### AGREEMENT

In consideration of the foregoing Recitals, the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Owner and the Construction Manager agree as follows.

### ARTICLE 1

#### DEFINITIONS

**1.1 Definitions.** In addition to the other terms defined herein, the following terms, whether in the singular or in the plural when used herein, in **Schedule 1, Generally Applicable Provisions**, in the appendices attached hereto or in notices given under this Agreement and initially capitalized, have the meanings specified below:

“**Actual Reimbursable Costs**” has the meaning given in **Section 6.2.2.2(ii)**.

“**Administrative Agent Agreements**” has the meaning given in **Section 4.9**.

“**Affiliate**” means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, an Owner.

“**Agency Authority**” has the meaning given in **Section 2.3.2**.

“**Agreement**” means this Construction Management Agreement.

“**Applicable Energy Regulations**” means the rules, Orders, regulations, practices, procedures and protocols established in compliance with Applicable Law by applicable Transmission Providers (such as the Midwest Independent Transmission System Operator, Inc.), electric reliability organizations (such as the North American Electric Reliability Corporation and the Midwest Reliability Organization) and comparable Persons that are applicable to the Services, the Maintenance Services, the Control Center Services, the Construction Work; the Wisconsin Project or portions thereof (or their operations); or the performance of the obligations of the parties (each in its respective capacities) under this Agreement.

“**Applicable Law**” means: (i) any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, treaties, rules, codes, standards, Governmental Approvals, requirements and Orders that (a) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body having jurisdiction over a specified Person (or the Properties of such Person) and (b) are applicable to: the Services, the Construction Work, the Maintenance Services, and the Control Center Services; the Wisconsin Project or portions thereof (or their operations); or the performance of the obligations of the parties (each in its respective capacities) under this Agreement; and (ii) Applicable Energy Regulations.

“**Application for Deposit**” means an application for deposit under this Agreement, substantially in the form attached as **Appendix F-2**, which is to be used to request funds pursuant to **Sections 6.2** and **6.5**.

“**Approved Bidders List**” has the meaning given in **Section 3.2.4**.

“**Approved Design**” has the meaning given in **Section 4.2**.

“**Asset Ownership Percentage**” has the meaning given in **Section 3.1.3.1.2** of the **Wisconsin Project Participation Agreement**.

“**Associated Assets**” means the Discretely Owned Substation Assets, the Remote USIs, the Underbuild Lines, the Co-located Owner Lines, the Relocated Transmission Lines and the Relocated Distribution Lines.

“**Associated Owner Asset Owners**” means the Owners of Associated Owner Assets, which consist of the Discretely Owned Substation Owners, the Remote Credited USI Owners, the Underbuild Project Owners, the Co-located Line Owners, the Relocated Project TL Owners and the Relocated Project DL Owners.

“**Associated Owner Assets**” means Associated Assets owned by an Owner, which consist of the Discretely Owned Substation Assets, the Remote Credited Owner USIs, the Underbuild Owner Lines, the Co-located Owner Lines, the Relocated Project Owner TLs and the Relocated Project Owner DLs.

“**Brookings Management Committee**” means the Management Committee under the Brookings Project Participation Agreement.

“**Brookings Owners**” has the meaning given in the definition of “Brookings Project.”

“**Brookings Project**” means the project described in the Project Participation Agreement by and among Great River Energy; Central Minnesota Municipal Power Agency; Western Minnesota Municipal Power Agency; Otter Tail Power Company; and NSP, MN (collectively, the “**Brookings Owners**”), dated as of January 13, 2012 (the “**Brookings Project Participation Agreement**”).

“**Brookings Project Participation Agreement**” has the meaning given in the definition of “Brookings Project.”

“**Brookings Representative**” means the “Construction Manager” as identified in the construction management agreement executed by the Brookings Owners.

“**Business Day**” means any day other than a Saturday, Sunday or federal holiday.

“**Capital Improvements**” means capital additions or modifications to the Facilities (or a portion thereof) undertaken at the direction of the Management Committee after the applicable Facilities are placed in service: (i) in accordance with the Wisconsin Capital Budget or (ii) as a consequence of an Emergency, in either case, for the purpose of maintaining Facility Capacity or the reliability of the Facilities in accordance with Good Utility Practice. Capital Improvements exclude: (a) work undertaken pursuant to this Agreement or the Wisconsin Construction Agreements in accordance with the Wisconsin Project Plan and (b) Upgrades.

“**CapX 2020 Substation Design Criteria**” means the criteria established in: (i) Control and Protective Design Criteria for Substations, Revision 0, dated December 12, 2006; (ii) Physical Design Criteria for Substations, Revision 0, dated December 12, 2006; and (iii) Civil Performance Criteria for Substations, Revision 0, dated December 12, 2006; copies of which are set forth in **Appendix C-1**, as such criteria are amended by the Management Committee.

“**CapX 2020 Transmission Capacity Expansion Initiative**” means the cooperative efforts of the Owners and other Persons to engage in electric transmission projects designed to reliably serve load and meet the projected growth of electricity requirements in the Transmission Grid in Wisconsin and the immediately surrounding region, which efforts are anticipated to include, in the aggregate over a long-term period, the study, planning, coordination, development, construction and ownership of electric transmission facilities.

“**CapX 2020 Transmission Line Design Criteria Guidelines**” means the requirements established in the CapX 2020 Transmission Line Design Criteria Guidelines, Revision 3, dated April 19, 2010, a copy of which is set forth in **Appendix C-2**, as such requirements are amended by the Management Committee.

“**CapX Design Criteria**” means: (i) CapX 2020 Substation Design Criteria and (ii) CapX 2020 Transmission Line Design Criteria Guidelines.

“**CapX Project**” means any of the several transmission projects arising from the CapX 2020 Transmission Capacity Expansion Initiative planning process, including the Wisconsin Project.

“**Cause**” has the meaning given in **Section 15.2.1.3**.

“**Chair**” means the Owner Representative who is acting as the Chair of the Management Committee in accordance with **the Joint Cooperation Agreement**.

“**Change in Law**” means any change in, or enactment of, any Applicable Law or official published policy regarding the interpretation or enforcement of any Applicable Law by a Governmental Body that takes place after the Effective Time and affects or relates to the Construction Work, the Services or the performance of the obligations of the Owners (individually or collectively) or the Construction Manager under this Agreement, including the

imposition of any new Governmental Approval requirements; **provided, however**, a change in Applicable Law affecting only a tax payable or any other cost of performance hereunder will not constitute a Change in Law.

“**Change Order**” means a document issued pursuant to the terms and conditions of a Wisconsin Construction Agreement that exclusively proposes to modify the sums to be paid, the scope of work (including quantities) or the time permitted for performance of Construction Work thereunder.

“**CM Subcontract**” means each contract, agreement or arrangement with the Construction Manager or a CM Subcontractor on the one hand, and any CM Subcontractor on the other hand, establishing the terms of performance of any part of the Services.

“**CM Subcontractor**” means each and every supplier, subcontractor, vendor, consultant or contractor of any tier performing any part of the Services, directly or indirectly, for the Construction Manager. Reference to an Owner as a “CM Subcontractor” excludes any reference to the Construction Manager’s Affiliates and to such Owner in any other capacity.

“**Co-located Costs**” has the meaning given in **Section 5.4.1(xvi)**.

“**Co-located Line Owner**” has the meaning given in **Section 2.12.3**.

“**Co-located Owner Agreement**” has the meaning given in **Section 2.12.4**.

“**Co-located Owner Lines**” has the meaning given in **Section 2.12.3**.

“**Commission**” (or any derivation thereof) means the process of verifying the safety, reliability and performance (including testing) of the Wisconsin Project, or any portion thereof, in accordance with the applicable Wisconsin Construction Agreements and Good Utility Practice.

“**Construction Aids**” means all tangible equipment (including construction equipment and machinery), tools, supplies, utilities, support services, field office equipment and supplies, structures, apparatus, protective fencing, and other goods and items that are required in connection with the Construction Work but which are not incorporated into the Wisconsin Project or any portion thereof.

“**Construction Management Services**” has the meaning given in **Section 2.2.1**.

“**Construction Manager**” means NSP, MN, or any successor as is hereinafter provided, in each case, in its capacity as the Person who is responsible, in accordance with the terms of this Agreement, for performance of the Services. Reference to the Construction Manager excludes any reference to the Construction Manager in any other capacity.

“**Construction Work**” means all activities that are necessary, desirable or incidental to placing the Phase in service and achieving Final Completion, including coordinating with the Minnesota Construction Manager to the extent reasonably necessary for the Phase to achieve Final Completion and be placed in service, in accordance with Good Utility Practice and the

Wisconsin Project Plan; **provided, however**, (i) the Services and (ii) the obligations of the Owners (individually or collectively through the Management Committee) under this Agreement do not constitute Construction Work.

“**Construction Work Schedule**” has the meaning given in **Section 4.1.1**.

“**Consumables**” means items such as compressed chemicals, oils, lubricants, cleaning supplies, gaskets, valve packing, light bulbs, and comparable items which, by normal industry practices, are considered consumables and are replaced on a regular basis, or are required for cleaning or preparing the Phase to be placed in service.

“**Contractor**” means any Person with whom some or all of the Owners enter into a Wisconsin Project Construction Contract. Reference to an Owner as a “Contractor” excludes any reference to such Owner in any other capacity.

“**Contractor Lien**” means a Lien upon the Facilities (or a portion thereof), any Wisconsin Project Real Property or the Asset Ownership Percentage of an Owner filed in connection with the performance of the Services or the Construction Work.

“**Contractor Procured Materials**” has the meaning given in **Section 4.5.2**.

“**Control Center Authority**” means the Person designated as the “Control Center Authority” in the Wisconsin Operation and Maintenance Agreement. Reference to the Control Center Authority excludes any reference to the Control Center Authority in any other capacity.

“**Control Center Services**” means the services to be provided by the Control Center Authority as set forth in **Article 4** and other provisions of the **Wisconsin Operation and Maintenance Agreement**.

“**Coordinated Owners**” has the meaning given in the **Recitals**.

“**Coordinated Projects**” has the meaning given in the **Recitals**.

“**Current Month**” has the meaning given in **Section 6.2.2.2**.

“**Damages**” means any loss, charge, deficiency, tax, fine, interest, assessment, judgment, award, demand, liability, penalty or costs and expenses, including amounts paid in settlement, reasonable attorneys and other professional fees and reasonable costs of investigation.

“**Debt**” means for any Person, without duplication:

- (i) indebtedness of such Person for borrowed money;
- (ii) obligations of such Person evidenced by bonds, debentures, notes, mortgages or other similar instruments;
- (iii) obligations of such Person to pay (a) amounts due under financing leases; (b) the deferred purchase price of Property or services (other than accounts

- payable in the ordinary course of business); or (c) amounts due under capitalized or operating leases;
- (iv) obligations of such Person under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) of such Person to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of another Person;
  - (v) obligations of such Person under interest rate or currency protection agreements or other hedging instruments;
  - (vi) obligations of such Person to purchase securities (or other Property) that arise out of, or in connection with, the sale of the same or substantially similar securities (or Property); or
  - (vii) deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument.

**“Default”** has the meaning given in **Section 15.1.4** of the **Wisconsin Project Participation Agreement**.

**“Development Manager”** means NSP, MN pursuant to the terms of the Project Development Agreement.

**“Development Period Contracts”** has the meaning given in **Section 3.1**.

**“Development Work”** means the matters, actions and activities undertaken by the parties to the Project Development Agreement in furtherance of the development of the Wisconsin Project.

**“Discretely Owned Existing Substation”** has the meaning given in the definition of Discretely Owned Substation Assets.

**“Discretely Owned New Substation”** has the meaning given in the definition of Discretely Owned Substation Assets.

**“Discretely Owned Substation Assets”** means: (i) a new substation to be constructed in accordance with the Wisconsin Project Plan (a **“Discretely Owned New Substation”**); (ii) improvements to be constructed in accordance with the Wisconsin Project Plan to an existing substation (a **“Discretely Owned Existing Substation”**); (iii) improvements to be made to the underlying electric system of an Owner at or in close proximity to its Discretely Owned New Substation or Discretely Owned Existing Substation; (iv) all Property interests that arise from the work performed under any Wisconsin Project Construction Contract in connection with **clauses (i), (ii) or (iii)** above; and (v) all Real Property Agreements providing for the acquisition of real property interests in connection with **clauses (i), (ii) or (iii)** above. In all cases, Discretely Owned Substation Costs will be paid or credited as provided in the Wisconsin Project Participation Agreement and title to each Discretely Owned Substation Asset will be held by the

Discretely Owned Substation Owner. Discretely Owned Substation Assets will not constitute part of the Facilities.

“**Discretely Owned Substation Costs**” has the meaning given in **Section 5.4.1(xi)**.

“**Discretely Owned Substation Owner**” means an Owner that owns a Discretely Owned Substation Asset. Reference to a Discretely Owned Substation Owner excludes any reference to a Discretely Owned Substation Owner in any other capacity.

“**DOSA Construction Agreement**” means a Wisconsin Project Construction Contract that provides for the engineering, procurement, construction and commissioning of one or more Discretely Owned Substation Assets.

“**DPC**” has the meaning given in the preamble to this Agreement.

“**Easements**” means the easements described in the Transmission Easement Agreement.

“**Effective Time**” has the meaning given in the preamble to this Agreement.

“**Emergency**” means any circumstance or condition that will or could imminently be expected to materially harm the safe and reliable operation of all or a portion of the Wisconsin Project, the rest of the Transmission Grid or otherwise endanger public safety, Property or the environment.

“**Engineering and Operating Committee**” or “**E&O Committee**” means the Engineering and Operating Committee established pursuant to the Joint Cooperation Agreement, which committee has been delegated authority by the Management Committee to undertake the obligations and exercise the rights accorded to it in the Joint Cooperation Agreement, the Wisconsin Operation and Maintenance Agreement, the Wisconsin Operation and Maintenance Agreement or as otherwise determined by the Management Committee.

“**Equipment**” means any product that: (i) is to be incorporated into the Phase; (ii) is an assembly of operational or non-operational parts, whether motorized or manually operated; and (iii) requires service connections such as wiring.

“**Estimated Reimbursable Costs**” has the meaning given in **Section 6.2.2.2(i)**.

“**Existing Distribution Lines**” has the meaning given in **Section 2.10.1**.

“**Existing DL Owners**” has the meaning given in **Section 2.10.1**.

“**Existing Project DL Owner**” has the meaning given in **Section 2.10.1**.

“**Existing Project TL Owner**” has the meaning given in **Section 2.11.2**.

“**Existing TL Owners**” has the meaning given in **Section 2.11.2**.

“**Existing TP DL Owner**” has the meaning given in **Section 2.10.2**.

“**Existing TP TL Owner**” has the meaning given in **Section 2.11.1**.

“**Existing Transmission Lines**” has the meaning given in **Section 2.11.2**.

“**Facilities**” means: (i) as more particularly identified in **Appendix A**, as it may be updated upon the Phase In-Service Date, all of the Equipment and Materials, installations and facilities, including associated site improvements, appurtenances and structures procured, installed or constructed as part of the Wisconsin Project that are located on Wisconsin Project Real Property (other than real property interests that are owned separately by (a) an Owner in a capacity other than as an Owner or (b) a Third Party); (ii) Capital Improvements; and (iii) all other Property interests that arise in connection with the Wisconsin Project from any Wisconsin Project Agreement or related to any of the foregoing, in each case, in which all of the Owners have Asset Ownership Percentages. The Facilities do not include the Associated Assets, Non-Credited USIs and Upgrades.

“**Facility Capacity**” means the then current maximum power that can be transmitted over the Facilities and the Discretely Owned Substation Assets, as built, without consideration of constraints imposed by the balance of the Transmission Grid.

“**FERC**” means the Federal Energy Regulatory Commission, a regulatory Governmental Body of the United States, or any successor thereto.

“**Final Completion**” means: (i) the achievement of the following conditions with respect to the Phase: (a) Substantial Completion has occurred; (b) the Construction Work has been completed, including Punch List items, in accordance with the applicable Wisconsin Project Construction Contracts; (c) all “Work” under the DOSA Construction Agreements, the Remote USI Agreements, the Underbuild Agreements, the Co-located Owner, the Relocated TL Agreements and the Relocated DL Agreements has been completed; and (d) all final Lien Waivers and other documents required of any Contractor and Subcontractor under the applicable Wisconsin Construction Agreements have been delivered to the Chair and (ii) with respect to the Phase, the Wisconsin Project Design Book is final and complete and has been delivered as directed by the Chair. Notwithstanding the foregoing, it is understood that the Phase cannot achieve Final Completion without Phase 2 (Minnesota) also having satisfied the conditions for “Final Completion,” all as more particularly provided in the Joint Cooperation Agreement.

“**Final Completion Date**” means the date determined in accordance with **Section 11.4** as the date on which Final Completion occurs.

“**Final Order**” means an Order as to which: (i) no request for stay is pending before the issuing Governmental Body, no such stay is in effect, and, if any deadline for filing any such request is designated by Applicable Law, such deadline has passed; (ii) no petition for rehearing or reconsideration of such action is pending before the issuing Governmental Body, and if any deadline for filing any such petition is designated by Applicable Law, such deadline has passed; (iii) the issuing Governmental Body does not have the action under reconsideration on its own motion; and (iv) no appeal to a court, or request for stay by a court, of the issuing Governmental Body’s action is pending or in effect, and, if any deadline for filing any such appeal or request is designated by Applicable Law, such deadline has passed.

“**Financial Summary Report**” has the meaning set forth in **Section 5.1.4**.

“**Financing**” means: (i) Debt on terms acceptable to an Owner, the proceeds of which are intended to be used, in whole or in part, to finance the costs of construction of the Wisconsin Project (including Capital Improvements); (ii) Debt as to which the Liens (including Permitted Owner Liens) of one or more Financing Parties have previously been perfected and which Liens will attach to or encumber that Owner’s Asset Ownership Percentage; (iii) Debt heretofore or hereafter secured under a mortgage, deed of trust or security agreement or instrument which grants a lien on all or substantially all of the tangible property of any Owner; or (iv) any refinancing, renewal, or continuation, in whole or in part, of any of the foregoing.

“**Financing Parties**” means any and all lenders, bondholders, underwriters and financing institutions, including credit enhancers and institutional investors, providing or facilitating a Financing and any trustee(s) or agent(s) acting on any of their behalf, and any successors, assigns or other transferees of any of the foregoing.

“**Financing Party Agent**” means any Person designated by a Financing Party to review the progress of and payments for the Services or the Construction Work.

“**Following Month**” means the Month following the Current Month.

“**Force Majeure**” means the occurrence of an event or series of events that is beyond the reasonable control of the Person affected that hinders the performance under contract of such Person and does not result from the fault, negligence, intentional misconduct or willful misconduct of the affected Person or such Person’s failure to comply with Applicable Law or Good Utility Practice; and such event or series of events could not have been avoided by the affected Person through the exercise of reasonable diligence, including the expenditure of reasonable monies and/or taking reasonable precautionary measures, including (to the extent that such events satisfy the foregoing criteria), the following:

- (i) acts of God or the public enemy;
- (ii) expropriation or confiscation;
- (iii) war, terrorism, rebellion, sabotage, civil unrest or riot;
- (iv) fires, explosions, hurricanes, floods, tornadoes, microbursts, other abnormally severe weather events or other natural catastrophes;
- (v) actions or inaction of a Governmental Body affecting performance required in connection with the Construction Work or the obligations of the parties under this Agreement;
- (vi) as to the Construction Manager, the failure of a Contractor or Subcontractor (including any Owner in its capacity as a Contractor) to perform Construction Work in accordance with the provisions of the applicable Wisconsin Construction Agreements unless proximately caused

- by the gross negligence, intentional misconduct or willful misconduct of the Construction Manager;
- (vii) a Change in Law;
  - (viii) as to the Construction Manager, delays in the delivery of Owner Procured Materials or “Owner Procured Materials” as defined in the Wisconsin Construction Management Agreement;
  - (ix) conditions at, on or affecting the Wisconsin Project Real Property that could not have been reasonably anticipated, including the existence of Hazardous Substances or archeological materials;
  - (x) unreasonable delays by any Owner in applying for Owner Governmental Approvals for reasons other than the failure of any Contractor or Subcontractor to satisfy its obligations under any Wisconsin Construction Agreement;
  - (xi) unreasonable delays by any Owner in applying for Owner Governmental Approvals for reasons other than the failure of any Contractor or Subcontractor to satisfy its obligations under any Wisconsin Construction Agreement, as each such capitalized term is defined in the Wisconsin Construction Management Agreement;
  - (xii) operating conditions on the Transmission Grid that restrict outages, testing, Commissioning or access;
  - (xiii) strikes and other labor disturbances; and
  - (xiv) delays in the completion of Phase 2 (Minnesota) that are not caused by the gross negligence, willful misconduct or intentional misconduct of the Wisconsin Construction Manager.

Under no circumstance will an event of Force Majeure excuse a Person’s obligations to make payments when due under this Agreement, unless such Force Majeure event results in a failure of the Federal Reserve wire system or other failure of the banking system that deprives a Person of access to otherwise available funds.

“**Funding Amount**” has the meaning given in **Section 6.1**.

“**GAAP**” means generally accepted accounting principles practiced in the United States of America, as in effect from time to time, applied on a consistent basis.

“**Good Reason**” has the meaning given in **Section 15.2.1.4**.

“**Good Utility Practice**” means any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in the region 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 in a manner that: (i) is consistent with Applicable Law; (ii) makes due consideration for reliability, safety and protection of the Wisconsin Project or any portion thereof, including Equipment and Materials, and the rest of the Transmission Grid; and (iii) is consistent with manufacturer's recommendations and warranties. 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 a range of acceptable practices, methods or acts generally accepted in the region.

**“Governmental Approval(s)”** means all waivers, franchises, variances, permits, authorizations, certificates, licenses and Orders as may be in effect from time to time of or from any Governmental Body having jurisdiction over any Owner, the Construction Manager, CM Subcontractor, Contractor, Subcontractor, Maintenance Provider, Control Center Authority, the Services, the Maintenance Services, the Control Center Services, the Construction Work or any portion of the Wisconsin Project.

**“Governmental Body”** means any: (i) nation, state, county, city, town, village, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or other government; or (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court), in any such case exercising, or entitled to exercise, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature over this Agreement, any part of the Wisconsin Project, the performance of the Services, the Construction Work, the Wisconsin Project Real Property, the Construction Manager, or any of the Owners. For purposes of this definition, a Person that establishes Applicable Energy Regulations will be deemed to be a Governmental Body; **provided, however**, an Owner will never be deemed to be a Governmental Body except when an Owner is a Transmission Provider establishing Applicable Energy Regulations in its capacity as a Person entitled to exercise functional control over a portion of the Transmission Grid in accordance with Applicable Law established by other Governmental Bodies that have jurisdiction over such Owner.

**“Hampton Joint Effort Agreement”** means that certain Hampton Joint Effort Agreement, dated as of January 13, 2012.

**“Hazardous Substance”** means petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all other substances which now are or in the future may be defined by Applicable Law as “hazardous substances,” “hazardous wastes,” “extremely hazardous wastes,” “toxic substances,” “infectious wastes,” “biohazardous wastes,” “medical wastes,” “radioactive wastes” or which are otherwise listed, defined or regulated in any manner pursuant to any Applicable Law that pertains to the protection of human health and safety or the environment.

**“Indemnified Person(s)”** has the meaning given in **Section 13.1.5**.

**“Indemnifying Person(s)”** has the meaning given in **Section 13.1.5**.

“**Independent Accountants**” has the meaning given in **Section 8.3**.

“**Independent Engineer**” means a Person designated by the Management Committee to provide independent consulting services, including the services described in **Section 2.5**.

“**Insolvency Event**” means, with respect to the Person: (i) the Person’s (a) failure to generally pay its debts as they become due; (b) admission in writing of its inability to pay its debts as they become due; or (c) making a general assignment for the benefit of creditors; (ii) any Proceeding being instituted by or against the Person seeking (a) to adjudicate it as bankrupt or insolvent; (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors; or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property and, in the case of any such Proceeding instituted against the Person, either such Proceeding remains undismissed for a period of thirty (30) days or any of the actions sought in such Proceeding occur; or (iii) the Person’s taking any action to authorize any of the actions set forth above in this definition.

“**Integrated Percentage Interest**” has the meaning given in the **Wisconsin Project Participation Agreement**.

“**Interconnection Agreement**” means an agreement providing for the terms and conditions pursuant to which the Facilities, or any portion thereof, are interconnected with the Transmission Grid.

“**Joint Cooperation Agreement**” means that certain Joint Cooperation Agreement, dated as of the Effective Time, by and among the Owners, the Minnesota Owners and NSP, MN, as construction manager for the Wisconsin Project and the Minnesota Project.

“**Joint Project Activities**” has the meaning given in **Section 7.5**.

“**Late Payment Rate**” means the lesser of: (i) the Prime Rate plus two percent (2%) per annum or (ii) the highest per annum interest rate allowed by Applicable Law.

“**Lien**” means any lien (including mechanic’s liens, materialmen’s liens and supplier’s liens), security interest, option, easement, restriction on transferability, defect of title or other claim, demand, charge or encumbrance of any nature whatsoever, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“**Lien Waiver**” means a waiver of Liens substantially in the applicable form as set forth in **Appendix F-1**.

“**Maintenance Provider**” means the Person designated as the “Maintenance Provider” in the Wisconsin Operation and Maintenance Agreement. Reference to the Maintenance Provider excludes any reference to the Maintenance Provider in any other capacity.

“**Maintenance Services**” means the services set forth in **Article 3** of the **Wisconsin Operation and Maintenance Agreement** and the other provisions thereof as applicable to the

Maintenance Provider as defined and set forth in **Appendix A** of the **Wisconsin Operation and Maintenance Agreement**.

“**Major Change Order**”

**PRIVILEGED INFORMATION**

“**Major Contract**”

**PRIVILEGED INFORMATION**

“**Management Committee**” means the Management Committee established pursuant to the Joint Coordination Agreement.

“**Material Action**” means: (i) any amendment to a Major Contract, Development Period Contract (that would have been a Major Contract if it had been entered into after the Effective Time) or Real Property Agreement that could materially and adversely affect any Owner by modifying any provision (a) providing indemnity; limiting liability (including liability for consequential damages); specifying the terms of insurance; providing remedies or (b) expressly required to be contained in such agreements under the terms of this Agreement or (ii) an action by the Construction Manager releasing, reducing or waiving the obligation or liability of a Contractor, with respect to the provisions described in **clause (i)** above, except to the extent such action is taken with respect to (a) a Wisconsin Project Construction Contract pursuant to the authority granted to the Construction Manager pursuant to **Section 7.12.2.1** or (b) a CM Subcontract and, in each case, the financial consequence of such action is within the monetary limit established in the second sentence of **Section 7.12.2.5**, as it may be adjusted by the Management Committee.

“**Material Adverse Events**” has the meaning given in **Section 5.1.4**.

“**Materials**” means any products, supplies or materials that are to be incorporated into the Phase, whether or not substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated or processed. The term “Materials” is intended to include any item that is to be incorporated into the Phase and which is not an item of Equipment or a Consumable.

**“Minnesota Construction Management Agreement”** means that certain Minnesota Construction Management Agreement entered into by the Minnesota Owners and the Minnesota Construction Manager as of the Effective Time.

**“Minnesota Construction Manager”** means the construction manager for the Minnesota Project pursuant to that certain Minnesota Construction Management Agreement executed by NSP, MN, as construction manager and the Minnesota Owners as of the Effective Time.

**“Minnesota Main Trust Account”** has the meaning given in **Section 6.4.4**.

**“Minnesota Operation and Maintenance Agreement”** means that certain “Minnesota Operation and Maintenance Agreement” entered into by the Minnesota Owners and the Responsible Entities (as defined in the Minnesota Project Participation Agreement) as of the Effective Time.

**“Minnesota Owners”** means NSP, MN, Dairyland Power Cooperative, Southern Minnesota Municipal Power Agency and the City of Rochester acting through its Public Utility Board.

**“Minnesota Project”** means collectively and as the following terms are defined in the Minnesota Project Participation Agreement: the Facilities; the Discretely Owned Substation Assets; the entirety of the “Work” to be performed under the Relocated TL Agreements, the Underbuild Agreements, the Co-located Owner Agreements, the Relocated DL Agreements and the Remote USI Agreements; the Non-Credited USI Work; the Minnesota Project Real Property; and all other Property related to or associated therewith in which any Owner has any right, title or interest, including the Governmental Approvals, the Minnesota Project Agreements, the Procured Materials, the Minnesota Construction Agreements, and the Real Property Agreements.

**“Minnesota Project Participation Agreement”** means that certain Minnesota Project Participation Agreement entered into by the Minnesota Owners as of the Effective Time.

**“Month”** means a calendar month.

**“Negative Balance”** has the meaning given in **Section 6.2.2.3**.

**“Non-Credited USI Owner”** means an Owner that owns a Non-Credited USI.

**“Non-Credited USIs”** has the meaning given in the definition of Underlying System Improvements.

**“Non-Credited USI Work”** means all activities that are necessary, desirable or incidental to placing the Non-Credited USIs in service in accordance with Good Utility Practice, other than: (i) the Services and (ii) the obligations of the Owners (individually or collectively through the Management Committee) under this Agreement (other than the obligations set forth in **Section 9.14**).

**“Notice of Commissioning”** has the meaning given in **Section 11.1.2**.

“**Notice of Final Completion**” has the meaning given in **Section 11.4**.

“**Notice of Substantial Completion**” has the meaning given in **Section 11.2**.

“**NSP, MN**” has the meaning given in the preamble to this Agreement.

“**NSP, WI**” has the meaning given in the preamble to this Agreement.

“**Operating Expenses**” means all expenses of the Wisconsin Project, without duplication, including all amounts payable under Wisconsin Project Agreements (other than this Agreement); expenses of obtaining and maintaining Governmental Approvals; expenses of performance of obligations under the Wisconsin Project Agreements (other than this Agreement); Capital Expenses, as defined in the Wisconsin Operations and Maintenance Agreement; Maintenance Costs, as defined in the Wisconsin Operations and Maintenance Agreement; expenses associated with Wisconsin Project Real Property on which the Facilities are located and other Wisconsin Project assets associated with the Facilities; insurance premiums, deductibles, and self-insured retentions as provided in **Appendix I**; Taxes; utilities; licenses; impositions; general, administrative, and management expenses; consulting and professional fees; and all other fees, costs and expenses, in each case necessary for the operation and maintenance of the Wisconsin Project and other expenses of an Owner expressly approved by the Management Committee as Operating Expenses. The following do not constitute Operating Expenses: (i) expenses of any Financing sought or obtained by an Owner; (ii) amounts paid by any Owner to a Transmission Grid operator or a regional transmission organization; (iii) expenses of any Owner that are not related to the Wisconsin Project; (iv) expenses of any Owner that are related to the Wisconsin Project but are not due and owing to such Owner pursuant to a written contract among the Owner in its capacity as a provider of goods or services to some or all of the Owners and such Owners in their capacity as Owners; (v) expenses of any Owner that are related to the Wisconsin Project but have not been approved by the Management Committee; (vi) expenses for which an individual Owner, in its capacity as an Owner or in any other capacity is solely responsible under a Project Agreement (other than in respect of its Asset Ownership Percentage); (vii) expenses incurred by a Discretely Owned Substation Owner or Remote Credited USI Owner (a) to comply with its obligations in **Section 3.1.6** of the **Wisconsin Project Participation Agreement** or (b) in connection with improvements to any Discretely Owned Substation Asset or Remote Credited Owner USI, except as otherwise set forth in any applicable Interconnection Agreement; or (viii) Wisconsin CM Costs.

“**Order**” means any judgment, award, decision, directive, consent decree, injunction (whether temporary, preliminary or permanent), ruling, writ or order adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Body or arbitrator (but as to an arbitrator, with respect to injunctive and other equitable relief, only to the extent permitted by this Agreement) that is binding on any Person or its Property under Applicable Law.

“**Owner**” means each Person that is a party to the Wisconsin Project Participation Agreement; **provided, however**, the term “Owner”: (i) excludes any Person whose Asset Ownership Percentage becomes zero (without regard to any Residual Interest) in accordance with the terms of the Wisconsin Project Participation Agreement from and after the effective date

when its Asset Ownership Percentage became zero (without regard to any Residual Interest); **provided, further**, that any such Person whose Asset Ownership Percentage becomes zero (without regard to any Residual Interest) is not released from its obligations under (a) this Agreement to the extent the same arose, accrued or first became performable prior to the effective date when its Asset Ownership Percentage became zero (without regard to any Residual Interest) and (b) the Transmission Capacity Exchange Agreement and (ii) includes a Person that later executes a Transfer Agreement in accordance with the provisions of the Wisconsin Project Participation Agreement from and after the date set forth in such Transfer Agreement. Except as expressly provided otherwise in this Agreement, reference to an “Owner” means an owner of an Asset Ownership Percentage under the Wisconsin Project Participation Agreement and excludes reference to any other capacity of such Person in connection with the Wisconsin Project.

“**Owner-Directed Project Change Request**” has the meaning given in **Section 5.3.1.1**.

“**Owner Governmental Approvals**” has the meaning given in **Section 7.4.7**.

“**Owner Procured Materials**” has the meaning given in **Section 4.5.2**.

“**Owner Representative**” has the meaning given in the **Joint Cooperation Agreement**.

“**Payment Request**” means a written request for payment submitted by a Contractor to the Construction Manager pursuant to the terms of a Wisconsin Project Construction Contract.

“**Percentage Interest**” means the individual undivided several interest of an Owner as determined by the Wisconsin Project Participation Agreement as of the time such determination is applicable under this Agreement.

“**Percentages**” has the meaning given in **Section 1.1** of the **Wisconsin Project Participation Agreement**.

“**Permitted Liens**” has the meaning given in **Section 7.15**.

“**Permitted Owner Lien**” means a Lien against: (i) the Asset Ownership Percentage of any Owner that such Owner grants, or has granted, to a Financing Party or (ii) an Associated Owner Asset that the applicable Associated Owner Asset Owner grants, or has granted, to a Financing Party.

“**Person**” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, Governmental Body or other entity with legal constitution under Applicable Law.

“**Phase**” means the Facilities and the Associated Assets from the North Rochester substation to the Briggs Road substation (including, without duplication and as appropriate, the associated rights to Wisconsin Project Real Property appurtenant thereto) that are or will be located in the State of Wisconsin, all as more particularly described in the Wisconsin Project Plan.

“**Phase 2**” means the Phase and Phase 2 (Minnesota), collectively.

“**Phase 2 (Minnesota)**” means, as the following terms are defined in the Minnesota Project Participation Agreement, that portion of the Segment and the Associated Assets from the North Rochester substation to the Briggs Road substation (including, without duplication and as appropriate, the associated rights to Minnesota Project Real Property appurtenant thereto) that are or will be located in the State of Minnesota, all as more particularly described in the Wisconsin Project Plan.

“**Phase In-Service Date**” means the date on which the Phase is placed in service and the Construction Manager turns over responsibility for the Phase to the applicable Maintenance Provider and the Control Center Authority for the performance of the Maintenance Services and the Control Center Services, respectively.

“**Pre-Construction Estimated Wisconsin Project Budget**” has the meaning given in **Section 4.3**.

“**Prime Rate**” means the per annum (365 or 366 days, as appropriate) prime rate as published on the last banking day of the applicable Month in the “Money Rates” table of *The Wall Street Journal*; **provided, however**, if more than one such prime rate is published, the mean will be used for purposes of this Agreement, until the Management Committee specifies a different reference publication or equivalent bank rate.

“**Prior Month**” means the Month prior to the Current Month.

“**Proceeding**” means any suit, litigation, arbitration, hearing, audit, investigation or other action (whether civil, criminal, administrative or investigative) commenced, brought, conducted, heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“**Procured Materials**” means Owner Procured Materials and Contractor Procured Materials, in the aggregate.

“**Progress Report**” has the meaning given in **Section 8.2.1**.

“**Project Development Agreement**” means that certain Project Development Agreement, dated March 7, 2007, establishing the terms and conditions pursuant to which Development Work was undertaken prior to the Effective Time.

“**Property**” means any kind of property or asset, whether real, personal, mixed, tangible or intangible.

“**Proposed Increase in the Wisconsin Maximum CM Cost Amount**” has the meaning given in **Section 5.1.5**.

“**Punch List**” has the meaning given in **Section 11.3**.

“**RCUSI Construction Agreement**” has the meaning given in **Section 2.14.2**.

“**Real Property Agreements**” means contracts, agreements, instruments or arrangements providing for the acquisition or disposition of Wisconsin Project Real Property described in **clause (i)** of the definition thereof.

“**Real Property Management Services**” has the meaning given in **Section 2.2.2**.

“**Records**” has the meaning given in **Section 7.19.1(xii)**.

“**Relocated Distribution Line Costs**” has the meaning given in **Section 5.4.1(xv)**.

“**Relocated Distribution Line Owners**” has the meaning given in **Section 2.11.1**.

“**Relocated Distribution Lines**” has the meaning given in **Section 2.11.1**.

“**Relocated DL Agreements**” has the meaning given in **Section 2.11.2**.

“**Relocated DL Project**” means the “Work” under any Relocated Owner DL Self-Performance Agreement.

“**Relocated Owner DL Self-Performance Agreement**” has the meaning given in **Section 2.11.2**.

“**Relocated Owner TL Self-Performance Agreement**” has the meaning given in **Section 2.11.5**.

“**Relocated Project DL Owner**” has the meaning given in **Section 2.11.1**.

“**Relocated Project Owner DL**” has the meaning given in **Section 2.11.1**.

“**Relocated Project Owner TL**” has the meaning given in **Section 2.11.4**.

“**Relocated Project TL Owner**” has the meaning given in **Section 2.11.4**.

“**Relocated TL Agreements**” has the meaning given in **Section 2.11.5**.

“**Relocated TL Project**” means the “Work” under any Relocated Owner TL Self-Performance Agreement.

“**Relocated TP DL**” has the meaning given in **Section 2.11.1**.

“**Relocated TP DL Agreement**” has the meaning given in **Section 2.11.2**.

“**Relocated TP DL Owner**” has the meaning given in **Section 2.11.1**.

“**Relocated TP TL**” has the meaning given in **Section 2.11.4**.

“**Relocated TP TL Owner**” has the meaning given in **Section 2.11.4**.

“**Relocated Transmission Line Costs**” has the meaning given in **Section 5.4.1(xv)**.

“**Relocated Transmission Line Owners**” has the meaning given in **Section 2.11.4**.

“**Relocated Transmission Lines**” has the meaning given in **Section 2.11.4**.

“**Remote Credited Owner USIs**” means (i) the underlying system improvements identified in **Appendix J-9**, as it may be amended in accordance with this Agreement, that are to be made to the underlying electric system of an Owner at or in close proximity to an existing substation of such Owner which substation is not a Discretely Owned New Substation or Discretely Owned Existing Substation; (ii) all Property interests that arise from the work under any Wisconsin Project Construction Contract with respect to such underlying system improvements; and (iii) any Real Property Agreements providing for the acquisition of real property interests for such underlying system improvements. In all cases, Remote Credited USI Costs will be paid or credited as provided in the Wisconsin Project Participation Agreement and title to each Remote Credited Owner USI will be held by the Remote Credited USI Owner. Remote Credited USIs will not constitute part of the Facilities or the Discretely Owned Substation Assets.

“**Remote Credited USI Owner**” has the meaning given in **Section 2.14.1**.

“**Remote Owner USI Costs**” has the meaning given in **Section 5.4.1(xiii)**.

“**Remote TP USI Agreement**” has the meaning given in **Section 2.14.2**.

“**Remote TP USI Costs**” has the meaning given in **Section 5.4.1(xiii)**.

“**Remote TP USI Owner**” has the meaning given in **Section 2.14.1**.

“**Remote TP USIs**” has the meaning given in the definition of Underlying System Improvements.

“**Remote USI Agreements**” has the meaning given in **Section 2.14.2**.

“**Remote USI Costs**” has the meaning given in **Section 5.4.1(xiii)**.

“**Remote USI Owner**” has the meaning given in **Section 2.14.1**.

“**Remote USI Project**” means the “Work” under any RCUSI Construction Agreement.

“**Remote USIs**” has the meaning given in the definition of Underlying System Improvements.

“**Residual Interest**” means the obligation of a Discretely Owned Substation Owner that is in default of its obligations under the Wisconsin Project Participation Agreement to remain a party to the Transmission Capacity Exchange Agreement and continue to fulfill its obligations thereunder as if it has a .0000001 Asset Ownership Percentage.

“**RPU**” has the meaning given in the preamble to this Agreement.

“**Sales Taxes**” has the meaning given in **Section 6.2.3(iv)**.

“**Scope of Work**” has the meaning given in **Section 4.1.1**.

“**Self-Performed Associated Assets**” means the Discretely Owned Substation Assets, the Remote Credited Owner USIs, the Relocated Project Owner TLs and the Relocated Project Owner DLs.

“**Self-Performing Owners**” means the Discretely Owned Substation Owner, the Remote Credited USI Owner, the Relocated Project TL Owners and the Relocated Project DL Owners.

“**Services**” means the Construction Management Services and the Real Property Management Services.

“**Subcontract**” means each contract, agreement or arrangement between any Contractor or Subcontractor, on the one hand, and any Subcontractor, on the other hand, establishing the terms of performance of any part of the Construction Work.

“**Subcontractor**” means each and every supplier, subcontractor, vendor, consultant or contractor of any tier performing any part of the Construction Work, including providing any studies, reports, plans, evaluations or Procured Materials in connection with the Construction Work, directly or indirectly, for or to any Contractor. Reference to an Owner as a “Subcontractor” excludes any reference to such Owner in any other capacity.

“**Substantial Completion**” means the achievement of the following conditions with respect to the Phase (other than that portion of the “Work” as defined in the Underbuild Agreements, the Co-located Owner Agreements, the Relocated DL Agreements, or Relocated TL Agreements that is to occur after the Underbuild Lines, Co-located Owner Lines, Relocated Transmission Lines or Relocated Distribution Lines, as applicable, are placed in service): (i) completion of the applicable Construction Work to the extent required for safe, reliable and continuous operation consistent with Good Utility Practice and Applicable Law; (ii) completion of Commissioning; (iii) applicable vendor and construction documentation (including start-up procedures and copies of applicable portions of the Wisconsin Project Design Book) and any special tools necessary to support continuous, safe and reliable operation of such Phase have been delivered to or are in the possession of the applicable Maintenance Provider or Associated Owner Asset Owner; (iv) the Phase has been energized and placed in service (unless otherwise specified by the Management Committee); and (v) unless waived by the Construction Manager as to any Lien or indemnity agreement (such waiver only to be effective as to establishing the existence of Substantial Completion and for no other purpose), the Construction Manager has received from each Contractor as required under a Wisconsin Project Construction Contract and Subcontractor under a Subcontract, in each case, with a contract value equal to or greater than One Hundred Thousand Dollars (\$100,000), duly executed Lien Waivers, unless, in either case, the Contractor or Subcontractor is precluded by Applicable Law from filing a valid Lien in the first place. Notwithstanding the foregoing, it is understood that the Phase cannot achieve Substantial Completion without Phase 2 (Minnesota) also having satisfied the conditions for “Substantial Completion,” all as more particularly provided in the Joint Cooperation Agreement.

“**Term**” has the meaning given in **Section 15.1.2**.

“**Third Party**” means any Person that is neither a party nor an Affiliate of a party to this Agreement.

“**Third Party Claim**” means any claim asserted by a Third Party, other than a Third Party Environmental Claim, and resulting Damages, including claims arising from: (i) personal injury to persons, including death; (ii) theft or loss of or damage to Property; or (iii) violations of Applicable Law.

“**Third Party Environmental Claim**” means any claim asserted by a Third Party, and resulting Damages, arising from: (i) the spill, discharge or other release of a Hazardous Substance into the environment or (ii) conditions related to Hazardous Substances that give rise to strict or vicarious liability, in each case, that give rise to personal injury to individuals, including death, loss of or damage to Property, or other liability under Applicable Law.

“**Transfer Agreement**” has the meaning given in **Section 10.3.1.3** of the **Wisconsin Project Participation Agreement**.

“**Transfer Capability**” means the transfer capability of the Transmission Grid after completion of the Coordinated Projects, as such transfer capability may change from time to time.

“**Transmission Capacity Exchange Agreement**” means that certain Transmission Capacity Exchange Agreement, by and among the Owners and the Minnesota Owners, effective as of the Effective Time.

“**Transmission Easement Agreement**” means that certain Transmission Easement Agreement, effective as of the Effective Time, by and among the Coordinated Owners, the Discretely Owned Substation Owners, the “Discretely Owned Substation Owners” (as defined in the Minnesota Project Participation Agreement), the Remote Credited USI Owners and the “Remote Credited USI Owners” (as defined in the Minnesota Project Participation Agreement).

“**Transmission Grid**” means the electric transmission system (including the Underlying System Improvements) to which the Facilities and the Discretely Owned Substation Assets will be directly interconnected and of which they become a part.

“**Transmission Provider**” means any Person, including an Owner, that exercises functional control over the operation of a portion of the Transmission Grid as necessary to effectuate transmission transactions that it administers and provides transmission service under a tariff, rate schedule or other agreement.

“**Underbuild Agreements**” has the meaning given in **Section 2.11.2**.

“**Underbuild Costs**” has the meaning given in **Section 5.4.1(xvi)**.

“**Underbuild Lines**” has the meaning given in **Section 2.12.1**.

“**Underbuild Owner Agreement**” has the meaning given in **Section 2.12.2**.

“**Underbuild Owner Line**” has the meaning given in **Section 2.12.1**.

“**Underbuild Owners**” has the meaning given in **Section 2.12.1**.

“**Underbuild Project Owner**” has the meaning given in **Section 2.12.1**.

“**Underbuild TP Agreement**” has the meaning given in **Section 2.12.2**.

“**Underbuild TP Line**” has the meaning given in **Section 2.12.1**.

“**Underbuild TP Owner**” has the meaning given in **Section 2.12.1**.

“**Underlying System Improvements**” means improvements to the Transmission Grid specified in **Appendices J-12** (the “**Non-Credited USIs**”), **J-9** (the Remote Credited Owner USIs) and **J-8** (the “**Remote TP USIs**”) that are required to accommodate the Wisconsin Project, title to which will be held (unless otherwise provided therein) by the Owner or a Third Party, as applicable, that procures, constructs, installs and places in service such Underlying System Improvement. The Remote Credited Owner USIs and the Remote TP USIs are collectively referred to as the “**Remote USIs.**” Underlying System Improvements do not constitute part of the Facilities. Neither the Non-Credited USIs nor the Remote USIs constitute part of the Discretely Owned Substation Assets.

“**Upgrade**” means a capital addition or modification to the Phase undertaken after the applicable Phase In-Service Date that increases Facility Capacity or Transfer Capability or is required because of an interconnection request.

“**Vice Chair**” means the Owner Representative who is acting as Vice Chair of the Management Committee in accordance with the Joint Cooperation Agreement.

“**Wisconsin Capital Budget**” means the rolling three-year capital expense budget approved by the Management Committee pursuant to the Wisconsin Operation and Maintenance Agreement.

“**Wisconsin CM Costs**” has the meaning given in **Section 5.4.1**.

“**Wisconsin Construction Agreements**” means all contracts, agreements or arrangements establishing the terms of performance of any part of the Construction Work, including Wisconsin Project Construction Contracts and Subcontracts, but specifically excluding this Agreement and the Real Property Agreements.

“**Wisconsin Initial Project Budget**” means the initial budget, attached as **Exhibit D** to the **Wisconsin Project Participation Agreement**, that sets forth the Wisconsin Project Costs that are projected as of the Effective Time to be incurred through Final Completion.

“**Wisconsin Main Trust Account**” means an account established by the Owners pursuant to the Wisconsin Trust Agreement for the purpose of receiving funds for the payment or reimbursement of Wisconsin Project Costs.

“**Wisconsin Maximum CM Cost Amount**” has the meaning given in **Section 5.1.3**.

“**Wisconsin Operation and Maintenance Agreement**” means that certain Wisconsin Operation and Maintenance Agreement, effective as of the Effective Time, by and among the Owners, the Maintenance Provider and the Control Center Authority.

“**Wisconsin Project**” means collectively: the Facilities; the Discretely Owned Substation Assets; the entirety of the “Work” to be performed under the Relocated TL Agreements, the Underbuild Agreements, the Co-located Owner Agreements, the Relocated DL Agreements and the Remote USI Agreements; the Non-Credited USI Work; the Wisconsin Project Real Property; and all other Property related to or associated therewith in which any Owner has any right, title or interest, including the Governmental Approvals, the Wisconsin Project Agreements, the Procured Materials, the Wisconsin Construction Agreements, and the Real Property Agreements.

“**Wisconsin Project Agreements**” means this Agreement, the Wisconsin Project Participation Agreement, the Wisconsin Operation and Maintenance Agreement, the Transmission Capacity Exchange Agreement, [the **Hampton Joint Effort Agreement**,] the Joint Cooperation Agreement, the Transmission Easement Agreement, the DOSA Construction Agreements, the RCUSI Construction Agreements, the Co-located Owner Agreements, the Underbuild Owner Agreements, the Relocated Owner TL Self-Performance Agreements, the Relocated Owner DL Self-Performance Agreements and any other contract or agreement designated as a “Wisconsin Project Agreement” by the Management Committee, which in no event may include Wisconsin Construction Agreements (other than the DOSA Construction Agreements, the RCUSI Construction Agreements, the Co-located Owner Agreements, the Underbuild Owner Agreements, the Relocated Owner TL Self-Performance Agreements, the Relocated Owner DL Self-Performance Agreements and Wisconsin Construction Agreements for Non-Credited USI Work to be performed by an Owner, if any), Real Property Agreements or any other contract, agreement, instrument or arrangement providing for the acquisition of any Property (except for the Transmission Easement Agreement).

“**Wisconsin Project Budget**” has the meaning given in **Section 5.1.1**.

“**Wisconsin Project Change Request**” means a submittal by the Construction Manager to the Chair and the Vice Chair substantially in the form set forth in **Appendix F-3**.

“**Wisconsin Project Construction Contract**” means each contract, agreement or arrangement between some or all of the Owners, on the one hand, and any Person, on the other hand, including Development Period Contracts, establishing the terms of performance of any part of the Construction Work, but specifically excluding this Agreement and the Real Property Agreements.

“**Wisconsin Project Costs**” means the Wisconsin CM Costs, Operating Expenses, costs of the Independent Engineer as provided in **Section 2.5** and any other amounts related to the Wisconsin Project incurred at the direction of the Management Committee; **provided, however**, the following costs incurred by an Owner in any capacity do not constitute Wisconsin Project Costs: (i) costs of negotiating the commercial terms of the Wisconsin Project Agreements, the Wisconsin Construction Agreements or any CM Subcontracts; (ii) costs of Non-Credited USI

Work; (iii) costs of the Wisconsin Project; or (iv) costs under any contract regarding the operation or maintenance of the Facilities after Substantial Completion.

“**Wisconsin Project Design Book**” means the compilation, both in electronic and hard copy, of documents, drawings, GPS coordinates, route maps, access routes and associated contact information, and information that reflects the final specifications and design of the Facilities and the Associated Owner Assets, including “as built” design, engineering and construction documents, required to be delivered by any Contractor in accordance with the provisions of the applicable Wisconsin Project Construction Contract.

“**Wisconsin Project Insurance**” means the insurance coverages required to be obtained by the Construction Manager in accordance with **Appendix I**, as it may be amended by the Management Committee.

“**Wisconsin Project Participation Agreement**” means that certain Wisconsin Project Participation Agreement, effective as of the Effective Time, by and among all of the Owners.

“**Wisconsin Project Plan**” has the meaning given in **Section 4.1.1**.

“**Wisconsin Project Real Property**” means: (i) the fee interests, licenses, rights-of-way, easements, access rights, and other real property interests acquired for the Wisconsin Project and (ii) the rights granted to the Owners pursuant to the Transmission Easement Agreement. For the avoidance of doubt, NSP, MN will not have any real property rights in the State of Wisconsin.

“**Wisconsin Real Property Plan**” has the meaning given in **Section 4.6.2**.

“**Wisconsin Trust Agreement**” means that certain Trust Agreement for the Wisconsin Project by and among the Owners and Wells Fargo Bank, N.A., effective as of the Effective Time.

**1.2 Generally Applicable Provisions.** **Schedule 1, Generally Applicable Provisions**, contains dispute resolution, confidentiality and other general provisions, all of which are incorporated by reference as if set forth herein in their entirety. This Agreement consists of this document itself and all Schedules and Appendices hereto, which are specifically made a part hereof and incorporated herein by this reference.

## ARTICLE 2

### ENGAGEMENT OF THE CONSTRUCTION MANAGER

**2.1 Engagement of the Construction Manager.** Each Owner hereby appoints and retains the Construction Manager to provide the Services throughout the Term on the terms and conditions set forth in this Agreement. The Construction Manager hereby accepts such appointment and agrees to perform the Services as an independent contractor, except as provided in **Sections 2.3, 3.1 and 7.12**, in accordance with the terms and conditions of this Agreement. In providing the Services, the Construction Manager recognizes the necessity of a close working relationship between it and the Owners, as well as with the Minnesota Construction Manager and the Minnesota Owners. The fact that any Owner is

serving in the capacity of the Construction Manager, as well as an Owner, does not in any way change, modify or release such Person from its rights, interests and obligations in its capacity as an Owner under this Agreement.

## 2.2 Services.

2.2.1 **Construction Management Services – General Duties.** The Construction Manager shall furnish to the Owners, at no charge in excess of its actual cost as provided in **Section 5.4**, its services (“**Construction Management Services**”) to coordinate, manage, administer, oversee and enforce the performance of Construction Work through Final Completion and to perform its obligations under the Administrative Agent Agreements and the Joint Cooperation Agreement. In performing the Construction Management Services, the Construction Manager shall apply the skill and judgment of its organization to the Construction Management Services in accordance with the provisions of this Agreement and Good Utility Practice. Subject, where applicable, to the specific provisions of this Agreement establishing the terms and conditions for the performance of same, the Construction Management Services include the obligation of the Construction Manager to:

- (i) provide overall coordination and administration;
- (ii) manage and coordinate Contractors and CM Subcontractors engaged in providing Wisconsin Project engineering and design, including matters relating to the development and modification of the Approved Design in accordance with **Section 4.2**;
- (iii) manage and coordinate the Construction Work Schedule and Scope of Work in accordance with **Section 4.1**;
- (iv) develop and revise budgets, including the Pre-Construction Estimated Wisconsin Project Budget in accordance with **Section 4.3** and the Wisconsin Project Budget in accordance with **Section 5.1**;
- (v) assist the Owners (individually or collectively) regarding rights, duties and obligations with respect to (a) representation before Governmental Bodies, in connection with the preparation, prosecution, administration and maintenance of Governmental Approvals in accordance with **Sections 4.4** and **7.4.7**; (b) insured and uninsured claims against the Owners or Third Parties in accordance with **Sections 7.12** and **7.13**; (c) providing assistance pertaining to any prudency review in accordance with **Section 5.5**; and (d) providing assistance pertaining to Sales Tax matters as provided in **Section 7.17**;
- (vi) provide an analysis of the types and quantities of labor required for the Construction Work and review the availability of appropriate categories of the labor required for critical periods of the construction and make recommendations to the Management Committee for actions designed to

- minimize adverse effects on the cost, progress and quality of the Construction Work resulting from labor shortages;
- (vii) provide an Equipment and Materials procurement plan to the Management Committee in accordance with **Section 4.5.1** for the procurement of Procured Materials and thereafter procure Owner Procured Materials as required by **Section 4.5.2**;
  - (viii) select Contractors and negotiate and award the Wisconsin Project Construction Contracts and other Wisconsin Construction Agreements (other than Development Period Contracts) appropriate to procure services, Equipment, Materials, Consumables and Construction Aids (including Procured Materials in accordance with **Section 4.5**) necessary or desirable to perform, complete or enhance the timely performance of Services or the Construction Work, subject to and in accordance with the provisions of **Sections 2.3, 3.2** and **4.8**, and other provisions of this Agreement, as applicable;
  - (ix) advise and make recommendations to the Management Committee and provide direction, as appropriate, to Contractors regarding labor, environmental, safety, quality control and Emergency recovery matters in accordance with **Sections 7.7, 7.8** and **7.9**;
  - (x) exercise commercially reasonable efforts to obtain satisfactory performance from Contractors by exercising the Owners' rights and enforcing the Contractors' obligations pursuant to the authority granted under **Section 2.3.1(ii)**, in accordance with **Sections 3.2.2, 7.4** and **12.1.4**, including administering the Change Order process in accordance with **Section 3.2.5**.
  - (xi) coordinate, monitor and assess the performance of Joint Project Activities in accordance with **Sections 7.2** and **7.5**;
  - (xii) advise the Management Committee regarding rights, duties and obligations with respect to the Construction Work, including the enforcement of warranties for Construction Work and Procured Materials;
  - (xiii) keep, coordinate and organize records associated with the Construction Work in accordance with **Sections 7.19** and **8.1**;
  - (xiv) coordinate with and report to the Management Committee on a periodic basis with respect to the Wisconsin Project, including fulfilling the reporting requirements set forth in **Sections 3.2.2.2** (Reporting), **4.1** (Wisconsin Project Plan), **4.3** (Preparation of Pre-Construction Estimated Wisconsin Project Budget), **5.1.4** (Financial Reports; Projections) and **5.1.5** (Notice of Maximum CM Cost Increase), **6.2.3** (Supporting Documentation), **8.2** (Progress and Financial Summary Reports), **8.3**

- (Year-end Financial Reports), **8.4** (Final Completion Report), and **11.1.2** (Initial Notice of Commissioning);
- (xv) coordinate with the Management Committee and Contractors upon any suspension of performance of Construction Work during the Term or upon termination of this Agreement, including Wisconsin Project wind-up coordination and assistance in accordance with **Section 15.2**;
  - (xvi) coordinate with the Maintenance Provider and the Control Center Authority to transfer care, custody, or control of the Phase to the Maintenance Provider and Control Center Authority as and when the Phase is placed in service;
  - (xvii) manage surplus Procured Materials in accordance with **Section 7.20**;
  - (xviii) prepare and use standard form construction and procurement contracts and purchase orders that the Management Committee has voted to approve as the basis of negotiations with Contractors (including with vendors of Procured Materials) in accordance with **Section 4.8**;
  - (xix) perform such other Construction Management Services as are necessary and consistent with Good Utility Practice to cause Final Completion to occur or as otherwise requested by the Management Committee and consistent with Good Utility Practice;
  - (xx) exercise commercially reasonable efforts to (a) oversee Commissioning in accordance with **Section 11.1**; (b) coordinate with the Management Committee regarding determinations of Substantial Completion and Final Completion pursuant to **Sections 11.2** and **11.4**; (c) develop Punch List(s) in accordance with **Section 11.3**; and (d) exercise the applicable Owners' rights and enforce the counterparties' obligations under Development Period Contracts in accordance with **Section 3.1**;
  - (xxi) provide one (1) copy to the Chair and Vice Chair of any notice or other material written communication provided by the Construction Manager to any Owner in connection with the Construction Management Services;
  - (xxii) develop the Approved Bidders List in accordance with **Section 3.2.4**;
  - (xxiii) prepare requests for information; requests for qualification and requests for proposals from Contractors; receive bids; prepare bid analyses; and make recommendations to the Management Committee with respect to the award or rejection of any bid for any Major Contract;
  - (xxiv) perform the Owners' obligations, manage, administer and enforce, as applicable, on the Owners' behalf, the Underbuild Agreements, the Co-located Owner Agreements, the Relocated TL Agreements and the Relocated DL Agreements;

PUBLIC DOCUMENT  
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- (xxv) take such actions as are requested by the Management Committee to assist the Owners in the fulfillment of their obligations under the Hampton Joint Effort Agreement;
- (xxvi) take such actions as are required of the Construction Manager under the Joint Cooperation Agreement or as further requested by the Management Committee in connection with the overall effort to construct and place in service the Coordinated Projects; and
- (xxvii) notify (a) the Rural Utilities Service, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the Wisconsin State Historic Preservation Office, the Ho-Chunk Nation, the Letegitigaaning Ojibwe Nation, the Mille Lacs Band of Ojibwa and the Shakopee Mdewakanton Sioux, as applicable, and (b) each Owner, in the event that the Construction Manager believes that there has been a discovery of human remains on Wisconsin Project Real Property or other sites on which Construction Work is taking place.

2.2.2 **Real Property Management Services.** The Construction Manager shall furnish to the Owners, at no charge in excess of its actual cost as described in **Appendix D**, its services (“**Real Property Management Services**”) to acquire the Wisconsin Project Real Property described in **clause (i)** of the definition thereof required to complete the Wisconsin Project, including all services associated therewith. In performing the Real Property Management Services, the Construction Manager shall apply the skill and judgment of its organization to the Real Property Management Services in accordance with the provisions of this Agreement and Good Utility Practice. Subject, where applicable, to the specific provisions of this Agreement establishing the terms and conditions of the performance of same, the Real Property Management Services include the obligations of the Construction Manager to:

- (i) develop the Wisconsin Real Property Plan for the acquisition of all Wisconsin Project Real Property necessary to (a) complete the Phase and (b) provide access for maintenance and improvement of the Facilities and, in accordance with **Section 3.1.6** of the **Wisconsin Project Participation Agreement**, the Discretely Owned Substation Assets and the Remote Credited Owner USIs;
- (ii) implement, manage, oversee, coordinate and complete all aspects of the Wisconsin Real Property Plan, including site identification and identification of land owners and required crossing permits; communicate with such land owners and their representatives to obtain required permissions; conduct due diligence; arrange for all necessary surveys; draft and negotiate the Real Property Agreements (to the extent permitted by Applicable Law) and close the acquisition or disposition (in accordance with the parameters established by the Management Committee) of the Wisconsin Project Real Property described in **clause (i)**

of the definition thereof and make all monetary payments associated therewith during the Term;

- (iii) advise the Management Committee regarding rights, duties and obligations under the Real Property Agreements and represent the applicable Owners before Governmental Bodies in connection with the acquisition (including condemnation) or disposition (in accordance with the parameters established by the Management Committee) of the Wisconsin Project Real Property described in **clause (i)** of the definition thereof;
- (iv) administer and oversee CM Subcontracts entered into in connection with the Real Property Management Services;
- (v) initiate or manage litigation to condemn Wisconsin Project Real Property described in **clause (i)** of the definition thereof (including obtaining evidence and testimony regarding valuation, prior negotiations and other matters related to the condemnation);
- (vi) exercise commercially reasonable efforts to enforce the rights of the Owners under the Real Property Agreements, including litigation and settlement of disputes arising out of such agreements;
- (vii) keep the Management Committee reasonably apprised of significant issues and events which have occurred or are anticipated to occur in connection with the execution of the Wisconsin Real Property Plan;
- (viii) request, on reasonable notice, each Owner, as applicable, to provide documents, instruments or take other actions necessary for the Construction Manager to timely complete performance of the Wisconsin Real Property Plan;
- (ix) keep, coordinate, organize, and make accessible to each Owner the records associated with the execution of the Wisconsin Real Property Plan, including documenting all Wisconsin Project Real Property by files and maps, in accordance with formats that the Management Committee has voted to approve;
- (x) assist at the request of an Owner (at such individual Owner's expense) with filings and/or recordings required by such Owner's Financing Party; and
- (xi) provide one (1) copy to the Chair and Vice Chair of any notice or other written material communication provided by the Construction Manager to any Owner in connection with the Real Property Management Services.

## 2.3 Agency Authority.

2.3.1 **Agency Authority.** Subject to the terms and conditions set forth in this Agreement, each Owner designates and appoints the Construction Manager as its designated and disclosed agent to carry out, as agent for and on behalf of each Owner, the following services, and the Construction Manager accepts such appointment and agrees to execute such authority and to act on behalf of each Owner as such Owner's agent with respect to the following:

- (i) the execution and delivery of all Wisconsin Project Construction Contracts, amendments and Change Orders thereto to procure labor, Equipment, Materials, Consumables and Construction Aids (including Owner Procured Materials in accordance with **Section 4.5**) necessary or (as determined by the Construction Manager) desirable to perform and complete the Construction Work in accordance with the provisions of this Agreement, including **Sections 3.2.1, 3.2.2, 3.2.3 and 3.2.5**;
- (ii) exercising the rights of the Owners under the Wisconsin Project Construction Contracts and enforcing the obligations of the Contractors thereto and, when necessary, instituting, defending and settling disputes and legal Proceedings with respect to any right, obligation, or other matter arising therefrom, subject to **Section 7.12**, as applicable;
- (iii) to the extent permitted by Applicable Law, the execution and filing of all applications (and amendments and supplements thereto), certifications and instruments for, and submittal of all associated documentation required to obtain, Owner Governmental Approvals from all Governmental Bodies;
- (iv) execution, delivery and recordation of all contracts, documents and instruments necessary or (as determined by the Construction Manager) desirable in order to perform or cause to be performed all Real Property Management Services, including the execution and delivery (to the extent permitted by Applicable Law) of the Real Property Agreements; and
- (v) in addition to the authority granted to the Construction Manager by the Owners under **Section 2.3.1(ii)**, institute, defend and settle disputes and Proceedings with respect to any right or obligation or other matter arising therefrom or from any Real Property Agreements or claims of the Owners (individually or collectively) or Third Parties arising out of or, attributable to, the Wisconsin Project, all in accordance with **Section 7.12**.

2.3.2 **Agency Authority Limited.** The Construction Manager's authority to act as agent for and on behalf of each Owner is specifically set forth in **Sections 2.3.1 and 7.12** (collectively, "**Agency Authority**"). No authority to act as an agent hereunder is created, implied or bestowed on the Construction Manager by this Agreement for any other purpose whatsoever. In all matters where the Construction Manager will exercise Agency Authority: (i) such Services will be

undertaken as a disclosed agent for and on behalf of each of the Owners and (ii) the Agency Authority of the Construction Manager is limited to binding each of the Owners granting such authority severally (and not jointly) except with the prior written consent of the Management Committee. The Owners acting through the Management Committee, retain the right to further limit the scope of the Agency Authority granted herein. The Construction Manager and each Owner must agree in writing to the terms of any expansion of the Agency Authority granted to the Construction Manager hereunder.

2.3.3 **Covenant to Cooperate with Agent.** To the extent the performance of the Services by the Construction Manager, acting pursuant to Agency Authority, requires the cooperation or assistance (including execution of documents) of an Owner, such Owner individually agrees to give its prompt and reasonable assistance to the Construction Manager.

2.4 **Construction Manager as Contractor.** The Construction Manager is entitled to perform Construction Work, but only pursuant to a separate contract negotiated and approved by a vote of the Management Committee. Such contract must be separate and distinct from this Agreement and, as such, will be separately enforceable by the Owners (acting through the Management Committee) in accordance with its terms. In the performance of such Construction Work, the Construction Manager, in its capacity as a Contractor, may subcontract any portion of the Construction Work (such as design, engineering or environmental work), but not all or substantially all of the Construction Work (taken as a whole) to Subcontractors; **provided**, that it remains liable to the Owners for any such Construction Work performed (or failed to be performed) by its Subcontractors. Construction Work subcontracted to an Affiliate must be invoiced to the Owners at cost in accordance with **Appendix D** as if the work thereunder was performed by the Construction Manager.

2.5 **Use of Independent Engineer Services.** Notwithstanding anything to the contrary in this Agreement, when the Construction Manager undertakes the performance of Construction Work, the Owners, at their option, may, with respect to the Construction Work performed by the Construction Manager, utilize the services of an Independent Engineer to assist the Owners, in lieu of the Construction Manager to: (i) review Payment Requests, Change Orders, contract amendments and associated documentation and determine the Owners' funding obligations and responses in respect thereof; (ii) inspect and determine whether such Construction Work has been properly performed in accordance with the applicable Wisconsin Project Construction Contract; and (iii) enforce the obligations of the Construction Manager as a Contractor under the applicable Wisconsin Project Construction Contract, including the resolution of disputes. The cost of the Independent Engineer's services is the responsibility of the Owners collectively and payment is to be arranged in the manner directed by the Management Committee. Such costs are neither Wisconsin CM Costs nor are they to be included in the calculation of the Wisconsin Maximum CM Cost Amount.

2.6 **Minor Elements of Construction Work; Emergency.** Notwithstanding **Section 2.4**, the Construction Manager, without approval of the Management Committee, may

perform: (i) minor elements of Construction Work or (ii) take actions in an Emergency that could constitute Construction Work if necessary for the preservation of public safety or Property, including the environment, or to avoid a delay in the critical path of the Construction Work Schedule. To be considered “minor elements of Construction Work,” the cost incurred to accomplish such Construction Work, as estimated by the Construction Manager in good faith, must not exceed One Hundred Thousand Dollars (\$100,000). The Construction Manager may undertake minor elements of Construction Work only upon execution of a standard form purchase order (prepared in accordance with **Section 4.8**); **provided**, that the entire cost thereof will be billed in accordance with **Appendix D**. The Construction Manager shall promptly give notice to the Chair and Vice Chair when the Construction Manager undertakes minor elements of Construction Work or Emergency actions under this **Section 2.6**.

- 2.7 Instructions.** The Construction Manager may request: (i) a meeting with the Management Committee or (ii) instruction from the Management Committee, in each case prior to taking action (to the extent practicable) with respect to any material matter contemplated by this Agreement. All requests for a meeting or instruction must be in writing, specifically reference this **Section 2.7** and describe the matter requiring discussion or instruction. The notice must be delivered to the Chair and Vice Chair. The Construction Manager may defer action (to the extent practicable) that is dependent upon such discussion or instruction pending such meeting or receipt of written instruction from the Management Committee. The Management Committee shall meet with the Construction Manager or issue its written instruction five (5) Business Days after receipt of the written request therefor. If the Management Committee delays issuance of its instruction and the Wisconsin Project Plan, the cost of Services or the cost of Construction Work is adversely impacted by the Management Committee’s delay, the Construction Manager will be entitled to equitable relief therefor to the extent it was unable to prevent or mitigate such impact. To secure such relief, the Construction Manager shall submit a Wisconsin Project Change Request, reasonably documented, to the Management Committee. The Management Committee shall promptly vote on such Wisconsin Project Change Request.
- 2.8 Limitation on Authority.** Notwithstanding any other provision of this Agreement to the contrary, the Construction Manager shall not, without the prior written consent of: (i) the applicable Self-Performing Owner (a) execute or otherwise approve any Material Action or material modification to any Wisconsin Construction Agreement, Real Property Agreement or other agreement related to the ownership, construction or operation of any Self-Performed Associated Asset to which the applicable Self-Performing Owner is not a party, or any Governmental Approvals related to such Self-Performed Associated Asset or (b) execute or otherwise approve any Change Order under any DOSA Construction Agreement to which the Discretely Owned Substation Owner is not a party, Relocated Owner TL Self-Performance Agreement to which the Relocated Project TL Owner is not a party, Relocated Owner DL Self-Performance Agreement to which the Relocated Project DL Owner is not a party, or RCUSI Construction Agreement to which the Remote Credited USI Owner is not a party or (ii) the Management Committee, take any Material Action. For the avoidance of doubt, the limitation on the Construction Manager’s rights pursuant to **clause (ii)** does not limit the authority of the Construction

Manager to enter into or approve Change Orders to Wisconsin Construction Agreements that are not Major Change Orders or take actions with respect to Wisconsin Construction Agreements that are not Material Actions.

**2.9 Discretely Owned Substation Owners.** NSP, WI, in its capacity as an Owner, acknowledges that it is also a Discretely Owned Substation Owner and agrees to perform the obligations imposed on it under this Agreement in its capacity as a Discretely Owned Substation Owner. If any other Owner should at any time after the Effective Time become a Discretely Owned Substation Owner, it agrees, in its capacity as an Owner, that from and after such time it will be deemed a party to this Agreement in that capacity and that it shall perform the obligations thereafter imposed on it under this Agreement in its capacity as a Discretely Owned Substation Owner.

**2.10 Existing Lines.**

**2.10.1 Existing Distribution Lines.** To comply with Good Utility Practice and the Wisconsin Project Plan, the Construction Work performed for the Facilities requires that certain distribution lines that are not part of the Wisconsin Project (the “**Existing Distribution Lines**”) be relocated and placed either on the supporting structures that are part of the Facilities or placed in another location, all as more particularly described in the Wisconsin Project Plan. Such Existing Distribution Lines are either owned individually by an Owner (each an “**Existing Project DL Owner**”) or by certain Third Parties (each an “**Existing TP DL Owner**”). The Existing Project DL Owners and the Existing TP DL Owners are collectively referred to as the “**Existing DL Owners.**” The Existing Distribution Lines and the Existing DL Owners are set forth in **Appendix J-1**, as such appendix may be amended by the Management Committee.

**2.10.2 Existing Transmission Lines.** To comply with Good Utility Practice and the Wisconsin Project Plan, the Construction Work performed for the Facilities requires that one or more transmission lines that are not part of the Wisconsin Project (the “**Existing Transmission Lines**”) be relocated and placed either on the supporting structures that are part of the Facilities or in another location, all as more particularly described in the Wisconsin Project Plan. Such Existing Transmission Lines are either owned individually by an Owner (each an “**Existing Project TL Owner**”) or by certain Third Parties (each an “**Existing TP TL Owner**”). The Existing Project TL Owners and the Existing TP TL Owners are collectively referred to as the “**Existing TL Owners.**” The Existing Transmission Lines and the Existing TL Owners are set forth in **Appendix J-2**, as such appendix may be amended by the Management Committee.

**2.11 Relocated Lines.**

**2.11.1 Relocated Distribution Lines.** Each Existing Project DL Owner (i) has executed a Relocated Owner DL Self-Performance Agreement in its capacity as a Relocated Project DL Owner (a “**Relocated Project DL Owner**”) (or an Underbuild Owner Agreement) to relocate its Existing Distribution Lines (each a

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“**Relocated Project Owner DL**”) or (ii) agrees to execute a Relocated Owner DL Self-Performance Agreement (or an Underbuild Owner Agreement in accordance with **Section 2.12**). Each Existing TP DL Owner that executes a Relocated TP DL Agreement (a “**Relocated TP DL Owner**”) to relocate its Existing Distribution Lines (each a “**Relocated TP DL**”) and each Relocated Project DL Owner will be set forth respectively together with the applicable Relocated Project Owner DLs or the applicable Relocated TP DLs in **Appendix J-7** and **Appendix J-8**, as such appendices may be amended by the Management Committee. The Relocated Project DL Owners and the Relocated TP DL Owners are collectively referred to as the “**Relocated Distribution Line Owners**” and the Relocated Project Owner DLs and the Relocated TP DLs are collectively referred to as the “**Relocated Distribution Lines**.”

2.11.2 **Relocated Owner DL Self-Performance Agreements.** As of the Effective Time, to facilitate the Construction Work, the Owners and Relocated Project DL Owners that are identified in **Appendix J-7** as Relocated Project DL Owners, whose Existing Distribution Lines will be relocated (but will not become Underbuild Owner Lines) in accordance with the Wisconsin Project Plan have entered into an agreement in the form attached as **Exhibit S-8A** to the **Wisconsin Project Participation Agreement** (each a “**Relocated Owner DL Self-Performance Agreement**”). As of the Effective Time, insufficient information exists to support execution of Relocated Owner DL Self-Performance Agreements (as contemplated by the Wisconsin Project Plan) by other Existing Project DL Owners and the Construction Manager. At such time as any such Existing Project DL Owner, the Construction Manager and the Management Committee determine that sufficient engineering and financial information exists to support execution of a Relocated Owner DL Self-Performance Agreement for such Construction Work, the Existing Project DL Owner and the Construction Manager shall execute a Relocated Owner DL Self-Performance Agreement. The Construction Manager shall use commercially reasonable efforts to enter into a definitive agreement with each Existing TP DL Owner whose Existing Distribution Lines will be relocated (but will not become Underbuild Owner Lines) in accordance with the Wisconsin Project Plan (each a “**Relocated TP DL Agreement**”). After the Effective Time, upon execution of any Relocated Owner DL Self-Performance Agreement or Relocated TP DL Agreement, the applicable appendix will be supplemented by the Management Committee. The Relocated Owner DL Self-Performance Agreements and the Relocated TP DL Agreements are collectively referred to as the “**Relocated DL Agreements**.” Notwithstanding anything to the contrary in this Agreement, inasmuch as the Relocated Distribution Lines are being constructed to replace the Existing Distribution Lines, the design standards for each such line will be the design standards of the Relocated Project DL Owner or the Relocated TP DL Owner, as applicable, then in effect.

2.11.3 **Relocated Line Easement Agreements.** If necessary, to enable the Relocated Project DL Owners to maintain, repair, restore or replace their Relocated Project Owner DLs (i) the Owners and each Relocated Project DL Owner shall enter into an easement agreement in the form attached as **Exhibit J-8B** to the **Wisconsin**

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**Project Participation Agreement** and (ii) the Construction Manager shall use commercially reasonable efforts to enter into an easement agreement with each Relocated TP DL Owner.

2.11.4 **Relocated Transmission Lines.** Each Existing Project TL Owner (i) has executed a Relocated Owner TL Self-Performance Agreement in its capacity as a Relocated Project TL Owner (a “**Relocated Project TL Owner**”) (or an Underbuild Owner Agreement or Co-located Owner Agreement) to relocate its Existing Transmission Lines (each a “**Relocated Project Owner TL**”) or (ii) agrees to execute a Relocated Owner TL Self-Performance Agreement (or an Underbuild Owner Agreement or Co-located Line Agreement in accordance with **Section 2.12**). Each Existing TP TL Owner that executes a Relocated TP TL Agreement (a “**Relocated TP TL Owner**”) to relocate its Existing Transmission Lines (each a “**Relocated TP TL**”) and each Relocated Project TL Owner will be set forth respectively together with the applicable Relocated Project Owner Tls or the applicable Relocated TP Tls in **Appendix J-5** and **Appendix J-6**, as such appendices may be amended by the Management Committee. The Relocated Project TL Owners and the Relocated TP TL Owners are collectively referred to as the “**Relocated Transmission Line Owners**” and the Relocated Project Owner Tls and the Relocated TP Tls are collectively referred to as the “**Relocated Transmission Lines.**”

2.11.5 **Relocated Owner TL Self-Performance Agreements.** As of the Effective Time, to facilitate the Construction Work, the Owners and the Existing Project TL Owners that are identified in **Appendix J-5** as Relocated Project TL Owners, whose Existing Transmission Lines will be relocated (but will not become Underbuild Owner Lines or Co-located Lines) in accordance with the Wisconsin Project Plan have entered into an agreement in the form attached as **Exhibit J-8A** to the **Wisconsin Project Participation Agreement** (each a “**Relocated Owner TL Self-Performance Agreement**”). As of the Effective Time, insufficient information exists to support execution of Relocated Owner TL Self-Performance Agreements (as contemplated by the Wisconsin Project Plan) by other Existing Project TL Owners and the Construction Manager. At such time as any such Existing Project TL Owner, the Construction Manager and the Management Committee determine that sufficient engineering and financial information exists to allow execution of a Relocated Owner TL Self-Performance Agreement, the Existing Project TL Owner and the Construction Manager shall execute a Relocated Owner TL Self-Performance Agreement for such Construction Work. The Construction Manager shall use commercially reasonable efforts to enter into a definitive agreement with each Existing TP TL Owner whose Existing Transmission Lines will be relocated in accordance with the Wisconsin Project Plan (each a “**Relocated TP TL Agreement**”). The Relocated Owner TL Self-Performance Agreements and the Relocated TP TL Agreements are collectively referred to as the “**Relocated TL Agreements.**” After the Effective Time, upon execution of any Relocated Owner TL Self-Performance Agreement or Relocated TP TL Agreement, the applicable appendix will be supplemented by the Management Committee. Notwithstanding anything to the contrary in this

Agreement, inasmuch as the Relocated Transmission Lines are being constructed to replace the Existing Transmission Lines, the design standards for each such line will be the design standards, then in effect, of the Relocated Project TL Owner or the Relocated TP TL Owner, as applicable.

- 2.11.6 **Relocated Line Easement Agreements.** If necessary to enable the Relocated Project TL Owners to maintain, repair, restore or replace their Relocated Project Owner TLs (i) the Owners and each Relocated Project TL Owner will enter into an easement agreement in the form attached as **Exhibit J-8B** to the **Wisconsin Project Participation Agreement** and (ii) the Construction Manager will use commercially reasonable efforts to enter into an easement agreement with each Relocated TP TL Owner.

## 2.12 Underbuild Lines and Co-located Owner Lines.

- 2.12.1 **Underbuild Lines.** Certain Existing Transmission Lines or Existing Distribution Lines, as applicable, owned by an Existing Project TL Owner or Existing Project DL Owner, as applicable, will be relocated and permanently placed on the supporting structures that are part of the Facilities in accordance with the Wisconsin Project Plan (each an “**Underbuild Owner Line**”). Each Existing Project TL Owner or Existing Project DL Owner that executes an Underbuild Owner Agreement with respect to its Underbuild Owner Lines in accordance with **Section 2.12.2** is referred to as an “**Underbuild Project Owner.**” Each Existing TP TL Owner that executes an Underbuild TP Agreement (an “**Underbuild TP Owner**”) with respect to its Existing Transmission Lines that will be relocated and placed on the supporting structures that are part of the Facilities in accordance with the Wisconsin Project Plan (each an “**Underbuild TP Line**”) and each Underbuild Project Owner will be set forth respectively together with the applicable Underbuild Owner Lines and the applicable Underbuild TP Lines in **Appendix J-3** and **Appendix J-4**, as such appendices may be amended by the Management Committee. The Underbuild Project Owners and the Underbuild TP Owners are collectively referred to as the “**Underbuild Owners**” and the Underbuild Owner Lines and the Underbuild TP Lines are collectively referred to as the “**Underbuild Lines.**”

- 2.12.2 **Underbuild Agreements.** To facilitate the Construction Work, (i) NSP, WI, with respect to its Underbuild Owner Lines that are identified in **Appendix J-3**, agrees to enter into an agreement with the Owners in the form attached as **Exhibit J-3A1** to the **Wisconsin Project Participation Agreement** and (ii) DPC, with respect to its Underbuild Owner Lines that are identified in **Appendix J-3**, agrees to enter into an agreement with the Owners in the form attached as **Exhibit J-3A2** to the **Wisconsin Project Participation Agreement** (each agreement referred to in **clauses (i)** and **(ii)** of this **Section 2.12.2**, an “**Underbuild Owner Agreement**”) at such time as the Existing Project TL Owner or Existing Project DL Owner, as applicable, the Construction Manager and the Management Committee determine that sufficient engineering and financial information exists to support execution of an Underbuild Owner Agreement. As of the Effective Time, it has not been

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determined which other Existing Transmission Lines or Existing Distribution Lines (or portions thereof) owned by Existing Project TL Owners, Existing Project DL Owners, Existing TP TL Owners or Existing TP DL Owners will be relocated and placed on supporting structures that are part of the Facilities as contemplated by the Wisconsin Project Plan. If it is determined by the Construction Manager, the applicable Existing Project TL Owner, Existing TP TL Owner, Existing Project DL Owner or Existing TP DL Owner and the Management Committee that any such lines will be relocated and permanently placed on supporting structures that are part of the Facilities (but will neither be a Co-located Line nor be relocated to another location) and sufficient engineering and financial information exists to support execution of an agreement, (i) the Owners and any such Underbuild Project Owner agree to execute an Underbuild Owner Agreement and (ii) the Construction Manager, on behalf of the Owners, shall use commercially reasonable efforts to enter into a definitive agreement with each such Existing TP TL Owner or Existing TP DL Owner (each an “**Underbuild TP Agreement**”). After the Effective Time, upon execution of any Underbuild Owner Agreement or Underbuild TP Agreement, the information in the applicable appendix will be supplemented by the Management Committee. The Underbuild Owner Agreements and the Underbuild TP Agreements are collectively referred to as the “**Underbuild Agreements**.” If it is determined by the Construction Manager, the applicable Existing Project TL Owner, Existing Project DL Owner, Existing TP TL Owner or Existing TP DL Owner and the Management Committee that its Existing Transmission Line or Existing Distribution Line will be relocated to another location (but will not be relocated and placed on supporting structures that are part of the Facilities), **Section 2.11** will apply and information in **Appendices J-6** and **J-8** will be supplemented. Notwithstanding anything to the contrary in this Agreement, inasmuch as the Underbuild Lines are being constructed to replace the Existing Transmission Lines or Existing Distribution Lines of each Underbuild Owner, the design standards for each such line will be the design standards of the Underbuild Owner as then in effect.

2.12.3 **Co-located Owner Lines**. As provided in the Wisconsin Project Plan, the transmission capability provided by certain Existing Transmission Lines will be reestablished on cross-arms on structures that are part of the Facilities and which have been installed for future Project 345kV second circuit capability (collectively, the “**Co-located Owner Lines**”). The transmission capability provided by these Co-located Owner Lines will be established as provided in the Co-located Owner Agreement for use by the Existing Project TL Owners that have executed a Co-located Owner Agreement (each a “**Co-located Line Owner**”). The Co-located Owner Lines and their respective Co-located Line Owners are set forth in **Appendix J-11**. The Co-located Owner Lines include conductors and insulators, but do not include the cross-arms from which the Co-located Owner Lines are suspended.

2.12.4 **Co-located Owner Agreements**. To facilitate the Construction Work, DPC, with respect to the Co-located Owner Lines that are identified in **Appendix J-11**,

agrees to enter into an agreement with the Owners in the form attached as **Exhibit J-11A** to the **Wisconsin Project Participation Agreement** (the “**Co-located Owner Agreement**”) at such time as DPC, the Construction Manager and the Management Committee determine that sufficient engineering and financial information exists to support execution of the Co-located Owner Agreement. Transmission capability provided to a Co-located Line Owner through a Co-located Owner Line will be subject to future reestablishment on a comparable basis by the Owners on the terms and conditions set forth in the Co-located Owner Agreement.

2.12.5 **Underbuild Owner Easement Agreements.** To allow for the maintenance, repair, restoration or replacement of the (i) Underbuild Owner Lines, the Owners and each Underbuild Owner (other than DPC) will enter into an easement agreement in the form attached as **Exhibit J-3B** to the **Wisconsin Project Participation Agreement**; and (ii) Underbuild TP Lines, the Construction Manager will use commercially reasonable efforts to enter into an easement agreement with each Underbuild TP Owner.

**2.13 Partial Underbuild and Relocated Transmission Lines.** Some of the Existing Transmission Lines may be relocated and placed in part (i) on supporting structures that are part of the Facilities and (ii) in another location. To facilitate the Construction Work, each Existing Project TL Owner and the Owners will enter into an agreement that will (a) specify the rights and obligations under that agreement and (b) be developed using the applicable principles of the Underbuild Owner Agreement and the Relocated Owner TL Self-Performance Agreement. For purposes of this Agreement, each portion of such Existing Transmission Lines that will be relocated and placed on supporting structures that are part of the Facilities will be deemed an Underbuild Owner Line (and the respective owner of such portion will be deemed an Underbuild Project Owner, with respect to such portion, and such owner will be set forth respectively together with such Underbuild Owner Line in **Appendix J-3**), and each portion of such Existing Transmission Lines that will be relocated and placed in another location will be deemed a Relocated Project Owner TL (and the respective owner of such portion will be deemed a Relocated Project TL Owner, with respect to such portion, and such owner will be set forth respectively together with such Relocated Project Owner TL in **Appendix J-5**). If the Existing Transmission Lines described in the first sentence of this **Section 2.13** are owned by Existing TP TL Owners, the Construction Manager, on behalf of the Owners, will use commercially reasonable efforts to apply the principles established in this **Section 2.13** to negotiate agreements with such Existing TP TL Owners.

**2.14 Remote USIs.**

2.14.1 **Remote USI Owners.** To comply with Good Utility Practice and the Wisconsin Project Plan, the Construction Work performed for the Facilities requires that the Remote USIs be constructed, installed and placed into service. Such Remote USIs will either be owned individually by (i) an Owner (each a “**Remote Credited USI Owner**”) or (ii) certain Third Parties (each a “**Remote TP USI Owner**”). The Remote Credited USI Owners and the Remote TP USI Owners are

collectively referred to as the “**Remote USI Owners.**” The Remote Credited USI Owners and the Remote TP USI Owners are set forth respectively together with the applicable Remote Credited Owner USIs and the Remote TP USIs in **Appendix J-9** and **Appendix J-10.**

- 2.14.2 **RCUSI Construction Agreements.** As of the Effective Time, DPC and NSP, WI are the only Remote Credited USI Owners. To facilitate the Construction Work, the Owners and each of DPC and NSP, WI have entered into an agreement in the form attached as **Exhibit J-9A** to the **Wisconsin Project Participation Agreement** (a “**RCUSI Construction Agreement**”). If after the Effective Time, to facilitate the Construction Work any additional Remote Credited Owner USI becomes necessary because of the Wisconsin Project at a substation owned by an Owner but which is not part of the Wisconsin Project, the Owners and such Owner shall execute a RCUSI Construction Agreement. The Construction Manager shall use commercially reasonable efforts to enter into a definitive agreement with each Remote TP USI Owner (each a “**Remote TP USI Agreement**”). The RCUSI Construction Agreement and the Remote TP USI Agreements are collectively referred to as the “**Remote USI Agreements.**”
- 2.15 Co-located Line Owners.** If any Owner should at any time after the Effective Time become a Co-located Line Owner, it will be deemed a party to this Agreement in that capacity and that it shall perform the obligations thereafter imposed on it under this Agreement in its capacity as a Co-located Line Owner.
- 2.16 Underbuild Owners.** If any Owner should at any time after the Effective Time become an Underbuild Owner, it will be deemed a party to this Agreement in that capacity and that it shall perform the obligations thereafter imposed on it under this Agreement in its capacity as an Underbuild Owner.
- 2.17 Remote Credited USI Owners.** DPC and NSP, WI, each in its capacity as an Owner, acknowledges that it is also a Remote Credited USI Owner and agrees to perform the obligations imposed on it under this Agreement in its capacity as a Remote Credited USI Owner. If any other Owner should at any time after the Effective Time become a Remote Credited USI Owner, it will be deemed a party to this Agreement in that capacity and that it shall perform the obligations thereafter imposed on it under this Agreement in its capacity as a Remote Credited USI Owner.
- 2.18 Relocated Project DL Owners.** If any Owner should at any time after the Effective Time become a Relocated Project DL Owner, it will be deemed a party to this Agreement in that capacity and it shall perform the obligations thereafter imposed on it under this Agreement in its capacity as a Relocated Project DL Owner.
- 2.19 Relocated Project TL Owners.** If any Owner should at any time after the Effective Time become a Relocated Project TL Owner, it will be deemed a party to this Agreement in that capacity and that it shall perform the obligations thereafter imposed on it under this Agreement in its capacity as a Relocated Project TL Owner.

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- 2.20 Other Underlying System Improvements.** The Parties recognize that it is possible that additional improvements to the underlying electric system of an Owner or a Third Party that have not been specifically identified in this Agreement as of the Effective Time may become necessary, whether as a requirement of Applicable Law or to enable the Wisconsin Project to be fully energized. In such event, upon written direction of the Management Committee to modify the Wisconsin Project Plan, the Construction Manager shall use commercially reasonable efforts to enter into a definitive agreement with such Person to construct or cause the construction of such improvement. With respect to additional improvements to the underlying electric system of an Owner, the Management Committee shall determine who bears the cost responsibility for such improvements and how such costs are to be accounted for. The costs incurred by the Construction Manager related to the negotiation and implementation of any such definitive agreements will constitute Wisconsin CM Costs. Upon execution of any such definitive agreement, the appendices of this Agreement and the Exhibits of the **Wisconsin Project Participation Agreement**, as appropriate, will be supplemented.
- 2.21 For Reference Only.** Appendix E sets forth a reference guide that summarizes certain of the assets that are to be created for the Wisconsin Project and identifies which Owners own such assets and the Owners' respective payment obligations in respect thereof. This reference guide is set forth for the convenience of the parties and may not be used to interpret the provisions of this Agreement.

### ARTICLE 3

#### CONTRACTING RESPONSIBILITIES

- 3.1 Development Period Contracts.** Prior to the Effective Time, the Development Manager under the Project Development Agreement, pursuant to an agency grant, entered into certain contracts that remain, in whole or in part, executory as of the Effective Time, each of which is identified in **Exhibit A** of the **Wisconsin Project Participation Agreement** (the "**Development Period Contracts**"). As of the Effective Time, each Owner that is then party to any of the Development Period Contracts hereby confers on the Construction Manager the authority to act as its agent under each such contract equivalent to the authority granted to the Construction Manager pursuant to **Sections 2.3.1** or **7.12**, as appropriate, subject to any limitation or requirement in this Agreement in respect of such authority, including **Section 2.3.2**. The Construction Manager hereby accepts such grant of authority and agrees to exercise the rights of the applicable Owners and enforce the obligations owed to the applicable Owners under such agreements. In furtherance of the foregoing, the Construction Manager shall deliver, to the extent necessary, any notice or other instrument as required under each Development Period Contract to effect the purposes of this **Section 3.1**. To the extent the Construction Manager is the same Person as the Development Manager, the Construction Manager acknowledges and agrees that, subject to compliance with Applicable Law, it has taken all actions necessary to transfer care, custody and control of such Development Period Contracts to the Construction Manager in its capacity as such under and pursuant to this Agreement.

### 3.2 Construction Work Contracts.

#### 3.2.1 Contracts and Bidding Requirements.

3.2.1.1 Construction Work Contracts. With the exception of Joint Project Activities, and subject to **Sections 2.3, 2.4, 3.2.2** and **3.2.3**, the Construction Manager shall, on behalf of and as the disclosed agent for each Owner, bid, negotiate, enter into contracts for, and otherwise arrange for (including, at the Construction Manager's discretion, the Construction Manager's employees, any Owner or Third Parties) the resources necessary to cause the performance and completion of the Construction Work. Except with respect to Major Contracts, Major Change Orders, and Material Actions, the Construction Manager has sole authority to approve (pursuant to procedures developed by the Construction Manager and submitted to the Management Committee for its information) all Wisconsin Project Construction Contracts, as well as all amendments and Change Orders thereto.

#### 3.2.1.2 Bidding Requirements.

### PRIVILEGED INFORMATION

#### 3.2.2 Administration and Reporting of Contracts.

3.2.2.1 Contract Administration. The Construction Manager shall: (i) administer and enforce, in all material respects, all Wisconsin Project Construction Contracts (including contracts for the acquisition of Procured Materials) and Real Property Agreements and undertake such other matters relating to such agreements as more particularly set forth in **Section 7.4** and (ii) furnish a conformed copy of all executed Wisconsin Project

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Construction Contracts, other Wisconsin Construction Agreements, Real Property Agreements and all amendments and Change Orders thereto to the Chair and Vice Chair, and to any Owner upon the written request by such Owner. The posting of such agreements, amendments and Change Orders to a website maintained by or on behalf of the Construction Manager throughout the Term will be sufficient to comply with the requirements of this **Section 3.2.2.1** if an e-mail message is sent to the Chair, Vice Chair and each Owner advising of each such posting. The format and characteristics of any such website will be cooperatively determined by the Owners and must include security measures and permit 24/7 access until an end date agreed by the Owners.

**3.2.2.2 Reporting.** In each Progress Report, the Construction Manager shall provide a listing of each of the Wisconsin Project Construction Contracts, CM Subcontracts, Real Property Agreements, Change Orders, and amendments it has entered into under and pursuant to this Agreement since the preceding Progress Report provided pursuant to **Section 8.2.1**. Such listing must include the title, date of such instrument, the contracting parties, a summary of the scope of Construction Work to be performed, Procured Materials to be obtained or Wisconsin Project Real Property rights to be acquired and the contract price and payment terms corresponding thereto; **provided, however**, if the Construction Manager has posted such documents on the website in accordance with **Section 3.2.2.1**, the Construction Manager is not required to provide information other than the title, date, contracting parties and contract price.

**3.2.3 Contracting with Owners Without Bidding.**

**3.2.3.1 Pre-Bid Obligations.** Unless: (i) the Construction Manager or the Owners have entered into a Management Committee approved Wisconsin Project Construction Contract contemporaneously with the Effective Time with a Self-Performing Owner for the Construction Work associated with its Self-Performed Associated Asset or (ii) the Development Manager has entered into a Development Period Contract for the design, procurement and/or construction of a Self-Performed Associated Asset with a Person that is a Self-Performing Owner, prior to undertaking any construction bid process for Construction Work associated with such Self-Performed Associated Asset, the Construction Manager shall give prior written notice to the Self-Performing Owner of the Construction Manager's determination to proceed with such Construction Work. Such notice must include: (1) the scope and specifications of the Construction Work to be performed; (2) the schedule for such Construction Work; and (3) the line item amount established in the Wisconsin Project Budget for such Construction Work, or, if no such line item is established, then a budget range for such Construction Work. The Self-Performing Owner will have the option to perform, or cause to be performed through use of contractors or vendors appearing on the Approved Bidders List, such Construction

Work, subject to compliance with the remaining provisions of this **Section 3.2.3**.

3.2.3.2 Owner Response to Pre-Bid Notice. A Self-Performing Owner, receiving the notice set forth in **Section 3.2.3.1** shall, within five (5) Business Days from receipt of the Construction Manager's notice pursuant to **Section 3.2.3.1**, provide a written response to the Construction Manager, either electing to perform the Construction Work described in **Section 3.2.3.1** or indicating that it chooses not to do so. If such Owner elects to perform (or contract with others to perform) such Construction Work, such Owner shall provide the following to the Construction Manager within twenty (20) Business Days from receipt of the Construction Manager's notice pursuant to **Section 3.2.3.1**: (i) such Owner's work plan for the scope and specifications of such Construction Work; (ii) the estimate for such work together with a certification that, in such Owner's good faith judgment, the work can be performed in accordance with the Construction Work Schedule and for the estimated amount that is equal to or less than the amount established for that work in the Wisconsin Project Budget; and (iii) any other information, documentation, or both, reasonably requested by the Construction Manager, including whether the Owner will utilize Subcontractors, and to what extent such Construction Work will be completed by such Subcontractors. Upon receipt of such information, the Owners and the applicable Self-Performing Owner will enter into an agreement to perform the applicable Construction Work on terms and conditions substantially in the applicable form set forth in the Wisconsin Project Participation Agreement. There is no requirement for such Self-Performing Owner to bid the work or to engage in a bidding process in the selection of its Subcontractors. Subcontractor costs must be passed through without mark-up or added charge. The Management Committee must vote on whether to authorize execution of any Wisconsin Project Construction Contract (other than a Development Period Contract) that is a Major Contract to be entered into by a Self-Performing Owner as contemplated by this **Section 3.2.3.2**. Major Change Orders and any Material Actions in respect of such Major Contract will also be subject to the procedures set forth in **Section 3.2.5**, including Management Committee authorization.

3.2.3.3 Additional Requirements. A Self-Performing Owner that enters into a Wisconsin Project Construction Contract as contemplated in **Section 3.2.3.2**, must provide information and documentation on a monthly basis supporting the Wisconsin CM Costs incurred in the performance of the Construction Work thereunder comparable to the information and documentation required of the Construction Manager under **Article 6** of this Agreement as well as a detailed comparison of actual Wisconsin CM Costs to the Wisconsin Project Budget for such work and a summary of significant issues that have been or are expected to arise, including matters relating to the cost, schedule or performance of such Construction Work.

Any additional information and documentation requested by the Construction Manager may not exceed that which would be required of any Contractor or Subcontractor performing similar Construction Work.

3.2.3.4 Waiver of Right to Perform Construction Work. If a Self-Performing Owner: (i) waives its right, as described in **Section 3.2.3.2**, to perform the Construction Work; (ii) does not provide a written response to the Construction Manager within the time period prescribed in **Section 3.2.3.2**; or (iii) in the case where the Wisconsin Project Construction Contract (other than a Development Period Contract) would constitute a Major Contract, does not obtain the affirmative vote of the Management Committee required by **Section 3.2.5**, such Owner will not be entitled to perform such Construction Work; **provided, however**, such Owner may participate in the bid process and submit a bid in connection with any request for bids thereafter initiated by the Construction Manager.

3.2.3.5 Construction by Others. If an Owner elects not to construct one or more of its Self-Performed Associated Assets:

- (i) the Construction Manager will otherwise arrange for the construction thereof;
- (ii) the cost of any Discretely Owned Substation Asset or Remote Credited Owner USI will be paid solely by the Discretely Owned Substation Owner or the Remote Credited USI Owner, as applicable;
- (iii) the cost of any Discretely Owned Substation Asset or Remote Credited Owner USI will be substantiated by the Construction Manager using a process substantially similar to the process set forth in **Article 6** for the advance payment of Wisconsin CM Costs by the Owners for Services and other Construction Work; and
- (iv) the Owner electing not to construct one or more of its Self-Performed Associated Assets will hold title to such Self-Performed Associated Asset as and when procured and constructed.

3.2.4 Approved Bidders; Preparation of Bid List. The Construction Manager shall prepare and submit to the Management Committee for its review and a vote a proposed list of approved bidders with respect to the scope of the Major Contracts. Once the Management Committee votes to approve such list, such list will be the "**Approved Bidders List**" and the Construction Manager shall award Wisconsin Project Construction Contracts (other than Development Period Contracts) only to entities on the Approved Bidders List. Each Owner will be listed as an approved bidder on the Approved Bidders List and each Self-Performing Owner that owns or will own one or more Self-Performed Associated Assets may put contractors and suppliers on the Approved Bidders List for

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Construction Work to be performed in connection with its Self-Performed Associated Assets. The Construction Manager shall seek Management Committee consent if it wishes to add names to the Approved Bidders List at any time. A Self-Performing Owner may strike the name of any entity on the Approved Bidders List for Construction Work to be performed with respect to any Self-Performed Associated Assets that it owns or will own.

3.2.5 **Procedures for Major Contracts, Major Change Orders and Material Actions.** All Major Contracts, Major Change Orders and Material Actions will be reviewed, approved and entered into only in accordance with the procedures set forth in this **Section 3.2.5**. Such procedures will not apply to the execution of any contracts, amendments and change orders executed and delivered before the Effective Time.

3.2.5.1 **Major Contract Change Orders and Material Actions.** The Management Committee may from time to time designate any Wisconsin Project Construction Contract as a Major Contract; **provided**, that no such designation will affect the validity of the execution of or actions taken with respect to that contract prior to such designation. The Construction Manager shall present all Major Contracts and Major Change Orders and Material Actions thereto to the Management Committee for a vote by tendering to the Chair and Vice Chair a copy of such contract or request in writing accompanied by an explanation of the Construction Manager's recommendation. The Management Committee will vote on any Major Contract, Major Change Order or Material Action thereto within ten (10) days of receipt by the Chair and the Vice Chair of the contract and request and the Construction Manager's written recommendation. Only if the Management Committee votes to approve such Major Contract, Material Action or Major Change Order, will the Construction Manager, subject to the provisions of **Section 2.3**, have the authority, as agent for and on behalf of each Owner, to enter into or undertake such Major Contract, Material Action or Major Change Order; **provided**, that it is substantially in the form approved by the Management Committee (with due consideration to modifications necessary to reflect the results of final negotiations and revisions in the ordinary course of business which do not, in aggregate, constitute a material modification to the document presented by the Construction Manager and approved by the Management Committee).

3.2.5.2 **Management Committee Prior Approval.** Without otherwise limiting its authority to undertake minor elements of the Construction Work or actions in the event of any Emergency in accordance with **Section 2.4**, the Construction Manager shall not enter into any Major Contracts or Major Change Orders or undertake Material Actions without the prior affirmative vote of the Management Committee.

3.2.6 **Contract Requirements.** Without the prior affirmative vote of the Management Committee, the Construction Manager shall not enter into agreements after the Effective Time pursuant to its authority under this Agreement that do not substantially meet the following requirements, as applicable:

- (i) each Wisconsin Project Construction Contract with a Third Party must provide that: (a) services must be performed prior to payment therefor, other than payment of customary mobilization costs and an initial progress payment made in the ordinary course of business and (b) the final payment or final release of retention (or other security) for goods must not be due or released prior to the earlier of shipment or delivery;
- (ii) each Wisconsin Project Construction Contract for the purchase of Procured Materials must provide that such Procured Materials are being procured by the Construction Manager as agent of the Owners;
- (iii) Wisconsin Project Construction Contracts and CM Subcontracts must require, at a minimum, contractors and vendors (other than the Construction Manager pursuant to **Section 2.4** or a Self-Performing Owner) to indemnify each Owner for: (a) Third Party Claims arising from such contractor's or vendor's negligence, intentional misconduct or willful misconduct and (b) violations of Applicable Law occurring in the performance of, or failure to perform, their obligations under their respective agreements;
- (iv) each Wisconsin Project Construction Contract and Real Property Agreement must provide that the Construction Manager is entering into the contract as agent for the applicable Owner or Owners; that the obligations of the applicable Owner or Owners are several (and not joint);
- (v) each Wisconsin Project Construction Contract must provide that payments by or on behalf of the Owners do not constitute acceptance of the Construction Work to the extent not in conformance with the Wisconsin Project Construction Contract;
- (vi) the applicable portion of the Construction Work provided or constructed will comply with Applicable Law; and
- (vii) each Wisconsin Project Construction Contract with a contract value of Five Hundred Thousand Dollars (\$500,000) or more (other than with respect to a Remote Credited USI, a Discretely Owned Substation Asset, a Relocated Project Owner DL or a Relocated Project Owner TL in which DPC does not have an ownership interest) must contain the provisions set forth in **Sections II(A) and (B) of Appendix H** and each Wisconsin Project Construction Contract for the performance of construction activities to take place on Wisconsin Project Real Property must contain the provisions of **Section II(C) of Appendix H**.

## ARTICLE 4

### CERTAIN PRE-CONSTRUCTION DUTIES

#### 4.1 Wisconsin Project Plan.

- 4.1.1 **Construction Work Schedule and Scope of Work.** Pursuant to **Section 3.2.2.2(xv)** of the **Wisconsin Project Participation Agreement**, the Management Committee has approved the: (i) initial schedule for the execution of the Construction Work (the “**Construction Work Schedule**”) and (ii) scope of work for the Wisconsin Project (the “**Scope of Work**” and, together with the Construction Work Schedule, collectively, the “**Wisconsin Project Plan**”). The Wisconsin Project Plan, as of the Effective Time, is attached hereto as **Appendix A**. The Wisconsin Project Plan, as amended from time to time, subject to approval by vote of the Management Committee, describes the overall plan for performance of Construction Work specifying critical milestones relating to the target dates of Commissioning, Substantial Completion and Final Completion and sets forth, in general terms, the method by which the Construction Work is to be accomplished. It is acknowledged by the Parties that the Management Committee has approved the initial schedule and the Scope of Work for the Minnesota Project, the cost and construction of which is the responsibility of the Minnesota Owners, and the completion of which is necessary for the Wisconsin Project to have the beneficial effect on transmission capacity contemplated by the Owners.
- 4.1.2 **Intentionally Omitted.**
- 4.1.3 **Wisconsin Project Joint Efforts.** The Owners and the Construction Manager acknowledge and agree that Phase 2 will be constructed and placed in service for the benefit of the Minnesota Project and the Wisconsin Project. The Construction Manager is responsible for the design, procurement and construction of Phase 2 (Wisconsin). The Owners and Construction Manager also acknowledge that the Minnesota Construction Manager is responsible for the design, procurement and construction of Phase 2 (Minnesota). The Owners have also entered into the Joint Cooperation Agreement with the Minnesota Owners to establish protocols and procedures designed to assure the coordination of the Phase 2 design, development, procurement, construction and Commissioning and establish, among other things, the rights and obligations of the Owners and the Minnesota Owners with respect to the construction of and payment for Phase 2.
- 4.1.4 **Revision of Wisconsin Project Plan.** During the Term, the Construction Manager, on its own initiative pursuant to **Section 5.3.2** or at the request of the Management Committee pursuant to **Section 5.3.1** shall revise, in accordance with Good Utility Practice and Applicable Law, the Wisconsin Project Plan to reflect any modifications that, in the good faith judgment of the Construction Manager, are necessary or desirable in accomplishing the Construction Work, including revisions resulting from: (i) the actual progress of construction compared with the Construction Work Schedule therefor; (ii) the timing of

commencement of Construction Work and completion requirements of Contractors and Subcontractors; (iii) the coordination of Joint Project Activities; (iv) the ordering and delivery of Procured Materials having long lead time constraints; (v) the availability of labor; (vi) Wisconsin Project Real Property acquisition progress; (vii) the occurrence and impacts of Changes in Law; (viii) modifications in the Approved Design; or (ix) the progress of the Wisconsin Project. With each such revision, the Construction Manager shall provide a review and reconciliation of projected Wisconsin CM Costs with the then approved Pre-Construction Estimated Wisconsin Project Budget or Wisconsin Project Budget, which information must be presented for the Wisconsin Project. Comparable information shall be presented for the Wisconsin Project separately and on a consolidated basis.

- 4.2 Approved Design.** The conceptual design of the Wisconsin Project, as approved by vote of the Management Committee pursuant to **Section 4.3.2** of the **Project Development Agreement**, is attached hereto as **Appendix B**. The Construction Manager shall update the conceptual design of the Wisconsin Project, as appropriate, and as and when the conceptual design is approved by vote of the Management Committee, it will be the “**Approved Design**” of the Wisconsin Project). The Management Committee may modify the Approved Design of any portion of the Wisconsin Project and upon a vote of the Management Committee approving a Wisconsin Project Change Request, the Construction Manager shall cause such portion of the Wisconsin Project to be redesigned based on each such directive of the Management Committee, subject to compliance with Good Utility Practice and Applicable Law. The Approved Design must at all times be consistent with applicable CapX Design Criteria. The Construction Manager shall submit the revised drawings, specifications, engineering and design to the Management Committee for review and a vote. The Construction Manager shall revise the Wisconsin Project Plan to reflect any modification in the Approved Design in accordance with the provisions of **Sections 4.1** and **5.3**.
- 4.3 Preparation of Pre-Construction Estimated Wisconsin Project Budget.** As of the Effective Time, the Management Committee shall have voted to adopt the Wisconsin Initial Project Budget. Commencing as of the Effective Time, the Construction Manager shall undertake to update, refine and revise the preliminary estimates of Wisconsin CM Costs for the Wisconsin Project set forth in the Wisconsin Initial Project Budget using estimation techniques, practices and methods commonly accepted in the electrical utility industry. As the Construction Manager progresses with the preparation and development of the Wisconsin Project Plan, the Construction Manager shall prepare, update and submit to the Management Committee, at appropriate intervals (not less frequently than monthly), preliminary CM Cost estimates of increasing detail and refinement resulting from the progression of the development of the Approved Design, the receipt of Owner Governmental Approvals, receipt of bid packages on Wisconsin Construction Agreements, and establishment of pricing and terms for the acquisition of Procured Materials and Wisconsin Project Real Property. Based upon the CM Cost estimates and input from the Management Committee, if any, the Construction Manager shall develop a budget for Construction Work and submit such budget as a Wisconsin Project Change Request to the Management Committee for review and a vote. Upon the Management

Committee's vote approving such Wisconsin Project Change Request, such budget will become the "**Pre-Construction Estimated Wisconsin Project Budget.**" The Pre-Construction Estimated Wisconsin Project Budget is for informational purposes only, and will not limit the Construction Manager in the performance of its pre-construction period duties and responsibilities set forth in this **Article 4** in any way.

**4.4 Development Period Governmental Approvals.** The Construction Manager hereby agrees to prosecute, administer and maintain, as appropriate, in the place of the Development Manager under the Project Development Agreement, each of the Owner Governmental Approvals applied for or received prior to the Effective Time. In furtherance of the foregoing, the Construction Manager shall deliver, to the extent necessary, such notices and instruments of license and assumption to the Third Parties or Governmental Bodies to each of such Governmental Approvals as required by Applicable Law. To the extent the Construction Manager is the same Person as the Development Manager, the Construction Manager acknowledges and agrees that, subject to compliance with Applicable Law, all such Governmental Approvals have been transferred to the care, custody and control of the Construction Manager in its capacity as such (and, subject to the provisions of **Section 2.3**, as agent of each Owner) under and pursuant to this Agreement.

**4.5 Equipment and Materials Procurement Plan.**

4.5.1 **Equipment and Materials Procurement Plan.** To the extent Procured Materials have not been procured prior to the Effective Time, the Construction Manager shall promptly after the Effective Time provide the Management Committee with a procurement plan prepared in accordance with Good Utility Practice specifying in detail the procurement of Equipment and Materials that could affect the critical path or which are expected to be procured pursuant to Major Contracts. Such procurement plan will specify proposed deadlines for the reservation of capacity and/or ordering of such Equipment and Materials in order that such Equipment and Materials can be manufactured, fabricated, purchased, and delivered on a schedule consistent with the Construction Work Schedule. The Construction Manager shall promptly amend the procurement plan from time to time based on updated information developed through the design process and bidding process. The Construction Manager shall coordinate, as necessary, with the Minnesota Construction Manager to procure Equipment and Materials for the Wisconsin Project and to procure comparable items for the Minnesota Project on a separate but coordinated basis.

4.5.2 **Procurement Responsibility.** Promptly after receiving the procurement plan pursuant to **Section 4.5.1**, the Management Committee, after consultation with the Construction Manager, may direct the Construction Manager not to procure any of the items of Equipment and Materials proposed in the procurement plan. The Construction Manager may proceed to procure any of the other items of the Equipment and Materials proposed in such procurement plan or amendments thereto (the "**Owner Procured Materials**"); **provided**, that the Management Committee may vote to revise the list of Owner Procured Materials at any time

and from time to time (to the extent that the Construction Manager or any Contractor has not already procured or contracted for procurement of any such Owner Procured Materials). If such revisions by the Management Committee adversely impact the then-current Wisconsin Project Budget or the critical path as established in the Construction Work Schedule, then the Management Committee, upon receipt of a Wisconsin Project Change Request, shall equitably adjust the Construction Work Schedule or the Wisconsin Project Budget, as applicable. All Equipment and Materials that are not designated as Owner Procured Materials constitute “**Contractor Procured Materials.**” Contractor Procured Materials are exclusive of any items that are designated as Owner Procured Materials under any Wisconsin Project Construction Contract. The Construction Manager shall procure all Owner Procured Materials, Consumables and Construction Aids from Contractors or Subcontractors pursuant to the contracting procedures set forth in **Section 3.2.**

#### **4.6 Wisconsin Real Property Plan.**

4.6.1 **Plan Development.** No later than the deadline set forth in the Construction Work Schedule, or if no such deadline is designated, then promptly following the Effective Time, the Construction Manager shall provide the Management Committee with a proposed plan for the acquisition of all Wisconsin Project Real Property, which proposed plan must be in writing and include: (i) a proposed schedule for the acquisition of the Wisconsin Project Real Property, including, to the extent capable of determination, the identification of real property interests and locations thereof that will need to be acquired in order to construct the Wisconsin Project in accordance with the Approved Design; (ii) the proposed timing of optioning or otherwise acquiring or disposing of the Wisconsin Project Real Property; (iii) the estimated costs of optioning or otherwise acquiring the Wisconsin Project Real Property, including the costs of acquiring rights to Wisconsin Project Real Property not acquired in fee simple; (iv) the proposed timing of any disposition of Wisconsin Project Real Property and the estimated economic consequences of such disposition; and (v) proposed guidelines and procedures to be utilized by the Construction Manager in negotiating the acquisition of the Wisconsin Project Real Property.

4.6.2 **Plan Approval.** The Management Committee, in consultation with the Construction Manager, shall review and take action with respect to such proposed plan and provide its comments thereon, if any, to the Construction Manager. Such plan, including any amendment thereto, as and when approved by a vote of the Management Committee, is referred to herein as the “**Wisconsin Real Property Plan.**” The Construction Manager shall diligently proceed to implement the Wisconsin Real Property Plan. The Construction Manager shall be responsible for negotiating the terms for the acquisition of the Wisconsin Project Real Property in accordance with the Wisconsin Real Property Plan.

4.6.3 **Wisconsin Project Real Property.**

4.6.3.1 **Acquisition.** Except as otherwise required by Applicable Law or approved by a vote of the Management Committee, all Project Real Property Agreements (including options) associated with the Facilities will be executed and delivered by the Construction Manager on behalf of the Owners and title to all such Wisconsin Project Real Property will be acquired in the name of the Owners, as tenants-in-common. Notwithstanding the foregoing, except as the Construction Manager and a Self-Performing Owner may otherwise agree, any Real Property Agreement that is exclusively associated with a Self-Performed Associated Asset: (i) will be executed and delivered by the Construction Manager (or at the Construction Manager's discretion by the applicable Self-Performing Owner) and (ii) will require that title to such Wisconsin Project Real Property will be in the name of the applicable Self-Performing Owner. The interest of each Owner in Wisconsin Project Real Property associated with the Facilities will be in accordance with the Wisconsin Project Participation Agreement. Unless otherwise approved by a vote of the Management Committee, every Real Property Agreement must provide that, to the extent the real property interest to be acquired is to vest in two or more of the Owners as tenants-in-common, it will be indefeasibly vested in such Owners as tenants-in-common unless the right to remove that portion of the Facilities constructed thereon upon termination of the Owners' rights to such real property interest has been granted to the Owners.

4.6.3.2 **Costs of Wisconsin Project Real Property.** Except as otherwise decided by a vote of the Management Committee, amounts owed to land owners and others in respect of the acquisition of Wisconsin Project Real Property during the Term constitute Wisconsin CM Costs and will be invoiced and paid in accordance with **Article 6** or credited in accordance with **Sections 3.1.1.2, 3.1.3.1.1, 3.1.3.2.1 and 3.1.6.2** of the **Wisconsin Project Participation Agreement**, as applicable.

**4.7 Administrative Agent Agreements.** On the date on which the Effective Time occurs, the Owners shall execute and deliver the Administrative Agent Agreement (Easements) in substantially the form attached hereto as **Appendix K-1** and the Administrative Agent Agreement (General Contracting Powers) in substantially the form attached hereto as **Appendix K-2** (collectively, the "**Administrative Agent Agreements**"). In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any of the Administrative Agent Agreements, the provisions of this Agreement will control.

**4.8 Standard Forms.** The Construction Manager, as part of the Services, shall prepare standard contract and purchase order forms for use in connection with: (i) the Wisconsin Project Construction Contracts; (ii) the performance, in accordance with **Section 2.4**, of minor elements of Construction Work; (iii) Real Property Agreements; and (iv)

Underbuild TP Agreements, Relocated TP TL Agreements, Relocated TP DL Agreements, Remote TP USI Agreements and agreements for Non-Credited USI Work. Such forms must be approved by a vote of the Management Committee prior to use. The Construction Manager shall use commercially reasonable efforts to utilize the form documents (including the forms of Lien Waiver attached as **Appendix F-1**) as the basis for contracting with Third Parties in connection with the Construction Work or the acquisition of Wisconsin Project Real Property. The parties understand that notwithstanding the commercially reasonable efforts of the Construction Manager, variances from such forms may be necessary. The Construction Manager may modify the terms of a standard form or subsequently amend any such instrument without the approval of the Management Committee, subject to the requirement of a Management Committee vote to approve Major Contracts, Major Change Orders, Material Actions or as may otherwise be necessary to comply with **Section 3.2.6** or **7.10**.

## ARTICLE 5

### WISCONSIN PROJECT BUDGET AND MANAGEMENT OF WISCONSIN CM COSTS

#### 5.1 Approval of the Wisconsin Project Budget; Adjustments.

- 5.1.1 **Approval of the Wisconsin Project Budget.** The Construction Manager shall revise the Pre-Construction Estimated Wisconsin Project Budget based on: (i) additional data received or developed during the performance of the pre-construction period activities performed pursuant to **Article 4**; (ii) modifications of assumptions previously used to establish the Pre-Construction Estimated Wisconsin Project Budget; and (iii) consultations with and directives from the Management Committee. At such time as the Construction Manager believes that the revised Pre-Construction Estimated Wisconsin Project Budget has been sufficiently refined to accurately forecast the cost to complete the Wisconsin Project, the Construction Manager shall submit the updated complete Pre-Construction Estimated Wisconsin Project Budget to the Management Committee as a Wisconsin Project Change Request for review and a vote (as approved by a vote of the Management Committee herein, the “**Wisconsin Project Budget**”).
- 5.1.2 **Adjustments to the Project Budget.** The Construction Manager shall thereafter update the Wisconsin Project Budget, from time to time, to reflect the Management Committee’s vote approving any budgetary adjustment resulting from Wisconsin Project Change Requests in accordance with the provisions of **Section 5.3** or the Joint Cooperation Agreement and shall provide the Management Committee with such updated Wisconsin Project Budget promptly following each such revision.
- 5.1.3 **Wisconsin Maximum CM Cost Amount.**

## PRIVILEGED INFORMATION

5.1.4 **Financial Reports; Projections.** In accordance with **Section 6.2.3**, the Construction Manager shall deliver to the Management Committee a financial summary report (the “**Financial Summary Report**”) substantially in the form set forth in **Appendix F-5**, as such form may be modified by vote of the Management Committee with the agreement of the Construction Manager. The Financial Summary Report must contain the Wisconsin Initial Project Budget, the current Pre-Construction Estimated Wisconsin Project Budget or the Wisconsin Project Budget, as appropriate, and in each case updated and revised in accordance with this Agreement. Each Financial Summary Report must include, at a minimum: (i) a summary of actual Wisconsin CM Costs incurred to date; (ii) a cash flow forecast, by Month, of Wisconsin CM Costs projected to be incurred through Final Completion; (iii) variance reports, including comparisons of actual Wisconsin CM Costs to the then current Wisconsin Project Budget and forecasted Wisconsin CM Costs to the then current Wisconsin Project Budget; and (iv) the amount of and explanation for any funds received from Third Parties, including Damages under Wisconsin Construction Agreements and interest on funds in the Wisconsin Main Trust Account. Variances should be individually identified and explained. To the extent applicable, such reports must be prepared in accordance with GAAP; **provided, however**, interim internal financial reports may be presented to the Management Committee subject to year-end adjustments and may lack footnotes and other required GAAP presentation items. Based on information then reasonably available to the Construction Manager, the Construction Manager shall give prompt written notice to the Chair and Vice Chair at any time the Construction Manager reasonably believes Wisconsin CM Costs exceed or are projected to exceed the Wisconsin Maximum CM Cost Amount. If a Force Majeure, an Emergency, or either a Third Party Claim or Third Party Environmental Claim (whether insured or uninsured) (“**Material Adverse Events**”) adversely affects the performance of the Services or the Construction Work, the Construction Manager shall give prompt written notice of the occurrence of such Material Adverse Event and provide its assessment of the impact thereof to the Chair and Vice Chair and shall factor such assessment into each subsequent Financial Summary Report. Adjustments arising from Material Adverse Events will be specifically identified and the Construction Manager shall

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provide detailed information concerning the actual impact of each such Material Adverse Event and amount expended as a result thereof together with each subsequent Application for Deposit until the full impact of such Material Adverse Event is known and incurred.

5.1.5 **Proposed Increase in the Wisconsin Maximum CM Cost Amount.** If, in accordance with **Section 5.1.4**, the Construction Manager gives notice to the Chair and Vice Chair that it believes that Wisconsin CM Costs exceed or are projected to exceed the Wisconsin Maximum CM Cost Amount, the Construction Manager shall provide to all Owners and the Chair and Vice Chair a Wisconsin Project Change Request estimating the amount of an increase in the Wisconsin Maximum CM Cost Amount which, based on estimates and information then known to the Construction Manager, reasonably would be necessary to achieve Final Completion (“**Proposed Increase in the Wisconsin Maximum CM Cost Amount**”) and the monthly cash flow impact of such increase. Within thirty (30) days of receipt of the Construction Manager’s estimate of the Proposed Increase in the Wisconsin Maximum CM Cost Amount, the Management Committee shall review and vote on whether to approve such Proposed Increase in the Wisconsin Maximum CM Cost Amount or implement other procedures, including modification of the Wisconsin Project Plan or Approved Design.

5.1.6 **Action by the Management Committee.** If the Management Committee votes to approve a Proposed Increase in the Wisconsin Maximum CM Cost Amount (or a further increase to any previously established maximum in accordance with the Joint Coordination Agreement) and, if necessary, the amount is fully subscribed under the Wisconsin Project Participation Agreement, the Construction Manager will continue to perform the Services in accordance with the Wisconsin Project Plan and the Approved Design required under this Agreement. If the Management Committee does not vote to approve the Proposed Increase in the Wisconsin Maximum CM Cost Amount, then the Management Committee shall determine, within ninety (90) days of the date of its receipt of the Construction Manager’s Proposed Increase in the Wisconsin Maximum CM Cost Amount, what alternative action is to be taken, including the potential of revising the Wisconsin Project Plan and the Approved Design to achieve Final Completion within the then remaining limit of the Wisconsin Maximum CM Cost Amount. Upon receiving such direction from the Management Committee, the Construction Manager shall immediately prepare revisions to the Wisconsin Project Plan and Approved Design with the objective of providing an alternative configuration of the Phase that can be brought to Final Completion within the then existing Wisconsin Maximum CM Cost Amount. The Construction Manager shall submit such alternative(s) to the Chair and Vice Chair as a Project Change Request. The Construction Manager is further authorized to take such other action with respect to Construction Work, including re-bidding or renegotiating the Wisconsin Project Construction Contracts with the objective of minimizing costs, and mitigating cost overruns, including those resulting from potential construction delays and changes in the Wisconsin Project Plan or the Approved Design. Each Owner shall cooperate with the Construction Manager in the Construction

Manager's efforts to accomplish the same. In furtherance of the foregoing, the Construction Manager, acting on its own initiative or as directed by the Management Committee, may schedule a series of meetings consistent with the process set forth in the Joint Coordination Agreement, pursuant to which representatives of each Owner, Associated Owner Asset Owner, the Independent Engineer and such other Third Parties (including Third Parties associated with the Minnesota Project) as the Construction Manager deems necessary or advisable will meet for the purpose of promoting the efficient exchange of information with the objective of modifying elements of the Wisconsin Project in the manner hereinabove described. The provisions of **Sections 4.1** and **4.2**, including any requirement for a Management Committee vote, will apply to changes in the Wisconsin Project Plan or Approved Design arising from this **Section 5.1.6**.

**5.2 Construction Manager Not Responsible for Cost Overruns.** The Wisconsin Project Budget and the cash flow projections prepared by the Construction Manager represent the Construction Manager's reasonable commercial judgment as to the amounts reflected therein in light of its experience and the application of estimation practices consistent with Good Utility Practice. Each Owner acknowledges that the assumptions used in developing the budgets required hereunder are forward-looking projections and that neither the Construction Manager nor the Owners (individually or collectively) have control over the cost of labor, Materials, Equipment, the acquisition cost of Wisconsin Project Real Property, competitive bidding, or market or negotiating conditions pursuant to which such assumptions relate. Accordingly, subject to the Wisconsin Maximum CM Cost Amount, the Construction Manager cannot and does not warrant or represent that bids, negotiated prices, or the monetary impact of Material Adverse Events will not vary from the estimates of Wisconsin CM Costs incorporated in the Wisconsin Project Budget approved by the Management Committee and the Construction Manager will not be liable to any Owner for such variances.

**5.3 Effect of Owner-Directed Project Change Requests and Project Change Requests.**

**5.3.1 Owner-Directed Project Change Requests.**

5.3.1.1 Evaluation. The Construction Manager shall process each written direction it receives from the Management Committee to modify the Wisconsin Project Plan (an "**Owner-Directed Project Change Request**") in accordance with this **Section 5.3**. Upon receipt of a request from the Management Committee of a proposal for an Owner-Directed Project Change Request, the Construction Manager shall evaluate the proposed Owner-Directed Project Change Request and make a determination as to the effect of such Owner-Directed Project Change Request on the Wisconsin Project Budget (including applicable contingencies), the Construction Work Schedule and the Wisconsin Maximum CM Cost Amount.

5.3.1.2 Change Without Budgetary Effect. If the Construction Manager determines that the projected effect of such Owner-Directed Project

Change Request on Construction Work and associated Wisconsin CM Costs is capable of being completed within the then approved Wisconsin Project Budget (without use of budgeted contingencies) and the Wisconsin Maximum CM Cost Amount, then the Construction Manager shall: (i) promptly process such proposed Owner-Directed Project Change Request; (ii) advise the Chair and Vice Chair in writing that it has processed such Owner-Directed Project Change Request as directed; and (iii) make no adjustment to the then approved Wisconsin Project Budget or the Wisconsin Maximum CM Cost Amount.

5.3.1.3 Change With Budgetary Effect. If the Construction Manager determines that the projected effect of the proposed Owner-Directed Project Change Request on Construction Work and associated Wisconsin CM Costs is, in its good faith determination, not capable of being completed within the financial limits of the then approved Wisconsin Project Budget (without use of budgeted contingencies) or the Wisconsin Maximum CM Cost Amount, then the Construction Manager shall submit to the Chair and the Vice Chair a notice setting forth the Construction Manager's good faith determination as to the increase required in the Wisconsin Project Budget and, if applicable, the Wisconsin Maximum CM Cost Amount necessitated as a result of such proposed Owner-Directed Project Change Request. The Management Committee shall vote on whether to approve the adjustments proposed by the Construction Manager, revise the Owner-Directed Project Change Request and appropriately adjust the Wisconsin Project Budget and the Wisconsin Maximum CM Cost Amount or withdraw the Owner-Directed Project Change Request. If the Management Committee does not approve such Owner-Directed Project Change Request within thirty (30) days of receipt of the Construction Manager's notice, the proposed Owner-Directed Project Change Request will be deemed withdrawn. Nothing will prohibit the Management Committee from re-considering an Owner-Directed Project Change Request that has been withdrawn.

5.3.2 Construction Manager's Adjustments and Wisconsin Project Change Requests. If the Construction Manager believes that a modification of the Approved Design, the Wisconsin Project Plan, the Wisconsin Project Budget or the Wisconsin Maximum CM Cost Amount is necessary, whether or not in response to Change Orders it has received from Contractors, it shall deliver a Wisconsin Project Change Request to the Chair and Vice Chair, substantially in the form set forth in **Appendix F-3**. If any such Wisconsin Project Change Request will require a change in the Approved Design, the Wisconsin Project Budget or the Wisconsin Maximum CM Cost Amount or will delay the date on which the Phase can be placed in service by more than forty-five (45) days based on the dates set forth in the then current Construction Work Schedule, the Management Committee must vote on whether to approve the implementation of such Wisconsin Project Change Request. Each Wisconsin Project Change Request must include the Construction Manager's good faith determination of the

potential adverse effects, if any, on the Wisconsin Project, the Construction Work, the Wisconsin Project or the “Construction Work” under the Wisconsin Construction Management Agreement that may occur if the Management Committee does not vote to approve such Wisconsin Project Change Request with, as applicable, the recommended increases in the Wisconsin Project Budget and the Wisconsin Maximum CM Cost Amount proposed by the Construction Manager. Changes must be described with particularity. The Management Committee shall vote on whether to approve the adjustments set forth in the Wisconsin Project Change Request, revise the terms of the Wisconsin Project Change Request and appropriately adjust the Wisconsin Project Budget and the Wisconsin Maximum CM Cost Amount, as necessary, or reject the Wisconsin Project Change Request. If the Management Committee fails to act within thirty (30) days of receipt of the Wisconsin Project Change Request, such failure to act constitutes denial of the Wisconsin Project Change Request. If the Management Committee does not vote to approve a recommended increase in the Wisconsin Project Budget, based on a Contractor requested Change Order, such Change Order must be rejected by the Construction Manager.

#### 5.4 Costs.

5.4.1 **Wisconsin CM Costs.** Except as otherwise provided in this Agreement, the cost of the Construction Work (including the Wisconsin Project’s allocable share of Joint Project Activities as determined by the Management Committee) and all costs incurred in the performance of the Services (“**Wisconsin CM Costs**”) specifically include, without duplication, the following:

- (i) amounts incurred by the Construction Manager in connection with the performance of the Services, as determined in accordance with **Appendix D**;
- (ii) amounts due to Contractors (including Subcontractors), CM Subcontractors, consultants, legal counsel and other Persons performing portions of the Services or Construction Work in connection and in accordance with this Agreement or the Wisconsin Project Construction Contracts, as applicable, and approved by the Construction Manager;
- (iii) costs related to the acquisition of Procured Materials;
- (iv) costs related to the acquisition or disposition (as approved by the Management Committee) of Wisconsin Project Real Property;
- (v) costs of premiums, deductibles and self-insured retentions for Wisconsin Project Insurance, to the extent such Wisconsin Project Insurance is (a) required by **Appendix I** and (b) specifically designated as a CM Cost by the terms of **Appendix I** (except as otherwise provided in **Appendix D**) or by action of the Management Committee;

- (vi) costs of the Construction Manager attributable to the Services or the Construction Work and relating to discharging and paying any liability, loss, damage, or expense, including attorneys' fees and other costs of defending, settling or otherwise administering Third Party Claims or Third Party Environmental Claims, except to the extent the Construction Manager is obligated to indemnify the Owners pursuant to **Section 13.1.2**;
- (vii) Sales Taxes and other taxes arising from and payable to any Governmental Body, payments in lieu of taxes, and fees related to Governmental Approvals arising out of the performance of the Services or Construction Work under this Agreement, the Wisconsin Construction Agreements, Real Property Agreements or otherwise attributable to the performance of the Services or Construction Work, excluding income, gross receipts, franchise or taxes similarly imposed or assessed on the results of operations of the Construction Manager, any Owner in any capacity, Contractor, CM Subcontractor or any Subcontractor; **provided, however**, with respect to the Underbuild Project Owner Lines and the Co-located Owner Lines, payments of Sales Taxes shall be made by the Construction Manager in accordance with **Appendix L**;
- (viii) any other costs incurred by the Construction Manager in connection with the performance of the Services, including (net of any reductions or adjustments received with respect thereto) rental charges, royalties and fees, field office costs, travel and relocation costs, professional services fees and costs incurred in connection with, or arising out of, performance bonds, security, utilities, safety, transport, storage and telecommunications;
- (ix) costs that are (a) stated to be Wisconsin CM Costs pursuant to this Agreement or (b) determined by the Management Committee to be Wisconsin CM Costs;
- (x) costs incurred in connection with the termination of this Agreement as described in **Section 15.2.3.4**;
- (xi) costs (a) incurred directly by a Discretely Owned Substation Owner and approved by the Construction Manager or the Independent Engineer as provided in **Section 2.5**, under a DOSA Construction Agreement for the engineering, procurement, construction or Commissioning of a Discretely Owned Substation Asset and (b) paid by Discretely Owned Substation Owners at the direction of the Construction Manager for a Discretely Owned New Substation (collectively, the "**Discretely Owned Substation Costs**"); **provided, however**, the costs so incurred by such Discretely Owned Substation Owners will not be reimbursed to such Discretely Owned Substation Owners because such Discretely Owned Substation Owners will receive a credit therefor pursuant to **Sections 3.1.1.2**,

**3.1.3.1.1, 3.1.3.2.1 and 3.1.6.2 of the Wisconsin Project Participation Agreement;**

- (xii) costs expended prior to the Effective Time (a) under Development Period Contracts directly related to the engineering, procurement or construction of the Facilities or the Discretely Owned Substation Assets; (b) in connection with the acquisition of Wisconsin Project Real Property; or (c) as set forth in **Exhibit H** of the **Wisconsin Project Participation Agreement**, up to a maximum aggregate amount of Six Hundred Eighty-Two Thousand Three Hundred Twenty-Four Dollars and Sixty-Three Cents (\$682,324.63), in each case as specifically determined by the Management Committee;
  - (xiii) costs (a) (1) incurred directly by a Remote Credited USI Owner and approved by the Construction Manager (or the Independent Engineer as provided in **Section 2.5**) under a RCUSI Construction Agreement or (2) paid by a Remote Credited USI Owner at the direction of the Construction Manager for a Remote Credited Owner USI (the “**Remote Owner USI Costs**”) and (b) incurred under a Remote TP USI Agreement (the “**Remote TP USI Costs**”) and together with the Remote Credited Owner Costs, collectively, the “**Remote USI Costs**”); **provided, however**, the Remote Owner USI Costs will not be reimbursed to the Remote Credited USI Owner because such Remote Credited USI Owner will receive a credit therefor pursuant to **Sections 3.1.1.2, 3.1.3.1.1, 3.1.3.2.1 and 3.1.6.2** of the **Wisconsin Project Participation Agreement**;
  - (xiv) costs incurred in connection with Development Work prior to the Effective Time that have neither been reimbursed nor paid to the appropriate Person as of the Effective Time;
  - (xv) costs incurred under Relocated TL Agreements (the “**Relocated Transmission Line Costs**”) and Relocated DL Agreements (the “**Relocated Distribution Line Costs**”);
  - (xvi) costs incurred to perform the “Work” under Underbuild Agreements (“**Underbuild Costs**”) and Co-located Line Agreements (“**Co-located Line Costs**”); and
  - (xvii) costs incurred in the performance of the Construction Manager’s obligations under the Joint Cooperation Agreement.
- 5.4.2 **Costs Not Chargeable to Project.** The provisions of **Section 5.4.1** to the contrary notwithstanding, the following do not constitute Wisconsin CM Costs:
- (i) to the extent not specifically provided under **Section 5.4.1**, costs of studies conducted by any Owner to determine for such Owner the usefulness, economics, legality and/or feasibility of participating in the Wisconsin Project;

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- (ii) costs of the Construction Manager associated with the preparation or negotiation of (a) Wisconsin Project Agreements or amendments thereto or (b) the commercial terms and conditions of any Wisconsin Construction Agreement or CM Subcontract with an Affiliate and amendments or Change Orders thereto;
- (iii) costs incurred by each Owner in performing functions of the Management Committee or any other committees established pursuant to this Agreement or the other Wisconsin Project Agreements, and expenses of its personnel while performing such functions;
- (iv) costs of insurance (including premiums, deductibles and self-insured retentions) purchased by any individual Owner except as specifically provided in **Appendix I**, as it may be amended by the Management Committee;
- (v) costs incurred by the Construction Manager in connection with its indemnification obligations set forth in **Article 13**;
- (vi) the cost of complying with conditions specified in any Owner Governmental Approval granted or issued by Final Order that are not generally applicable to the Owners collectively, but are imposed on an individual Owner;
- (vii) without duplication of the costs described in **clause (v)** above, costs that arise from the Construction Manager's failure to perform its obligations in accordance with this Agreement, which failure is the result of the Construction Manager's (a) gross negligence (in an aggregate amount not to exceed the limit of liability set forth in **Section 16.2.1**) or (b) willful misconduct or intentional misconduct; and
- (viii) costs that are excluded as Wisconsin CM Costs by the express terms of this Agreement or the Wisconsin Project Participation Agreement.

5.4.3 **Insurance Proceeds Not Constituting Wisconsin CM Costs.** To the extent that proceeds of insurance required to be procured or maintained pursuant to **Appendix I** are paid or recovered in respect of Wisconsin CM Costs, such proceeds will be deducted or offset against the Wisconsin CM Costs incurred therefor.

**5.5 Prudency Review Undertaking.** The Construction Manager shall provide reasonable assistance and documentation to the Owners (individually or collectively) in connection with: (i) Sales Tax matters as provided in **Section 7.17** and (ii) any prudency review or similar process relating to matters within the scope of this Agreement in order to address the issues identified by any reviewing Person, including any Governmental Body. To the extent Services provided under this **Section 5.5** are provided to the Owners collectively for the benefit of the Wisconsin Project, the costs of providing such Services are

Wisconsin CM Costs. Services under this **Section 5.5** provided for the benefit of less than all of the Owners will be charged to and payable by each such individual Owner.

## ARTICLE 6

### FUNDING

**6.1 Funding Amount.** The Construction Manager will be compensated for Wisconsin CM Costs expended by it in the performance of the Services or in connection with the Construction Work (the “**Funding Amount**”), except as expressly otherwise provided herein.

**6.2 Applications for Deposit.**

**6.2.1 General.**

**6.2.1.1 Funds Availability.** Subject to **Section 6.4** and **Section 6.6**, funds will be available to the Construction Manager in installments following completion and delivery to the Chair (or its designee) and each Owner of Applications for Deposit in accordance with the payment procedures set forth in this **Article 6**.

**6.2.1.2 Discretely Owned Substation Costs and Remote Credited USI Costs.** The Construction Manager shall separately account for the performance of Services exclusively and directly related to the acquisition of Wisconsin Project Real Property in accordance with the Wisconsin Real Property Plan for (i) each Discretely Owned Substation Asset and (ii) each Remote Credited Owner USI. Notwithstanding **Section 6.2.2**, the Construction Manager shall have the right to direct the applicable Discretely Owned Substation Owner or Remote Credited USI Owner to timely pay such costs directly or to invoice the Discretely Owned Substation Owner or Remote Credited USI Owner for payment of such costs such that the Construction Manager will have the needed funds reasonably in advance of the underlying date of payment. Such amounts will be assessed against and will be payable only by the Discretely Owned Substation Owner responsible for such Discretely Owned Substation Asset or the Remote Credited USI Owner responsible for such Remote Credited Owner USI, as applicable. Such amounts constitute Discretely Owned Substation Costs or Remote Credited USI Costs, as applicable and the Discretely Owned Substation Owners and the Remote Credited USI Owners will receive credit therefor pursuant to **Sections 3.1.1.2, 3.1.3.1.1, 3.1.3.2.1** and **3.1.6.2** of the **Wisconsin Project Participation Agreement**.

**6.2.2 Applications for Deposit.**

**6.2.2.1 Initial Application for Deposit.** At the direction of the Management Committee operating under the Project Development Agreement, the Construction Manager shall have submitted by the tenth (10th) day prior

to the date on which the Management Committee projects the Effective Time will occur an Application for Deposit to the Chair (or its designee) and each Owner for the Estimated Reimbursable Costs it expects to expend from the Effective Time through: (i) the end of the Month in which the Effective Time occurs and (ii) the Month thereafter less the amount of funds previously made available to the Construction Manager under the Project Development Agreement that are not committed to expenses to be paid on or prior to the day on which the Effective Time occurs. On the first Business Day following the day on which the Effective Time occurs each Owner shall make payment of its Asset Ownership Percentage of the aggregate amount of the Estimated Reimbursable Costs invoiced. Thereafter, commencing in the Month following the Month in which the Effective Time occurs, Applications for Deposit, including reconciliations between Estimated Reimbursable Costs and Actual Reimbursable Costs, will be made as contemplated by this **Section 6.2.2**.

6.2.2.2 Monthly Applications for Deposit. By the thirteenth (13<sup>th</sup>) day of each Month following the Month in which the Effective Time occurs (the “**Current Month**”), the Construction Manager shall submit to the Chair (or its designee) and each Owner an Application for Deposit that includes an invoice that sets forth:

- (i) the Construction Manager’s good faith estimate of the Wisconsin CM Costs to be expended by it in the performance of the Services and in connection with the Construction Work (the “**Estimated Reimbursable Costs**”) during the Following Month; and
- (ii) the amount equal to the difference between the aggregate Estimated Reimbursable Costs previously invoiced to the Owners and the aggregate Wisconsin CM Costs expended (or committed to be expended) by the Construction Manager (the “**Actual Reimbursable Costs**”) prior to the last day of the Month in which the Application for Deposit is submitted. If the difference is a (a) positive number (aggregate Estimated Reimbursable Costs exceed aggregate Actual Reimbursable Costs), then the amount of such difference will be subtracted from the amount of Estimated Reimbursable Costs requested in the current Application for Deposit by the Construction Manager pursuant to **clause (i)** above or (b) negative number, (aggregate Actual Reimbursable Costs exceed aggregate Estimated Reimbursable Costs), the amount of such difference will be added to the amount of Estimated Reimbursable Costs requested in the current Application for Deposit by the Construction Manager pursuant to **clause (i)** above.

6.2.2.3 Early Reconciliation. Prior to the reconciliation processes set forth in **Section 6.2.2.2(ii)**, the Construction Manager may submit to the Chair and each Owner a statement in the form set forth in **Appendix F-6** (an “**Early**

**Reconciliation Statement**”) if the Construction Manager at any time determines that the Actual Reimbursable Costs expended exceed the Estimated Reimbursable Costs previously invoiced to the Owners (the “**Negative Balance**”). In such case, the Construction Manager may submit an additional Application for Deposit to the Owners for the Negative Balance and the Owners shall make full payment of the amount equal to such Negative Balance in immediately available funds to the Wisconsin Main Trust Account within seven (7) Business Days of receipt by the Chair and the Owners of such Early Reconciliation Statement. Documentation required by **Section 6.2.3 (iii)-(v), (vii) and (viii)** to support the Early Reconciliation Statement must be submitted within ten (10) Business Days of the submission of the Early Reconciliation Statement.

6.2.2.4 Continuing Reconciliation Process. In reconciling Estimated Reimbursable Costs to Actual Reimbursable Costs for any period, the Construction Manager shall use commercially reasonable efforts to provide as complete a reconciliation as practicable, it being understood that further reconciliation may be necessary for amounts in dispute and for other amounts as to which information is not available at the time of reconciliation.

6.2.2.5 Account Transfer on Termination. Upon any termination of this Agreement and at such time as the Construction Manager has finished taking the actions required by the Management Committee pursuant to **Section 15.2.3**, if, after submission of its final Application for Deposit and the Owners’ payment thereof, the Construction Manager has received funds in excess of the Actual Reimbursable Costs to which it is entitled under this Agreement, the Construction Manager shall pay such excess to the Owners in the manner directed by the Management Committee on behalf of the Owners within thirty (30) Days of the demand for such amount by the Management Committee.

6.2.3 Supporting Documentation. The Construction Manager shall provide to the Chair and the Owners on or before the twentieth (20th) day of each Month the following:

- (i) the monthly Progress Report required pursuant to **Section 8.2** for the Prior Month;
- (ii) a partial Lien Waiver executed by the Construction Manager, and a Lien Waiver (if and as required under the applicable Wisconsin Project Construction Contract) from each Contractor, in each case, substantially in the applicable form set forth in **Appendix F-1**;

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- (iii) summary of payroll information for the Services rendered, identifying, at a minimum, total costs for all labor, identified by billing category and specifying hours and employee labor classification;
- (iv) a summary of the sales, consumer, excise, use or similar taxes that have been paid (collectively “**Sales Taxes**”);
- (v) a statement describing any undischarged Contractor Liens that have been filed or threatened in writing of which the Construction Manager is aware;
- (vi) a statement of (a) the Discretely Owned Substation Costs approved by the Construction Manager in respect of the Construction Work on each Discretely Owned Substation Asset being performed by or for each Discretely Owned Substation Owner for the Prior Month and in the aggregate; (b) amounts paid directly by a Discretely Owned Substation Owner at the request of the Construction Manager in the Prior Month and in the aggregate exclusively associated with a Discretely Owned Substation Asset; (c) the Remote Credited USI Costs approved by the Construction Manager in respect of the Construction Work on each Remote Credited Owner USI being performed by or for each Remote Credited USI Owner for the Prior Month and in the aggregate; and (d) amounts paid by a Remote Credited USI Owner at the request of the Construction Manager in the Prior Month and in the aggregate exclusively and directly associated with a Remote Credited Owner USI;
- (vii) the Financial Summary Report as required pursuant to **Section 5.1.4**;
- (viii) documentation reasonably required to allow the Management Committee to verify the reconciliation of Actual Reimbursable Costs compared to the Estimated Reimbursable Costs; and
- (ix) such other information as may be reasonably requested by the Management Committee; **provided**, that in respect of Actual Reimbursable Costs, the Construction Manager will not be required to provide information which, in the first instance, must be obtained from the counterparties to the Wisconsin Construction Agreements or Real Property Agreements, if the Construction Manager is not entitled to such information under such agreements.

#### 6.2.4 **Payment Process.**

- 6.2.4.1 **Limited Representations of the Construction Manager.** The delivery of an Application for Deposit or an Early Reconciliation Statement by the Construction Manager will constitute representations made by the Construction Manager to the Owners, based on the Construction Manager’s observations of the Construction Work that: (i) the Progress Report delivered to the Chair and the Owners by the Construction Manager in respect of the Prior Month was, to the Construction Manager’s

knowledge after reasonable diligence, accurate in all material respects as of the date such report was delivered and (ii) the amounts requested in the Application for Deposit are a reasonable estimate of amounts that (a) are expected to be due and payable in accordance with the Wisconsin Construction Agreements and the Real Property Agreements or (b) are necessary to otherwise perform the Services or portions of the Construction Work in the Following Month. The foregoing representations are subject to (1) an evaluation of the Construction Work for compliance with the Wisconsin Construction Agreements upon Substantial Completion; (2) the results of subsequent tests and inspections including those contemplated in **Article 11**; (3) deviations from the Wisconsin Construction Agreements and/or Real Property Agreements that are not materially adverse, individually or in the aggregate, or that are otherwise capable of correction prior to Final Completion; (4) specific qualifications expressed by the Construction Manager in the documentation supporting any such Application for Deposit or Early Reconciliation Statement; and (5) the provisions of **Section 6.2.4.2**.

**6.2.4.2 Limitations on Construction Manager Representations.** The delivery of an Application for Deposit or Early Reconciliation Statement is not a representation that the Construction Manager has: (i) made exhaustive or continuous on-site inspections to check the quality or quantity of the Construction Work or the conformance of the Construction Work to the Wisconsin Construction Agreements; (ii) reviewed Contractors' construction means, methods, techniques, sequences or procedures; (iii) reviewed invoices from Subcontractors; or (iv) except in connection with **Section 6.2.3(iii)**, made examination to ascertain how or for what purpose any Person has used money previously paid to it by the Construction Manager pursuant to previous Applications for Deposit or Early Reconciliation Statements.

**6.3 Management Committee Review.** Without prejudicing the Management Committee's other rights under this Agreement, for purposes of determining the amount of payment to which the Construction Manager is entitled in respect of an Application for Deposit or an Early Reconciliation Statement, the Management Committee shall promptly notify the Construction Manager concerning any invoiced amount or portion thereof that is in dispute (including where the Management Committee contends that there is a deficiency with respect to such Application for Deposit, Early Reconciliation Statement and/or the supporting documentation) and the basis for such dispute as soon as reasonably practicable with the objective of allowing time for the parties to this Agreement to resolve such dispute prior to the date on which payment on the disputed matter would otherwise be due. The Construction Manager acknowledges that the Management Committee's determination under this **Section 6.3** may be made in conjunction with the Independent Engineer, Financing Parties and the Financing Party Agents.

**6.4 Monthly Deposits and Payments.**

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- 6.4.1 **Deposits.** Except with respect to those amounts: (i) properly withheld or offset hereunder or (ii) to be paid exclusively by a Discretely Owned Substation Owner or Remote Credited USI Owner, each Owner shall make payment of its Asset Ownership Percentage (as such payment may be adjusted in accordance with **Section 6.4.4**) of the amounts invoiced by the Construction Manager in an Application for Deposit for the Estimated Reimbursable Costs in immediately available funds to the Wisconsin Main Trust Account on the twenty-third (23<sup>rd</sup>) day of the Current Month (but if such twenty-third (23<sup>rd</sup>) day is not a Business Day, then on the preceding Business Day). If the Construction Manager has received written notice from the Management Committee specifying with particularity the failure of the Construction Manager to fulfill some or all of its specified CM Cost reporting obligations to the Management Committee hereunder, and such failure has not been remedied within thirty (30) days of the receipt of such notice, the Management Committee may authorize the Owners to withhold an equitable amount from the Funding Amount in respect of amounts to be paid to the Construction Manager for the performance of the Services until such failure is cured; **provided**, that the Owners will not be entitled to withhold (but may dispute) amounts to be paid to Third Parties in respect of the Services, Wisconsin Construction Agreements or Real Property Agreements. The Owners have no obligation to pay or see to the payment of any money to any CM Subcontractor or Subcontractor, except as may be required by Applicable Law.
- 6.4.2 **Withdrawals.** Each Owner grants the Construction Manager the authority to withdraw funds from the Wisconsin Main Trust Account, in accordance with the terms of the Wisconsin Trust Agreement, only: (i) to pay for Wisconsin CM Costs; (ii) to distribute funds in accordance with **Section 6.2.2.5**; or (iii) as directed by the Management Committee. Commencing on the second (2nd) Business Day following the Effective Time, the Construction Manager may withdraw funds from the Wisconsin Main Trust Account deposited by the Owners for the payment of properly-invoiced Wisconsin CM Costs. Except with respect to funds deposited by the Owners in accordance with **Section 6.4.3** which may be withdrawn by the Construction Manager as necessary, the Construction Manager shall not withdraw funds more than ten (10) days prior to the date it reasonably estimates such funds are needed to make the payments or reimbursements described in **clauses (i) - (iii)** above. To effect a withdrawal of funds from the Wisconsin Main Trust Account, the Construction Manager shall tender to the trustee an executed certificate in the form attached to the Trust Agreement, as such form may be modified by the Owners and the trustee from time to time, together with such additional information as is required under the Wisconsin Trust Agreement.
- 6.4.3 **Extraordinary.** If the Construction Manager: (i) incurs Wisconsin CM Costs arising from an Emergency or other exigent circumstances or (ii) wishes to take advantage of discounts, rebates or similar economic advantages (other than in respect of amounts that will be paid directly by Discretely Owned Substation Owner or a Remote Credited USI Owner) for which the Estimated Reimbursable Costs requested in the last Application for Deposit are inadequate, and the

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expenditures resulting from such causes will be required before the Funding Amount from the next succeeding Application for Deposit is to be deposited, then the Construction Manager may request in writing the Management Committee to direct the Owners, any Discretely Owned Substation Owner or Remote Credited USI Owner, as applicable, to deposit the estimated funds needed for such purposes in the Wisconsin Main Trust Account. The Management Committee will act within three (3) Business Days of its receipt of the Construction Manager's written request accompanied by reasonable documentation and support. If the Management Committee so directs, each Owner shall deposit its proportionate share of the estimated amount within seven (7) Business Days of receipt by such Owner or Discretely Owned Substation Owner of a notice specifying the estimated amount needed. Amounts actually spent must be reconciled against the estimated payments made as soon as practical in connection with the monthly reconciliation process set forth in **Section 6.2.2**.

6.4.4 **Integrated Percentage Interest Requirement.** The Coordinated Owners intend that the proportion of Wisconsin CM Costs and "Minnesota CM Costs" (as defined in the Minnesota Project Participation Agreement) expended by each Coordinated Owner, each Discretely Owned Substation Owner and each "Discretely Owned Substation Owner" (as defined in the Minnesota Project Participation Agreement), and each Remote Credited USI Owner and each "Remote Credited USI Owner" (as defined in the Minnesota Project Participation Agreement), in its capacity as such, in connection with completing the Coordinated Projects, will equal the NSP Entities Combined Integrated Percentage Interest (as defined in the Joint Cooperation Agreement) and each other Coordinated Owner's Integrated Percentage Interest. Accordingly, the parties agree to the provisions set forth in **Article 8** of the **Joint Cooperation Agreement** to effectuate the intent of this **Section 6.4.4**.

6.5 **Final Payment.** Within ninety (90) days after Final Completion, the Construction Manager shall submit a reconciliation to the Chair and each Owner which shows: (i) all Actual Reimbursable Costs to which the Construction Manager is entitled through the Final Completion Date and (ii) all Estimated Reimbursable Costs withdrawn from the Wisconsin Main Trust Account by the Construction Manager through the Final Completion Date. To the extent that there is a differential between such total amounts, the Construction Manager shall, as appropriate, refund such differential amount to the Owners as directed by the Management Committee or submit an Application for Deposit to the Chair and each Owner for each Owner's proportionate share of such differential amount, by way of a final Application for Deposit for Services and/or Construction Work performed through the Final Completion Date. The Owners will not be required to make the final payment to the Construction Manager until the Final Completion Date occurs and the Construction Manager has delivered all items and satisfied all conditions required under **Section 11.4**. The final Application for Deposit submitted by the Construction Manager must be accompanied (to the extent not previously provided) by (a) a final Lien Waiver from the Construction Manager that is applicable to all of the Services and Construction Work performed through Final Completion, conditioned solely on receipt of such final payment and (b) a final Lien Waiver and release from each Contractor,

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Subcontractor (with an aggregate Subcontract value equal to or exceeding Fifty Thousand Dollars (\$50,000) and CM Subcontractor (with an aggregate Subcontract value equal to or exceeding Fifty Thousand Dollars (\$50,000) for all Services or Construction Work, as applicable, performed through Final Completion, in each case substantially in the forms attached hereto as **Appendix F-1**.

- 6.6 Withholding to Protect from Loss.** The Management Committee may, without prejudice to any other rights the Management Committee or the Owners may have hereunder, after issuing a notice to the Construction Manager, withhold all or any portion of any payment to such extent as may be necessary in the Management Committee's judgment to protect the Owners (individually or collectively) from loss in respect of:
- (i) undisputed overdue amounts due to the Owners from the Construction Manager under this Agreement;
  - (ii) amounts paid by the Owners pursuant to **Section 6.10**; and
  - (iii) Liens filed by CM Subcontractors which, thirty (30) days after having received knowledge thereof, the Construction Manager has failed to remove or arrange for a bond or other security acceptable to the Owners.
- 6.7 Delinquent Payments.** Payments not made when due under this Agreement will bear interest from the due date thereof until the date paid at the Late Payment Rate.
- 6.8 Payment Not Acceptance.** Payment hereunder neither constitutes acceptance of the Services nor forecloses any right of audit or dispute with respect to such payments. Except as otherwise provided hereunder, no Owner will withhold amounts (including disputed amounts) from its payments in respect of Applications for Deposit, Early Reconciliation Statements, or amounts requested pursuant to **Section 6.4.3**.
- 6.9 Owner's Failure to Remit; Construction Work Stoppage.** Subject to **Section 6.6**, if any Owner, Discretely Owned Substation Owner or Remote Credited USI Owner fails to remit any amounts due by such Owner, Discretely Owned Substation Owner or Remote Credited USI Owner and, as a result thereof, there are insufficient funds on deposit in the Wisconsin Main Trust Account to permit the Construction Manager to fund Wisconsin CM Costs properly payable hereunder, the Construction Manager shall give notice to the Chair and the Vice Chair and may exercise its rights of suspension in accordance with **Section 15.2.2** and also may (i) direct the Contractor to suspend performance of Construction Work under any Wisconsin Project Construction Contract or (ii) cause Subcontractors to suspend performance under their respective Subcontracts. If the Construction Manager exercises its right to take the actions described in **clauses (i), (ii)**, or both, the Construction Manager will have no liability to any Owner for delay or Damages resulting from such exercise.
- 6.10 Optional Payment by Owners.** If the Construction Manager defaults or neglects to fulfill its obligation to make undisputed payments of amounts required to be paid to Third Parties under any Wisconsin Construction Agreement, CM Subcontract or Real Property Agreement, then the Owners (acting collectively through the Management Committee)

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may cause such obligation to be satisfied by paying such amounts. To the extent the amount of such payments has previously been deposited in the Wisconsin Main Trust Account, the Owners may set off such amounts against the Funding Amount next due by the Owners to the Construction Manager.

**6.11 Amounts to be Deposited.** Within fifteen (15) Business Days of receipt, the Construction Manager shall, as directed by the Management Committee, deposit into the Wisconsin Main Trust Account the following sums, which the Construction Manager holds in constructive trust for the Owners:

- (i) funds recovered from Contractors, Subcontractors, CM Subcontractors and other counterparties, including backcharges and Damages, except with respect to amounts recovered in respect of an indemnification obligation owed to the Construction Manager on the part of a Contractor, Subcontractor, CM Subcontractor or other counterparty to a Wisconsin Construction Agreement;
- (ii) proceeds of the sale of surplus Procured Materials;
- (iii) refunds of Sales Taxes that are available and for which the Construction Manager has authority to obtain on behalf of the Owners; and
- (iv) any other amounts received by the Construction Manager arising out of or in connection with this Agreement, which amounts are to accrue to the benefit of the Owners, collectively.

**6.12 Owner Obligations Several.** Except as otherwise expressly provided in Sections 2.2.2(x), 7.12.2.3, 7.12.2.4, 7.19.2, 8.1, 9.6 and 9.11, the obligations of the Owners hereunder are several in proportion to their respective Asset Ownership Percentages. Each Owner is severally obligated (to the extent of its Asset Ownership Percentage as determined in the Wisconsin Project Participation Agreement) for the payment of Wisconsin CM Costs other than Discretely Owned Substation Costs and Remote Owner USI Costs. The failure of any Owner to pay any amount for which it is obligated hereunder will not relieve any other Owner from its several payment obligations hereunder.

**6.13 Interest Attribution.** On a periodic basis determined by the Management Committee, but not less frequently than annually, the Construction Manager shall advise each Owner of the total amount of interest earned during the applicable period on funds on deposit in the Wisconsin Main Trust Account and the percentage of such amount attributable to each Owner based on the Owner's Asset Ownership Percentage.

## ARTICLE 7

### DESCRIPTION OF CONSTRUCTION MANAGER DUTIES

**7.1 Work Commencement.** Upon the good faith determination by the Construction Manager that it has completed its pre-construction duties to a sufficient extent for

commencement of the construction, it shall notify the Management Committee of the date such construction will commence; **provided, however**, except to the extent permitted under the Project Development Agreement or as otherwise determined by the Management Committee, in no event may such construction commence prior to the Management Committee's vote to approve the Approved Design and the Wisconsin Project Budget therefor. Following the commencement of construction, the Construction Manager shall continue to perform, as necessary throughout the Term, its pre-construction duties and responsibilities, including those set forth in **Article 4**.

- 7.2 Oversight of Project Construction Work and Joint Project Activities.** The Construction Manager shall coordinate with representatives of the CapX 2020 Transmission Capacity Expansion Initiative and other CapX Project construction or development managers in the supervision, oversight, undertaking and completion of Construction Work, as necessary, including Joint Project Activities.
- 7.3 Designation of Project Manager.** The Construction Manager hereby appoints as its designated project manager and alternate project manager the individuals identified on **Appendix G**. In all matters concerning or arising under this Agreement, the Construction Manager will be bound by the written communications, directions, requests and decisions made by its project manager or alternate project manager. The appointment of the project manager and alternate project manager hereunder will remain in full force and effect until a written notice of substitution or replacement is delivered by the Construction Manager to the Chair and Vice Chair.
- 7.4 Contract Administration.**
- 7.4.1 Coordination of Activities.** The Construction Manager shall provide for coordination of the activities of the Contractors, including any Discretely Owned Substation Owner, Relocated Project TL Owner, Relocated Project DL Owner and Remote Credited USI Owner, engaged in Construction Work.
- 7.4.2 Site Visits.** The Construction Manager shall visit the physical sites where Construction Work is ongoing in accordance with Good Utility Practice at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Construction Work and to determine in general if the Construction Work is being performed in a manner indicating that the Construction Work, when completed, will be in accordance with the Wisconsin Construction Agreements, the Approved Design and the Wisconsin Project Plan. On the basis of on-site observations and reports received by the Construction Manager from the Contractors, the Construction Manager, pursuant to Progress Reports delivered pursuant to **Section 8.2**, shall keep the Owners informed of the Construction Work.
- 7.4.3 Performance by Contractors and Subcontractors.** Except with respect to any Construction Work undertaken by the Construction Manager (or its Affiliates), and without limiting the Construction Manager's responsibility to perform the Construction Management Services in accordance with Good Utility Practice, the

Construction Manager will not have control over or charge of and will not be responsible for: (i) construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Construction Work, which duties and responsibilities will be allocated by the Construction Manager to Contractors; (ii) any Contractor's or any Subcontractor's failure to carry out Construction Work in accordance with the Wisconsin Construction Agreements; (iii) acts or omissions of any Contractor, Subcontractor or any Owner acting in the capacity as a Contractor or Subcontractor, or their respective agents or employees; or (iv) any other Person performing portions of the Construction Work.

7.4.4 **Change Orders and Amendments**. Subject to the provisions of **Sections 3.2.5 and 2.6**:

- (i) **Change Orders**. The Construction Manager shall review, negotiate and process all requests for Change Orders arising under the Wisconsin Project Construction Contracts; **provided, however**, the Construction Manager shall not enter into any Major Change Order until the Management Committee votes to approve such Major Change Order, unless such agreement is conditioned on a Management Committee vote to approve such Major Change Order; and
- (ii) **Amendments**. The Construction Manager shall negotiate and process all amendments to Wisconsin Project Construction Contracts and Real Property Agreements; **provided, however**, the Construction Manager shall not undertake any Material Action until the Management Committee votes to approve such Material Action, unless such Material Action is conditioned on a Management Committee vote to approve the undertaking of such Material Action.

7.4.5 **Enforcement of Wisconsin Construction Agreements and Real Property Agreements**. The Construction Manager shall administer and enforce, in all material respects, each: (i) Wisconsin Construction Agreement and (ii) Real Property Agreement in respect of Wisconsin Project Real Property defined in **clause (i)** of the definition of Wisconsin Project Real Property (and other agreements associated with the performance of the Real Property Management Services) to which it is a party (whether as agent or otherwise), including the design, supply, construction, warranty and other obligations of the counterparties thereto. The Construction Manager shall pursue remedies available to the Owners with respect to the breach of those obligations, in each case, as deemed appropriate by the Construction Manager in its reasonable good faith discretion.

7.4.6 **Performance of Real Property Management Services**. The Construction Manager shall perform the Real Property Management Services in accordance with **Section 2.2.2**.

- 7.4.7 **Governmental Approvals.** Subject to **Section 2.3.1**, during the Term, the Construction Manager shall (to the extent permitted by Applicable Law) prepare, or cause to be prepared, all applications for all Governmental Approvals relating to the performance of the Services or Construction Work that are required in furtherance of the Wisconsin Project and that are customarily or otherwise required to be obtained by or in the name of the Owners or that are required to be obtained by the Owners pursuant to the applicable Wisconsin Construction Agreements (“**Owner Governmental Approvals**”). Subject to **Section 2.3.1(ii)** and after reasonable notice to the Chair and Vice Chair, the Construction Manager will have the right to execute and file applications for all such Governmental Approvals on behalf of the Owners; **provided, however**, if the Management Committee instructs the Construction Manager not to file such application, the Construction Manager shall not file such application prior to a vote of the Management Committee approving such filing. Subject to **Section 2.3.1**, the Construction Manager shall take whatever actions are necessary or desirable (as determined by the Construction Manager) to maintain or otherwise fulfill the performance and compliance requirements under and in connection with the Owner Governmental Approvals on behalf of the Owners. The Construction Manager shall, or shall cause its designee to, participate in meetings with Governmental Bodies and other Persons to assure that presentations, reports and data relating to construction of the Phase (or portion thereof) or other aspects of the Wisconsin Project are appropriately and properly identified and presented. Each Owner shall provide its support, cooperation and assistance in accordance with **Section 2.3.4** and the Joint Cooperation Agreement. The Construction Manager shall keep the Management Committee reasonably apprised of the occurrences and events occurring at such meetings and the status of the approval process of all such Governmental Approvals and significant issues or events that are anticipated to occur. When any Governmental Approval is being sought on a joint or consolidated basis with one or more other CapX Projects, including the Wisconsin Project, the oversight and supervision of such process must be on a coordinated basis and the Construction Manager shall work with the construction managers of each of the other CapX Projects involved, except as otherwise determined pursuant to **Section 7.5**.
- 7.4.8 **Remedies.** In accordance with **Section 2.3**, the Construction Manager will have the right to pursue any and all rights of any Owner under the Wisconsin Construction Agreements and Real Property Agreements with respect to any breach thereof, in each case as deemed appropriate by the Construction Manager in its reasonable good faith discretion, including disapproving or rejecting Construction Work or Procured Materials where the Construction Work or the Procured Materials are, in the Construction Manager’s opinion, defective or non-conforming to the Wisconsin Construction Agreements. Subject to any limitations set forth in this Agreement, the Construction Manager will have the right to enforce and defend any and all duties, rights and obligations under the Wisconsin Construction Agreements and Real Property Agreements.

- 7.5 Joint Project Activities and Costs.** Prior to the Effective Time, certain of the Owners, as participants in the CapX 2020 Transmission Capacity Expansion Initiative, have undertaken certain joint activities related to the Wisconsin Project and other CapX Projects, including the development of technical criteria, a Governmental Approval application process, the drafting and negotiation of CapX Project template agreements (including templates for this Agreement and certain of the other Wisconsin Project Agreements), procurement planning and bidding, and general CapX Project planning, coordination and execution activities. The Owners wish to continue to pursue such activities and may desire, from time to time, to engage in other similar activities on a joint and cooperative basis and reserve the right to adjust the scope of such activities as the Management Committee, after consultation with the Construction Manager, may determine. The post-Effective Time joint and cooperative work described in this **Section 7.5** constitutes “**Joint Project Activities.**” If the Management Committee advises the Construction Manager from time to time in writing of activities in furtherance of the Wisconsin Project that constitute Joint Project Activities, the Construction Manager shall take such actions as necessary to facilitate, coordinate, implement, monitor and/or assess Joint Project Activities.
- 7.5.1 Joint Project Activities Cost Allocation.** The cost of Joint Project Activities will be allocated as determined by the Management Committee.
- 7.5.2 Withdrawal From Certain Joint Project Activities.** The Construction Manager shall review the performance of and assess the ongoing benefits to the Wisconsin Project from Joint Project Activities and the allocation to the Wisconsin Project of the costs thereof. If the Construction Manager determines that any portion of the Joint Project Activities is not progressing satisfactorily, is no longer a sufficient benefit to the Wisconsin Project, or the costs of such Joint Project Activities are no longer justified or equitably allocated, the Construction Manager shall refer the matter to the Management Committee for further consideration.
- 7.6 CM Subcontractors.**

**PRIVILEGED INFORMATION**

- 7.7 Labor and Personnel.** The Construction Manager shall provide and make available all professional, supervisory, superintendent, field service, managerial, administrative and other personnel as are reasonably necessary to perform the Services. Personnel provided by the Construction Manager must be qualified and experienced in the duties to which they are assigned. The Construction Manager shall enforce reasonable discipline and good order among the Construction Manager's employees and other Persons carrying out Services hereunder. The Construction Manager shall take prompt action to remove or reassign unfit Persons or Persons not skilled in tasks assigned to them.
- 7.8 Safety Precautions and Requirements.** The Construction Manager shall, in conjunction with Contractors that perform Construction Work on real property interests owned by any one or more of the Owners, coordinate the development and implementation of and compliance with a quality assurance/quality control program, a construction safety program, a fire protection program, an accident prevention program, a substance abuse program, an environmental controls program and any other programs necessary to comply with Applicable Law and Good Utility Practice, including: (i) seeking to ensure the maintenance of reasonable safeguards for the protection of the environment, workers and the public, including first-aid facilities for workers at the various work sites and (ii) requiring Contractors to exercise commercially reasonable efforts to eliminate or abate all reasonably foreseeable safety hazards created by, or otherwise resulting from, the performance of Construction Work. Such plan shall expressly provide for keeping adequate records of incidents requiring medical attention in connection with the performance of the Services or the Construction Work and methods of communication to the Owners with respect to same. The Construction Manager shall orally notify the Chair and Vice Chair of any incident involving serious injury or death to any individual performing Services or Construction Work as soon as reasonably possible but not later than twenty-four (24) hours after it learns of the occurrence. The Construction Manager shall promptly thereafter provide a written report to the Chair and the Vice Chair of the cause of the incident (if known) and the actions taken or to be taken to avoid repetition. The Construction Manager shall promptly give notice to the Chair and Vice Chair of any hazardous conditions on the Wisconsin Project Real Property immediately after it becomes aware of such conditions.

- 7.9 Emergency Recovery Plan.** The Construction Manager shall develop, in conjunction with each Contractor performing Construction Work on real property interests owned by any one or more of the Owners, a recovery plan designed to prevent, avoid or mitigate injury, damage or loss resulting from the occurrence of any Emergency. The Construction Manager shall use commercially reasonable efforts to obligate Contractors and their Subcontractors to comply, at a minimum, with such plans; **provided**, that the Construction Manager will not be liable for the failure of Third Party Contractors (or their Subcontractors) to so comply.
- 7.10 Title/Risk of Loss.** Title to and risk of loss with respect to the Facilities and the Associated Assets and all other property rights created through performance of Construction Work (including all Procured Materials to be incorporated therein) will be determined in accordance with the provisions of the respective Wisconsin Construction Agreements and Real Property Agreements. The Construction Manager shall use its commercially reasonable efforts to cause title to Equipment, Materials and Consumables for the Facilities to be transferred to the Owners, as tenants-in-common in accordance with the Wisconsin Project Participation Agreement. The Construction Manager shall require that such title will transfer free and clear of Liens (other than Permitted Liens). The Construction Manager shall promptly advise the Management Committee if it is unable to secure provisions for such transfer of title and shall thereafter take direction from the Management Committee with respect thereto. The Construction Manager shall take any and all actions under its power to effect the intent of this **Section 7.10**, including execution and delivery of any necessary documents of transfer and recordings of the same.
- 7.11 Wisconsin Insurance Obligations of the Construction Manager.** The Construction Manager shall comply with the insurance obligations imposed on the Construction Manager in **Appendix I**, as it may be amended by the Management Committee.
- 7.12 Settlement of Insured and Uninsured Third Party Claims Against Owners; Maximum Settlement Authority.**
- 7.12.1 Insured Claims Against Owners.**
- 7.12.1.1 Construction Manager Rights and Obligations. Subject to **Section 2.3**, the Construction Manager, through tender of insured claims to (and cooperation with) one or more applicable insurers, shall investigate, and, as agent for and on behalf of the Owners, adjust, defend and settle insured claims against any Owner, arising out of or attributable to the Services or the Construction Work asserted by any Person (other than an Owner) against any one or more of the Owners, so long as such claim is within the scope of coverage and policy limits provided by any of the applicable insurance policies maintained in accordance with **Appendix I**, as it may be amended by the Management Committee, and to the extent such claim is monetary in nature only.

7.12.1.2 Limitation on Construction Manager Rights and Obligations. The foregoing right to settle insured claims is conditioned upon: (i) payment of the claim within the coverage limits of the insurance policies described in **Section 7.12.1.1**; **provided, however**, the existence of commercially reasonable deductibles, self-insured retentions and co-insurance limits will not affect such settlement rights; (ii) monetary relief being the sole relief provided; and (iii) the satisfaction of the conditions set forth in **Section 7.12.2.2(i)** and **(iii)**.

7.12.1.3 No Right to Settle Independently. No Owner has the right to independently settle any claim for which the Construction Manager has authority to adjust, defend and settle under the provisions of this **Section 7.12.1**.

7.12.2 Uninsured Claims Against Owners.

7.12.2.1 Construction Manager Rights and Obligations. The Construction Manager shall investigate and, subject to the provisions of **Section 2.3**, as agent for and on behalf of the Owners, and, subject to **Section 7.12.2.2**, adjust, defend and settle uninsured claims of Third Parties arising out of or attributable to the Services or the Construction Work against any one or more of the Owners and for which no insurance coverage is available for payment of such claim or claims.

7.12.2.2 Limitation on Construction Manager Rights and Obligations. Except with the written consent of each Owner affected thereby, the Construction Manager does not have the authority pursuant to **Section 7.12.2.1** to enter into any settlement or to consent to entry of any judgment (other than a judgment of dismissal on the merits without costs or conditions) unless the following conditions are satisfied: (i) there is no finding or admission of any violation of Applicable Law and no material effect on any claims that could reasonably be expected to be made against the Owners or any of them; (ii) the sole relief provided is monetary in an amount (a) not to exceed the amount set by the Management Committee pursuant to **Section 7.12.2.5** or (b) approved by vote of the Management Committee upon request by the Construction Manager for such specific matter; and (iii) the settlement includes a comprehensive release of each Owner by the claimant or the plaintiff of all claims, liabilities or obligations in respect of such claim or Proceeding.

7.12.2.3 Limitation on Owner Rights. Any Owner may independently, on its own behalf only and at its sole expense, settle or consent to an entry of judgment for an uninsured claim described in **Section 7.12.2.1** if and only if the terms of such settlement or judgment do

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not adversely affect another Owner, the Wisconsin Project or the Construction Manager's ability to prosecute the Construction Work, and if the settling Owner gives ten (10) days' prior written notice to each other Owner of such settlement or judgment and its terms. The act of settlement or consent to entry of judgment in and of itself will not be determined to have such an adverse effect. In such event, the settling Owner: (i) will not be included in any other settlement of such uninsured claim by the other Owners or the Construction Manager and (ii) will not be responsible for and will not be charged for any such other settlement of such uninsured claim, notwithstanding **Section 13.1.1**.

7.12.2.4 Owner Limited Right Participation. Each Owner will be entitled to participate in the prosecution, defense or settlement of any claim or Proceeding undertaken by the Construction Manager pursuant to **Section 7.12.1** or **7.12.2**; **provided**, that: (i) such participation will be limited to observation and comment to the Construction Manager and its counsel and (ii) the counsel selected by such Owner will not appear on such Owner's behalf in any negotiation or Proceeding related to such claim. Each Owner shall bear the fees and expenses of any additional counsel retained by it to participate in the prosecution or defense of any claim or Proceeding. Notwithstanding the foregoing, if any affected Owner delivers an opinion of counsel to the Construction Manager and the other Owners stating that there is a conflict of interest that would make it inappropriate under applicable standards of professional conduct for such affected Owner to be represented by common counsel, then: (a) each Owner will be entitled to employ counsel of its own choosing and the costs of counsel and defense for each Owner will not constitute Wisconsin CM Costs and (b) the Construction Manager shall not prosecute such claims for the Owners but will reasonably assist each Owner in connection with its prosecution, defense or settlement of such claims.

7.12.2.5 Maximum Amounts. The maximum amount for which the Construction Manager may settle or consent to the entry of judgment for any individual uninsured claim for purposes of **Section 7.12.2.2** will be initially established at One Hundred Thousand Dollars (\$100,000). The maximum amount for which the Construction Manager may release any Third Party from liability or potential liability will be initially established at Fifty Thousand Dollars (\$50,000). The parties hereto recognize that the Management Committee may, from time to time, vote to reduce or increase either or both of such maximum amounts set forth in this **Section 7.12.2.5**, which revised amounts will be deemed to be the applicable amounts under this Agreement without further action by the parties hereto.

- 7.12.3 **Additional Authority.** Each Owner agrees that if the Construction Manager requires an additional grant of authority to perform its obligations under this **Section 7.12**, subject to the rights granted to the Owners and the limitations imposed on the Construction Manager under this **Section 7.12**, such Owner will grant such authority to the Construction Manager as necessary.
- 7.13 Claims Against Third Parties.** The Construction Manager has the authority to investigate, present, prosecute, settle (subject to satisfaction of the conditions set forth in **Section 7.12**) and enforce (directly or indirectly) any and all claims on behalf of the Owners against any Contractor, Subcontractor, or CM Subcontractor (including any Owner acting in such capacity) arising out of the Services or the Construction Work. The Construction Manager shall also pursue claims against any other Person upon the direction of the Management Committee.
- 7.14 Discounts.** The Construction Manager shall use commercially reasonable efforts to secure available discounts, rebates or similar economic advantages that may be available in connection with Owner Procured Materials.
- 7.15 Prohibition Against Liens.** The Construction Manager shall make commercially reasonable efforts not to permit Liens filed in connection with the Services or the Construction Work to remain in effect other than: (i) Liens for taxes or assessments not yet delinquent; (ii) Liens for workers' compensation awards, unemployment insurance and other types of social benefit obligations not yet delinquent; (iii) unperfected Liens incurred in the ordinary course of business and not in connection with the borrowing of money, including Liens arising from the employment of labor or the acquisition of Equipment, Materials or Consumables; and (iv) Permitted Owner Liens (collectively, "**Permitted Liens**"); **provided, however**, the Construction Manager will not be required to discharge or otherwise satisfy a Lien filed in connection with the Services or Construction Work as long as the Construction Manager is timely contesting such Lien in accordance with Applicable Law and the Property subject to such Lien is not subject to imminent sale or foreclosure; **provided, further**, if any such Lien has been perfected and has not been discharged or otherwise satisfied within one hundred twenty (120) days of its perfection, the Construction Manager, after consultation with the Management Committee, shall discharge or otherwise satisfy such Lien. The cost to discharge or otherwise satisfy a Lien of record is a CM Cost, except to the extent the filing of the Lien was caused by the gross negligence, intentional misconduct or willful misconduct of the Construction Manager.
- 7.16 Compliance with Applicable Law.** The Construction Manager shall comply with Applicable Law in the performance of its obligations under this Agreement.
- 7.17 Certain Sales Tax Matters.** The Construction Manager shall perform the obligations set forth in **Appendix L** in connection with Sales Tax obligations arising from the Wisconsin Project.
- 7.18 Business Standards.** The Construction Manager, in performing its obligations under this Agreement, shall establish and maintain in effect appropriate business standards,

procedures and controls to avoid: (i) any real or apparent impropriety that might materially and adversely affect the reputation of any of the Owners or (ii) violation of any Applicable Law. The Construction Manager shall ensure compliance by all of the Construction Manager's personnel and CM Subcontractors with the obligations set forth in this **Section 7.18**, which obligations will apply to the activities of all such personnel and CM Subcontractors with other Construction Manager personnel, each Owner and its respective Affiliates relating to this Agreement or the Wisconsin Project. Such obligations include establishing precautions to prevent any Construction Manager personnel from making, receiving, providing or offering any gifts, entertainment, payments, loans or other consideration that could constitute any real or apparent impropriety that might adversely affect the reputation of any of the Owners or violate any Applicable Law.

### **7.19 Responsibility for Project Documents and Records.**

7.19.1 **Retention of Records.** The Construction Manager shall, in accordance with Good Utility Practice, maintain or cause to be maintained, all Wisconsin Project-related records generated or received by it in connection with its performance of the Services, the Construction Work, or both, including:

- (i) drawings, plans, specifications, other design documentation and other construction documentation, including schedules, correspondence, minutes of meetings, daily logs, Progress Reports, currently marked and as-built documentation, and similar construction or technical data;
- (ii) Wisconsin Construction Agreements and Change Orders and amendments thereto and CM Subcontracts and change orders and amendments thereto, including all records relating to the procurement of Equipment and Materials;
- (iii) Real Property Agreements and amendments thereto, closing documentation pursuant to which Wisconsin Project Real Property is acquired or disposed of, surveys, title insurance policies and other documents related to the acquisition, use, title, or restrictions upon Wisconsin Project Real Property;
- (iv) financial records pursuant to which the Construction Manager will seek payment or reimbursement hereunder for the performance of Services, (including Services performed by its CM Subcontractors), including payroll records, daily time sheets, other personnel records; books of account, records of monies expended or received, financial obligations incurred, credits accrued, as well as other documentation used by the Construction Manager to accumulate financial and statistical data in connection with the Services;
- (v) records required pursuant to **Section 8.1**, including financial records in support of amounts it is required to pay or approve for financial credit as

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- Wisconsin CM Costs, including payments to Contractors, CM Contractors or other Persons; together with all documentation provided by such Persons to justify either the payment of amounts owed to them or the amounts incurred by them for which they are entitled to credit;
- (vi) all Governmental Approvals relevant to the design or construction of the Project together with related applications, notices of violation, and related correspondence with Governmental Bodies;
  - (vii) all sales and use tax records, including documents relating to payments, refunds, exemptions, or other communications with Governmental Bodies relating to such taxes;
  - (viii) all records relating to Third Party Claims and Third Party Environmental Claims by or against the Construction Manager or the Owners arising out of the performance of its obligations under this Agreement;
  - (ix) all records relating to Wisconsin Project Insurance policies or claims thereunder;
  - (x) all records of incidents requiring medical attention in connection with the performance of the Services or Construction Work;
  - (xi) all other documents relating to the Wisconsin Project or any portion thereof, generated or received by the Construction Manager in connection with the performance of its obligations under this Agreement; and
  - (xii) all records generated or received by it in connection with Non-Credited USI Work (collectively, all of the foregoing, “**Records**”).

All Records maintained by the Construction Manager are to be maintained in accordance with the Construction Manager’s standard document retention practices.

7.19.2 **Transfer and Disposal**. The Construction Manager may destroy or dispose of Records if they have been retained for at least five (5) years after Final Completion if it has first offered to transfer such Records to those Owners that require such Records for its or their purposes in lieu of destroying or disposing of them and no Owner, within thirty (30) days of receipt of the Construction Manager’s offer, requests such Records to be transferred to it. Otherwise, the Construction Manager shall transfer such Records to the Owner that requests them. If more than one Owner requests them, the Management Committee shall vote to decide which Owner will become the custodian of such Records. Any Owner accepting custody of such Records shall provide access to them to the other Owners on the terms set forth in this **Article 7** and must make them available for transfer to the other Owners on substantially the same conditions as set forth in this **Section 7.19.2** if at any time it no longer wishes to retain custody of such Records. The Construction Manager shall use its commercially reasonable efforts to insert or cause to be inserted provisions substantially similar

to this **Section 7.19** and **Section 8.1** (to the extent appropriate) in each Wisconsin Project Construction Contract, each CM Subcontract and each first-tier Subcontract, which provisions will serve to the benefit of each Owner.

7.19.3 **Record Availability.** The Construction Manager shall make all Records it is required to retain under this Agreement pursuant to **Section 7.19.1** available to: (i) the Independent Accountants and (ii) except as provided below, the Owners for inspection (and copying) and audit. The Construction Manager will make the Records available at the Construction Manager's principal place of business or other agreed location upon at least five (5) Business Days' notice. The Construction Manager shall not make the Records described in **Sections 7.19.1(iv) to (vi)** (and other financial records) available to any other Person except in accordance with a protocol adopted by the Management Committee that will be designed to avoid use of such information by the receiving Owner in a manner that could violate Applicable Law.

**7.20 Surplus Items.** The Construction Manager, in the performance of the Construction Management Services, shall take reasonable precautions to minimize the amount of surplus Equipment, Materials and Construction Aids or Consumables. Subject to the prior approval of the Management Committee, the Construction Manager shall: (i) provide surplus items to the Maintenance Providers, as they may request, and (ii) sell or otherwise properly dispose of the remainder. Proceeds received by the Construction Manager in connection with any sale or other disposition must be deposited as directed by the Management Committee within fifteen (15) Business Days of receipt.

**7.21 Post-Term Services.** The parties recognize that upon expiration of the Term certain of the Services may not have been entirely performed and additional Services may be necessary. Without limiting the generality of the foregoing, the parties recognize, for example, that disputes arising from the Services and the Construction Work may not be entirely resolved and Sales Tax and other tax related matters may still be pending. Accordingly, each Owner and the Construction Manager agree to discuss the need and applicable terms and conditions for post-Term Services no less than ninety (90) days prior to the projected expiration date of the Term. The parties further agree in good faith to enter into an agreement for the performance of such additional services by the Construction Manager on substantially the same payment and liability terms as are set forth in this Agreement.

## ARTICLE 8

### FINANCIAL ACCOUNTS; REPORTING; INDEPENDENT ACCOUNTANTS

**8.1 Accounts.** The Construction Manager will strictly account for all funds that it deposits in or withdraws from the Wisconsin Main Trust Account (or any sub-account to which it is given access) and report all receipts and disbursements made under this Agreement. The Construction Manager's books, records of account and financial statements with respect to the Services, Construction Work, Real Property Agreements and other real property transaction records must be current, complete, true and correct in all material respects.

All such books and records must be organized and indexed, and consistent with all financial and other reports provided hereunder. Subject to Applicable Law, all books and records of the Construction Manager required to be maintained under this Agreement will be maintained at its principal place of business. Any Owner, at its own expense, will be entitled to inspect such books and records during business hours on at least five (5) Business Days' notice to the Construction Manager.

## 8.2 Progress and Financial Summary Reports.

8.2.1 **Progress Reports.** The Construction Manager shall prepare and submit to the Chair and Vice Chair written reports (each, a "**Progress Report**") in accordance with **Section 6.2.3(i)**. Each Progress Report must be substantially in the form reflected in **Appendix F-4**, unless otherwise approved by the Management Committee and Construction Manager. The Progress Report(s) must address, among other things, the following matters with respect to the performance of Construction Work and the Services, as applicable:

- (i) status of Governmental Approval applications;
- (ii) status of Procured Materials and Wisconsin Project Real Property acquisition and disposition, including any condemnation Proceedings initiated in furtherance thereof;
- (iii) a reasonable description of the progress of the Services and the Construction Work, including a reconciliation of the Construction Work to the Construction Work Schedule and a reasonably detailed explanation of any variances, together with the information required pursuant to **Section 3.2.2.2** with respect to contracts entered into by the Construction Manager with respect to Construction Work;
- (iv) identification of Contractors, CM Subcontractors and, to the extent known by the Construction Manager, Subcontractors (but only at the first tier) and the scope of their Construction Work or Services, as applicable;
- (v) claims or disputes regarding the performance of Construction Work or Services of which the Construction Manager has knowledge (including facts and circumstances of which the Construction Manager has knowledge that are reasonably likely to give rise to a claim or dispute);
- (vi) a report on safety, injury and illness incidents, including statistics relating to lost time accidents, near misses and OSHA recordables;
- (vii) identification of Liens filed against Wisconsin Project-related assets of any Owner of which the Construction Manager has knowledge other than Permitted Liens;

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- (viii) the status of Commissioning and inspections (including the results thereof), including the report to accompany the Notice of Commissioning required by **Section 11.1.2**;
- (ix) a statement of any other significant issues, including unresolved Change Orders;
- (x) identification of the date, time and location of inspections, tests and approvals of Construction Work scheduled in the next succeeding Month;
- (xi) a summary of significant events that are scheduled or anticipated to occur during the next thirty (30) days;
- (xii) the status of negotiations with each Relocated TP TL Owner to and until such time as the applicable Relocated TP TL Agreement and the associated easement agreements have been executed by the respective parties thereto;
- (xiii) the status of negotiations with each Relocated TP DL Owner to and until such time as the applicable Relocated TP DL Agreement and associated easement agreements have been executed by the respective parties; and
- (xiv) the status of negotiations with each Remote TP USI Owner to and until such time as the applicable Remote TP USI Agreement has been executed by the respective parties.

8.2.2 **Financial Reports.** The Construction Manager shall prepare and submit to the Management Committee: (i) an updated Financial Summary Report in accordance with **Section 5.1.4** and (ii) annually, on or before each August 1 during the Term, a CM Cost forecast for the next calendar year, including a monthly Wisconsin Project cashflow projection, which information is the same as the Construction Manager has provided to its management most recently for inclusion in such Owner's internal budgeting processes for the next calendar year.

**8.3 Year-end Financial Reports.** After the completion of each calendar year during the Term, or such other fiscal period agreed upon by the Management Committee and the Construction Manager, and any partial year for the first and last year of this Agreement, the Wisconsin CM Costs paid under this Agreement or credited in accordance with the Wisconsin Project Participation Agreement will undergo an agreed upon procedure determined by the Management Committee and to be conducted by a public accounting firm experienced in utility and regulated industry accounting (the "**Independent Accountants**"). The Independent Accountants will be selected by vote of the Management Committee and then retained by the Construction Manager. The Independent Accountants will be engaged pursuant to a written engagement letter for the applicable year. The report of the Independent Accountants will be completed and issued to the Construction Manager, the Chair and Vice Chair by the Independent Accountants within seventy-five (75) days after the applicable year-end. The Management Committee shall furnish any report of the Independent Accountants to each Owner promptly

following receipt. The Owners and the Construction Manager shall all reasonably cooperate with the Independent Accountants' requests as part of such reporting process, including providing access to Records.

- 8.4 Final Completion Report.** The Construction Manager shall prepare and distribute to the Management Committee and each Owner a final completion report within a commercially reasonable period of time following termination of this Agreement, which must include a complete cost report for the Services, the Construction Work and the acquisition of the Wisconsin Project Real Property together with such other amounts that may be paid upon termination as provided in **Sections 15.2.3.4 and 15.2.3.5**.

## ARTICLE 9

### OWNERS' RIGHTS AND DUTIES

- 9.1 Owners Act Through Management Committee.** Oversight and management of matters arising under this Agreement by the Owners will, except as otherwise provided in this Agreement, be determined by the Management Committee.
- 9.1.1 Restriction on Rights, Duties and Responsibilities of the Management Committee** . Notwithstanding anything to the contrary in this Agreement, the Management Committee will not have the power or authority to direct the means, manner or methodology used by: (i) the Construction Manager to carry out the Services or (ii) any Contractor (including an Owner) to carry out Construction Work.
- 9.1.2 Rights**. In carrying out the duties and responsibilities set forth in this **Article 9**, the Management Committee (unless otherwise provided in this Agreement) has all requisite rights, power and authority, including:
- (i) the right to receive such information (subject to **Section 7.19.3**) from the Construction Manager as the Management Committee may reasonably request;
  - (ii) the right to provide direction to, and develop policies for, the Construction Manager with respect to the Construction Manager's authority to act as an agent pursuant to **Sections 2.3, 3.1 and 7.12**;
  - (iii) the right to develop policies for the Construction Manager with respect to any matter under this Agreement;
  - (iv) the right to inspect Construction Work during the Term at reasonable times and without unduly hindering ongoing Construction Work, which right will extend, subject to reasonable coordination by the Management Committee, to each Owner, the Independent Engineer, Financing Parties and Financing Party Agents (as required in connection with an Owner's Financing); and

- (v) the right to issue Owner-Directed Project Change Requests to the Construction Manager, pursuant to **Section 5.3**.

9.1.3 **Management Committee Chair**. In all matters concerning or arising under this Agreement that require direction or a vote of the Management Committee to be effective, each Owner will be bound by the written communications, directions, requests and decisions made by the Management Committee.

**9.2 No Direct Owner Contact with Contractors and Subcontractors.** Except as otherwise provided in the Wisconsin Construction Agreements and when direct communications have been specifically authorized, with respect to all matters pertaining to the Construction Work, an individual Owner will communicate to Contractors, Subcontractors and CM Subcontractors only through the Construction Manager.

**9.3 Authorized Personnel.** Each Owner shall file with the Construction Manager a list of all individuals who are authorized to sign documents such as contracts, certificates, Governmental Approvals and affidavits on behalf of such Owner and to fully bind such Owner to all conditions and provisions of such documents. In all matters concerning or arising under this Agreement, each Owner will be bound by the written communications, directions, requests and decisions made by its respective Owner designees. The appointment of each Owner designee will remain in full force and effect until a written notice of substitution is delivered by such Owner to the Construction Manager and the Chair and Vice Chair.

**9.4 Property Interests.** All Property of the Wisconsin Project (which includes any and all rights and licenses, express or implied) that arises as a result of the Services, Construction Work, or both, accrues to the benefit of the Owners in such capacities as are set forth in the Wisconsin Project Agreements. During the Term, each Owner, in each of its capacities in the Wisconsin Project, hereby authorizes the Construction Manager to use all such Property rights and interests as necessary for the Construction Manager to perform its obligations under this Agreement.

**9.5 Wisconsin Project Real Property.** Each Owner shall cooperate with, support and assist the Construction Manager in obtaining all Wisconsin Project Real Property that, in accordance with Applicable Law, must be obtained in the name of the Owners (individually or collectively), including preparing documentation to be submitted by the Construction Manager to any Governmental Body in connection therewith.

**9.6 Owner Governmental Approvals.**

9.6.1 **Owner Compliance Obligations**. Each Owner shall comply with any condition applicable solely to it under the terms of any Governmental Approval that becomes a Final Order, and the costs and expenses associated with compliance with such condition(s) will be the sole liability and obligation of such Owner.

9.6.2 **Right to Cure**. If any Owner described in **Section 9.6.1** fails to comply with the conditions described in **Section 9.6.1**, the Construction Manager may, but will not be obligated to, seek authority from the Management Committee to cure such

breach or default by such Owner, including making any required payment or performing any required act. For purposes of the reimbursement of the Construction Manager, and without limiting the right of the Management Committee to seek reimbursement from the offending Owner, any amount so paid or incurred by the Construction Manager will be treated as if it constituted Wisconsin CM Costs incurred in furtherance of the Services. The making of such payment or the doing of such act by the Construction Manager will not operate to cure such default or to estop the applicable Owners from the pursuit of any remedy to which the applicable Owners may be entitled pursuant to the Wisconsin Project Agreements.

- 9.7 Insurance Requirements.** The Owners, in their respective capacities, shall comply with the respective insurance obligations imposed on them in **Appendix I**.
- 9.8 Scheduling.** Subject to the requests of the Construction Manager and the requirements of Applicable Energy Regulations, an Associated Owner Asset Owner shall coordinate any outage of its Associated Owner Asset necessary to enable the connection of the applicable portions of the Wisconsin Project to the electrical terminal points on the Transmission Grid set forth in the Approved Design in accordance with the Construction Work Schedule, including permitting installation of all breakers, relays, switches, synchronization Equipment, communications Equipment and other protective and control devices and metering Equipment for full hook-up and parallel operation at the specified voltage level as set forth in the Approved Design and in accordance with Applicable Energy Regulations. Each Associated Owner Asset Owner shall be responsible for coordinating outages, operating guidelines or other restrictions that may arise as a consequence of the construction, Commissioning, energization or operation of its respective Associated Owner Assets.
- 9.9 Right to Stop Construction Work.** The Management Committee may, with or without cause, order the Construction Manager to cause any Contractor to suspend, delay or interrupt the performance of Construction Work in whole or in part for such period of time as the Management Committee may determine, subject to the provisions of the applicable Wisconsin Project Construction Contracts.
- 9.10 Right to Carry Out Services.** If the Construction Manager fails to perform Services in accordance with this Agreement and fails, within a thirty (30) day period after receipt of written notice from the Management Committee, to commence and continue correction of such default or neglect with diligence and promptness, the Management Committee may, after such thirty (30) day period, give the Construction Manager a second written notice to correct such deficiencies within a second fifteen (15) day period. If the Construction Manager fails to commence and continue to correct such deficiencies within such second fifteen (15) day period, the Management Committee may, without prejudice to other remedies it may have hereunder, correct such deficiencies and will be entitled to recover the costs and expenses incurred (which amounts constitute Wisconsin CM Costs) in furtherance thereof to the extent the Construction Manager has been paid any estimated amounts therefor.

- 9.11 Coordination of Requests.** Subject to **Section 7.19.3**, each Owner, at its expense, has the right to audit or inspect Records, whether kept by the Construction Manager or others, and each Owner understands that such audit or inspection involves planning and resources by the custodian of such records. Accordingly, each Owner agrees that it will endeavor to coordinate its requests for inspection or audit with the other Owners.
- 9.12 Cooperation.** Subject to the requirements of Applicable Energy Regulations, each Associated Owner Asset Owner shall reasonably cooperate with the Construction Manager to facilitate the upgrade, completion or interconnection of its Associated Owner Assets as is required to accommodate the Wisconsin Project. The Construction Manager shall use commercially reasonable efforts to provide adequate advance notice of any outages that may adversely affect any Owner, in any capacity, in connection with the construction, Commissioning, energization or operation of the Wisconsin Project assets described in this **Section 9.12**.
- 9.13 Access Rights.** Each Owner, in each of its capacities, hereby grants to the Construction Manager rights of access, ingress, and egress to and from such facilities, at no cost, for the purpose of performance of the Construction Management Services. Such access, ingress, and egress shall be subject to such Owner's applicable rules and regulations applicable to entities engaged in construction, construction management, or related activities and the specific Wisconsin Construction Agreements relating thereto.
- 9.14 Non-Credited USIs.** Each Owner responsible for procuring, constructing, installing and placing in service each Non-Credited USI is identified in **Appendix J-12** and hereby agrees to undertake such responsibilities on a schedule reasonably consistent with the Construction Work Schedule. Each Owner responsible for the procurement, construction, installation and placement in-service of Non-Credited USIs agrees to enter into a suitable arrangement with the Construction Manager in connection therewith and perform its obligations thereunder at its own expense.

## ARTICLE 10

### REPRESENTATIONS AND WARRANTIES

- 10.1 Representations and Warranties of the Construction Manager.** The Construction Manager, on and as of the Effective Time, makes the following representations and warranties, which representations and warranties survive the execution and delivery of this Agreement:
- 10.1.1 Organization and Good Standing.** The Construction Manager is, as set forth in the preamble to this Agreement, an agency, non-profit corporation, cooperative, association, municipal corporation, political subdivision, limited liability company, corporation or a similar Person organized, existing and in good standing under the laws of the state of its formation or incorporation, as the case may be, and is authorized to conduct business in each state in which authorization may be required to perform its obligations under this Agreement.

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- 10.1.2 **Power and Authority.** The Construction Manager has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 10.1.3 **Authorization.** The Construction Manager has taken all action required by Applicable Law and its governing documents, including its charter, in order to approve, execute and deliver this Agreement.
- 10.1.4 **No Violation.** The execution and delivery of this Agreement by the Construction Manager, the performance by the Construction Manager of its obligations hereunder and the consummation by the Construction Manager of the transactions contemplated herein do not and will not: (i) contravene any Applicable Law in effect as of the Effective Time or any Order in effect as of the Effective Time of any Governmental Body or arbitrator having jurisdiction over the Construction Manager or its Property or (ii) result in a breach or violation of any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement in effect as of the Effective Time and to which the Construction Manager is a party or by which it or its Property is bound.
- 10.1.5 **Approvals and Consents.** No approval, consent or authorization of any Governmental Body or other Person is required for the execution and delivery by the Construction Manager of this Agreement or the performance by the Construction Manager of its obligations hereunder, except such approvals, consents or authorizations that have been given or obtained by the Construction Manager and are in full force and effect.
- 10.1.6 **Binding Effect.** This Agreement has been executed and delivered by the Construction Manager. Assuming that each Owner has all the requisite power and authority, and has taken all necessary action to execute and deliver this Agreement, this Agreement is the legal, valid and binding obligation of the Construction Manager enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights (*e.g.*, bankruptcy, insolvency, moratorium) or by the exercise of judicial discretion in accordance with general principles of equity.
- 10.2 Representations and Warranties of Owners.** Each Owner, in each of its capacities under this Agreement, severally and not jointly, on and as of the Effective Time, makes the following representations and warranties, which representations and warranties survive the execution and delivery of this Agreement:
- 10.2.1 **Organization and Good Standing.** Such Owner is, as set forth in the preamble to this Agreement, an agency, non-profit corporation, cooperative, association, municipal corporation, political subdivision, limited liability company, corporation or a similar Person organized, existing and in good standing under the laws of the state of its formation or incorporation, as the case may be, and is

authorized to conduct business in each state in which authorization may be required to perform its obligations under this Agreement.

- 10.2.2 **Power and Authority**. Such Owner has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 10.2.3 **Authorization**. Such Owner has taken all action required by Applicable Law and its governing documents in order to approve, execute and deliver this Agreement.
- 10.2.4 **No Violation**. The execution and delivery of this Agreement by such Owner, the performance by such Owner of its obligations hereunder and the consummation by such Owner of the transactions contemplated herein do not and will not (i) contravene any Applicable Law in effect as of the Effective Time or any Order in effect as of the Effective Time of any Governmental Body or arbitrator having jurisdiction over such Owner or its Property or (ii) result in a breach or violation of any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement in effect as of the Effective Time and to which such Owner is a party or by which it or its Property is bound.
- 10.2.5 **Approvals and Consents**. No approval, consent or authorization of any Governmental Body or other Person is required for the execution and delivery by such Owner of this Agreement, or the performance by such Owner of its obligations hereunder, except: (i) such approvals, consents or authorizations that have been given or obtained by such Owner and are in full force and effect or (ii) as set forth in **Schedule 12.1.5** of the **Wisconsin Project Participation Agreement**.
- 10.2.6 **Binding Effect**. This Agreement has been executed and delivered by such Owner. Assuming that the other Owners and the Construction Manager have all the requisite power and authority, and have taken all necessary action to execute and deliver this Agreement, this Agreement is the legal, valid and binding obligation of such Owner enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights (e.g., bankruptcy, insolvency, moratorium) or by the exercise of judicial discretion in accordance with general principles of equity.

## ARTICLE 11

### COMPLETION AND ACCEPTANCE OF WORK

- 11.1 Commissioning.** The Construction Manager shall supervise, manage and/or oversee the performance of all tasks necessary for Commissioning of the Phase, including the performance of all inspection, testing, operations and other tasks inherent in Commissioning in accordance with Good Utility Practice. The Construction Manager

shall oversee the turning over of the Facilities to the Maintenance Provider and the Control Center Authority.

- 11.1.1 **No Performance Guarantees.** Each Owner acknowledges that the Construction Manager is neither providing any performance guarantees nor guaranteeing successful Commissioning of the Phase. The Construction Manager's sole obligation with respect to Commissioning of the Phase is to supervise, manage and/or oversee the applicable tests inherent in the process of Commissioning with the objective being to verify that the same are conducted in accordance with the applicable procedures for testing and Commissioning set forth in the Wisconsin Project Construction Contracts and such other procedures as may have been developed by the Construction Manager in accordance with Good Utility Practice in the performance of the Construction Management Services, and to otherwise comply with the provisions of this **Section 11.1.**
- 11.1.2 **Initial Notice of Commissioning.** When the Construction Manager believes that successful Commissioning of the Phase has been completed in accordance with the Wisconsin Project Construction Contracts, it shall deliver to the Chair and Vice Chair a Notice of Commissioning (the "**Notice of Commissioning**") together with a report as to the results of such Commissioning in a form reasonably acceptable to the Management Committee.
- 11.1.3 **Notice of Deficiency.** The Management Committee shall use its commercially reasonable efforts to notify the Construction Manager at the earliest possible date of any inadequacy, inaccuracy or otherwise unacceptable information or result set forth in an applicable Notice of Commissioning given to the Management Committee. If the Management Committee determines, after consultation with the Construction Manager and a vote, that Commissioning of the Phase has not been achieved, the Management Committee shall notify the Construction Manager of such determination, specifying in reasonable detail the basis therefor. The Construction Manager shall promptly take such action, as is permitted under the applicable Wisconsin Project Construction Contracts, directing the Contractors to make such corrections or to perform additional Construction Work as will likely effect successful Commissioning and, upon such Contractors' completion thereof and the Construction Manager's confirmation of successful Commissioning, the Construction Manager shall promptly issue to the Chair and Vice Chair another Notice of Commissioning. Such procedure will be repeated as necessary until Commissioning of the Phase has been successfully accomplished in the judgment of the Construction Manager and by vote of the Management Committee, in which case, Commissioning of the Phase will have been deemed to have occurred on the date of the Management Committee's receipt of the most recently delivered Notice of Commissioning therefor.
- 11.1.4 **Coordination Meeting.** Not less than sixty (60) days prior to the projected start of Commissioning of the Phase, the Construction Manager shall meet with the Maintenance Provider, Control Center Authority and Associated Owner Asset Owners for the purpose of coordinating continuing access to the Facilities and the

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Associated Owner Assets to allow unfinished Construction Work to be completed without undue interference with the responsibilities of the Maintenance Provider or the Control Center Authority under the Wisconsin Operation and Maintenance Agreement, or any Associated Owner Asset Owner. As appropriate in the judgment of the Construction Manager, the Construction Manager may extend an invitation to any such meeting to any other owner of an Associated Asset. The Construction Manager shall coordinate the performance of warranty work for the Facilities by Contractors or Subcontractors when such work is to be performed after the Phase has been placed in service but prior to the expiration of the Term. The Construction Manager understands that operation of the Phase after having been placed in service is subject to Applicable Energy Regulations. The Construction Manager and the Maintenance Provider, Control Center Authority and Associated Owner Asset Owners, subject to Applicable Energy Regulations, shall cooperate to ensure that once the Phase is placed in service, the progress of the Construction Work can proceed without undue interference from the performance of the obligations of the Maintenance Provider or the Control Center Authority under the Wisconsin Operation and Maintenance Agreement or Associated Owner Asset Owners and that operation and maintenance of the Phase will not be impaired by such Construction Work, except as agreed by the affected parties. Prior to the placement of the Phase in service, the Construction Manager shall provide to the applicable Maintenance Provider, Control Center Authority or Associated Owner Asset Owners any portion of the Wisconsin Project Design Book that may be needed for maintenance or repair purposes.

- 11.2 Substantial Completion.** Following delivery of the final Notice of Commissioning for the Phase, the Construction Manager shall notify the Chair and Vice Chair in writing when the Construction Manager believes that Substantial Completion has been accomplished or when such notice is otherwise required to be given under the applicable Wisconsin Project Construction Contracts (“**Notice of Substantial Completion**”). The Notice of Substantial Completion must include the information required by **Section 11.3**, together with a written statement by the Construction Manager as to whether the Construction Manager agrees that Substantial Completion has been achieved and, if not, reasonable detail regarding the basis of the Construction Manager’s determination that Substantial Completion has not been achieved, including any time constraints imposed by the applicable Wisconsin Project Construction Contracts with respect to any action required regarding the same. The Management Committee shall review and promptly vote to accept or reject each Notice of Substantial Completion and deliver to the Construction Manager a notice indicating that, in the determination of the Management Committee, after consultation with the Construction Manager: (i) Substantial Completion has occurred or (ii) Substantial Completion has not been achieved, in which latter event, such notice will set forth in reasonable detail the basis of the Management Committee’s determination. If the Management Committee notifies the Construction Manager that, in its determination, Substantial Completion has not been achieved, the Construction Manager shall promptly take such action, as may be taken by the Owners under the applicable Wisconsin Project Construction Contracts, directing the Contractors to make such corrections or perform additional Construction Work as will likely effect achievement of Substantial Completion. The Construction Manager shall diligently

continue working with the Contractors in accordance with the Wisconsin Project Construction Contracts to supervise, administer and oversee the performance of Construction Work until Substantial Completion is achieved. For the avoidance of doubt, the achievement of Substantial Completion of Phase 2 requires that the conditions of Substantial Completion be achieved with respect to the Phase and Phase 2 (Minnesota) and therefore the Construction Manager shall undertake the obligations under this **Section 11.2** and **Section 11.3** on a coordinated basis with the Minnesota Construction Manager, as more particularly provided in the Joint Cooperation Agreement.

**11.3 Creation of Punch List.** Each notice delivered by the Construction Manager pursuant to **Section 11.2** must include a list of all minor items of the Construction Work that have been identified by or disclosed to the Construction Manager that remain to be completed but do not affect operation of the Phase in accordance with Good Utility Practice (which elements must not include items that may affect the safety, performance or reliability) and the proposed schedule for the completion of such remaining Construction Work. After reviewing such list, the Management Committee, in consultation with the Construction Manager, shall identify a detailed list of all elements of the Construction Work that remain to be completed and establish a proposed schedule for completing such Construction Work. The Construction Manager shall confer with the applicable Contractors and attempt to reach agreement upon the detailed list of items of the Construction Work and the schedule for completion of such Construction Work, and the Construction Manager is authorized to reach agreement with a Contractor on behalf of the Owners with respect to same (once agreed to by the Construction Manager and the Contractor, each such document herein a “**Punch List**”). The Construction Manager shall supervise, manage and oversee the completion of all Construction Work on each Punch List in accordance with the proposed schedule set forth therein.

**11.4 Final Completion.** Following the achievement of Substantial Completion of the Phase, the Construction Manager shall notify the Chair and Vice Chair in writing when the Construction Manager believes that Final Completion has been accomplished or when such notice is otherwise required to be given under the applicable Wisconsin Project Construction Contracts (“**Notice of Final Completion**”). The Notice of Final Completion will include a written statement by the Construction Manager as to whether the Construction Manager agrees that Final Completion has been achieved and, if not, reasonable detail regarding the basis of the Construction Manager’s determination that Final Completion has not been achieved, including any time constraints imposed by the applicable Wisconsin Project Construction Contracts with respect to any action required regarding the same. The Management Committee shall review and promptly vote to accept or reject each Notice of Final Completion and deliver to the Construction Manager a notice indicating that, in the determination of the Management Committee, after consultation with the Construction Manager: (i) Final Completion has occurred or (ii) Final Completion has not been achieved, in which latter event, such notice must set forth in reasonable detail the basis of the Management Committee’s determination. If the Management Committee notifies the Construction Manager that, in its determination, Final Completion has not been achieved, the Construction Manager shall promptly take such action, as may be taken by the Owners under the applicable Wisconsin Project Construction Contracts, directing the Contractors to make such corrections or perform

additional Construction Work as will likely effect achievement of Final Completion. The Construction Manager shall diligently continue working with the Contractors in accordance with the Wisconsin Project Construction Contracts to supervise, administer and oversee the performance of Construction Work until Final Completion is achieved. For the avoidance of doubt, the achievement of Final Completion of Phase 2 requires that the conditions of Final Completion be achieved with respect to the Phase and Phase 2 (Minnesota) and therefore the Construction Manager shall undertake the obligations under this **Section 11.4** on a coordinated basis with the Minnesota Construction Manager, as more particularly provided in the Joint Cooperation Agreement.

- 11.5 Inspection Opportunities.** The Construction Manager shall give each Owner timely notice of readiness of the Construction Work for all required inspections, tests or approvals and arrange for an opportunity for each Owner, the Independent Engineer and any Financing Party Agent to be present.

## ARTICLE 12

### CONSTRUCTION WORK WARRANTIES

- 12.1 Warranty Requirements for Contractors.** The Construction Manager shall make commercially reasonable efforts to obtain the warranties set forth below with respect to the performance of Construction Work. Without limiting the Construction Manager's right to negotiate more stringent provisions, at a minimum, the substance of such warranties must be incorporated, as appropriate, in bidding documents and standard form agreements (except as otherwise approved by the Management Committee) prepared and issued by the Construction Manager.

- (i) the applicable portion of the Construction Work provided or constructed conforms to the requirements of the applicable Wisconsin Project Construction Contract;
- (ii) the applicable portion of the Construction Work will be free from defects in design (to the extent applicable), workmanship and materials;
- (iii) all Contractor Procured Materials will be new and unused, unless otherwise specified in the applicable Wisconsin Project Construction Contract.

**12.1.1 Limitation.** If the Construction Manager is unable to procure the warranties and other terms set forth in **clauses (i)** through **(iii)** above from Contractors (or their Subcontractors), and/or obtains different warranties or terms, such results will not constitute a breach or default in the performance of the Construction Management Services.

**12.1.2 Scope of Warranties – Subcontractors.** The Construction Manager shall make commercially reasonable efforts to procure from each Contractor pursuant to the respective Wisconsin Project Construction Contract, an undertaking on the part of each such Contractor to procure from all Subcontractors warranties with respect

to any Materials, Equipment or services provided by each such Subcontractor and further to require that upon a default by the Contractor which necessitates the Owners' assumption of the work thereunder, each of such Subcontractor warranties be enforceable by, or be assignable to, the Owners (acting collectively through a designee selected by the Management Committee) on notice by the Owners.

12.1.3 **Duration of Warranties.** The Construction Manager shall make commercially reasonable efforts to procure the warranties set forth in **Sections 12.1(i)** through **(iii)** above to apply to all Construction Work for a period of at least three hundred sixty-five (365) days after Substantial Completion; **provided, however,** the Construction Manager shall also make commercially reasonable efforts to obtain provisions that provide that such warranties will continue to apply to any repairs or replacements undertaken pursuant to any such warranties for a period ending no earlier than the first to occur of three hundred sixty-five (365) days after such repair or replacement or seven hundred thirty (730) days from the date of Substantial Completion.

12.1.4 **Enforcement of Warranties.** Except as otherwise directed by the Management Committee, the Construction Manager shall enforce all warranties obtained from Persons under Wisconsin Construction Agreements and CM Subcontracts; **provided, however,** the Maintenance Provider and Associated Owner Asset Owners shall undertake the responsibility for applicable warranty enforcement and the Construction Manager shall cooperate with the applicable Person to effect a seamless transition of these responsibilities immediately upon the achievement of (i) Final Completion or (ii) or Substantial Completion of its respective Associated Owner Assets.

12.1.5 **No Warranty By the Construction Manager.** THE CONSTRUCTION MANAGER MAKES NO WARRANTY OR GUARANTY TO ANY OWNER OR ANY OTHER PERSON, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE WISCONSIN PROJECT, THE SERVICES OR CONSTRUCTION WORK AND THE CONSTRUCTION MANAGER EXPRESSLY DISCLAIMS, AND EACH OWNER EXPRESSLY WAIVES, ANY AND ALL WARRANTIES IMPLIED BY LAW, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS.

**12.2 Manufacturer Information.** The Construction Manager shall collect, organize and promptly provide to the Chair (for the benefit of each Owner and each applicable Maintenance Provider) copies of all manufacturers' notices (including any and all health and safety advisories and notices and material safety data sheets) related to any Equipment, Materials and Consumables supplied by Contractors or any Subcontractor that are received by the Construction Manager. The Construction Manager shall also provide copies of the Wisconsin Project Design Book to the Maintenance Provider, including documentation regarding Equipment and Materials comprising the Facilities, design manuals, operation and maintenance manuals and start-up documentation received from any Contractor or any Subcontractor (including manufacturers).

## ARTICLE 13

### INDEMNIFICATION

#### 13.1 Third Party Indemnification.

13.1.1 **Indemnification by Owners.** To the maximum extent permitted by Applicable Law, each Owner shall, severally to the extent of its individual Integrated Percentage Interest, defend, indemnify and hold harmless the Construction Manager, its Affiliates, and their respective directors, officers, shareholders, members, partners, employees, and agents from and against Third Party Claims and Third Party Environmental Claims arising from the Project, except to the extent such claims arise from an act or omission of the Construction Manager for which the Owners are indemnified under **Section 13.1.2** or for which there is contributory negligence under **Section 13.1.3**.

13.1.2 **Indemnification by the Construction Manager.** To the maximum extent permitted by Applicable Law, the Construction Manager shall defend, indemnify and hold harmless each Owner and its Affiliates and their respective directors, officers, shareholders, members, partners, employees and agents from and against:

- (i) Third Party Claims arising from the Construction Manager's negligent act or omission, gross negligence, intentional misconduct or willful misconduct in connection with the performance of or failure to perform the Services under this Agreement; **provided**, that the liability of the Construction Manager to defend, indemnify and hold harmless for a Third Party Claim arising from the Construction Manager's negligent act or omission (but not gross negligence, intentional misconduct or willful misconduct) will not exceed the amount of proceeds recovered from Wisconsin Project Insurance with respect to such Third Party Claim; and
- (ii) Third Party Environmental Claims, except (a) claims described in **clause (ii)** of the definition of Third Party Environmental Claim other than to the extent exacerbated by the gross negligence, intentional misconduct or willful misconduct of the Construction Manager and (b) claims subject to **Section 13.2**, unless arising from the Construction Manager's negligent act or omission, gross negligence, intentional misconduct or willful misconduct, arising out of, or in connection with, the performance of or failure to perform the Services under this Agreement. The Construction Manager's liability to defend, indemnify and hold harmless for a Third Party Environmental Claim arising from its negligent act or omission (but not gross negligence, intentional misconduct or willful misconduct) will not exceed the amount of proceeds recovered from Wisconsin Project Insurance with respect to such Third Party Environmental Claim.

- 13.1.3 **Contributory Negligence.** With respect to Third Party Claims and Third Party Environmental Claims alleging a negligent act or omission or gross negligence (but not intentional misconduct or willful misconduct) by the Indemnifying Person under **Section 13.1.1** or **13.1.2**, such Indemnifying Person will not be responsible for that portion of any award as to which it is determined (whether in the Proceeding brought by the Third Party or in any subsequent Proceeding commenced by a Person to determine the allocation of liability) that another Person was negligent or grossly negligent to the extent of the specific percentage of negligence or gross negligence allocated pursuant to a judgment rendered in the Proceeding to such other Person; **provided, however**, the foregoing will not relieve the Indemnifying Person of its obligation to defend the Indemnified Person(s) in any such Third Party Claim in accordance with **Section 13.1.1** or **13.1.2**, as applicable.
- 13.1.4 **Capacity of Persons.** The provisions in this **Article 13** apply to a party solely in its specified capacity and not to such party acting in any other capacity.
- 13.1.5 **Conduct of Claims.** Any Person or its officers, directors, employees or agents entitled to indemnification under this Agreement for any Third Party Claim or Third Party Environmental Claim (“**Indemnified Person(s)**”) shall, promptly after the receipt of notice of any legal action or claim against such Indemnified Person in respect of which indemnification may be sought pursuant to **Article 13**, notify the Person from whom it seeks indemnity (“**Indemnifying Person(s)**”) of such Third Party Claim or Third Party Environmental Claim. The Indemnifying Person(s) is not obligated to indemnify the Indemnified Person(s) with respect to any such claim if the Indemnified Person(s): (i) fails to notify the Indemnifying Person(s) thereof in accordance with the provisions of this **Section 13.1.5** in sufficient time to permit the Indemnifying Person(s) timely to defend against such matter and to make a timely response thereto, including any responsive motion or answer to a complaint, petition, notice or other legal, equitable or administrative process relating to the action or claim and (ii) such failure causes material prejudice to the defense of, or otherwise damages, the Indemnifying Person(s). If a Third Party Claim or a Third Party Environmental Claim is made or brought against the Indemnified Person(s), the Indemnifying Person(s) may, or if so requested by the Indemnified Person(s) shall, assume the defense thereof with counsel of its selection reasonably acceptable to the Indemnified Person(s). In such circumstances, the Indemnified Person(s) shall: (a) at no cost or expense to the Indemnified Person(s), cooperate with the Indemnifying Person(s) and provide the Indemnifying Person(s) with such information and assistance as the Indemnifying Person(s) reasonably requests in connection with such claim and (b) at its own expense, have the right to participate and be represented by counsel of its own choice in such claim. If the Indemnifying Person(s) assumes the defense of such claim (1) the Indemnifying Person(s) will not be liable for any settlement thereof that is made without its consent and (2) the Indemnifying Person(s) shall control any settlement of such claim; **provided, however**, that the Indemnifying Person(s) shall not conclude any settlement that requires any action or forbearance from action or payment (unless paid in full by the Indemnifying

Person(s)) or admission by the Indemnified Person(s) or any of its Affiliates without the prior approval of the Indemnified Person(s). The obligations of an Indemnifying Person(s) will not extend to any loss, damage or expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the taking, after the receipt of notice of such claim against the Indemnified Person(s), by the Indemnified Person(s) of any action (unless required by Applicable Law or applicable legal process) that materially prejudices the successful defense of the claim, without the prior written consent of the Indemnifying Person(s) (such consent not to be required in a case where the Indemnifying Person(s) has not assumed the defense of the claim). The Indemnified Person(s) agrees to afford the Indemnifying Person(s) or its counsel the opportunity to be present at, and to participate in, conferences with all Persons, including Governmental Bodies, asserting any such claim against the Indemnified Person(s) covered by the indemnity contained in **Section 13.1.1** or **13.1.2**, as applicable, or conferences with representatives of or counsel for such Person(s).

## 13.2 Environmental Indemnity.

- 13.2.1 **Limitation of Construction Manager Indemnity.** Except as otherwise provided in **Section 13.1.2(ii)**, **Section 13.1.2** is inapplicable to Third Party Claims and Third Party Environmental Claims arising with respect to any Associated Owner Asset.
- 13.2.2 **Existing Infrastructure Indemnity.** To the maximum extent permitted by Applicable Law, each Associated Owner Asset Owner hereby waives any claim for liability against and shall defend, indemnify and hold harmless the Construction Manager and its Affiliates and their respective directors, officers, shareholders, members, partners, employees and agents, from and against: (i) Third Party Claims or (ii) Third Party Environmental Claims that result from any spill, discharge, release or other contamination from Hazardous Substances on real property (a) underlying such Discretely Owned Substations Owner's Discretely Owned Existing Substation; (b) underlying such Underbuild Owner's Existing Transmission Lines; (c) underlying such Co-located Line Owner's Existing Transmission Lines; (d) underlying such Relocated Project TL Owner's Existing Transmission Lines, (e) underlying such Relocated Project DL Owner's Existing Distribution Lines or (f) on which the applicable Remote Credited Owner USI is located, in each case, that arises on real property interests that are not defined in **clause (i)** of the definition of Wisconsin Project Real Property, except to the extent caused by the negligent act or omission, gross negligence, intentional misconduct or willful misconduct of the Construction Manager.
- 13.2.3 **Additional Indemnity.** To the maximum extent permitted by Applicable Law, each Self-Performing Owner hereby waives any claim for liability against and shall defend, indemnify and hold harmless the Construction Manager and its Affiliates and their respective directors, officers, shareholders, members, partners, employees and agents, from and against Third Party Claims or Third Party

Environmental Claims that arise out of or result from any spill, discharge, release or other contamination from Hazardous Substances, in each case that arise (i) during the construction or Commissioning of any Discretely Owned Substation Asset or (ii) during the performance of any Relocated TL Project, any Relocated DL Project or any Remote USI Project, in each case, except to the extent (a) caused by the negligent act or omission, gross negligence, intentional misconduct or willful misconduct of the Construction Manager or (b) arising from Hazardous Substances existing on the real property interests identified in **clause (i)** of the definition of Wisconsin Project Real Property associated with such Self-Performed Associated Asset at the time of its acquisition and as to which such Self-Performing Owner was not responsible.

- 13.3 Insurer Obligations.** The provisions of this **Article 13** and **Article 16** are not to be construed so as to relieve any insurer of its obligation to pay any insurance claim in accordance with insurance policies obtained in respect of the Services or for the Construction Work.
- 13.4 Indemnification Costs.** Damages incurred in connection with Third Party Claims and Third Party Environmental Claims constitute Wisconsin CM Costs except to the extent the Construction Manager is obligated to indemnify the Owners therefor pursuant to this **Article 13**.

## ARTICLE 14

### CONFIDENTIALITY

- 14.1 Confidentiality.** Each party to this Agreement agrees to comply with the provisions of **Schedule 1** (Generally Applicable Provisions), including **Article 4 (Confidentiality)** thereof.

## ARTICLE 15

### TERM AND TERMINATION OF AGREEMENT

**15.1 Term of Agreement.**

15.1.1 **Effective Time.** This Agreement will become effective and be in full force and effect as of the Effective Time.

15.1.2 **Term.** Unless earlier terminated pursuant to the terms of **Section 15.2**, this Agreement will remain in full force and effect until Final Completion (the “**Term**”).

**15.2 Termination.**

15.2.1 **Rights of Termination.** Prior to the expiration of the Term, this Agreement may be terminated only as follows:

- 15.2.1.1 Voluntary Termination of this Agreement.
- 15.2.1.1.1 By Agreement. This Agreement may be terminated at any time for any reason or no reason upon the vote of the Management Committee to terminate this Agreement with the written concurrence of the Construction Manager.
- 15.2.1.1.2 Zero Asset Ownership Percentage. If the Asset Ownership Percentage of the Owner that is the Construction Manager becomes zero (without regard to any Residual Interest), either the Management Committee or the Construction Manager may terminate this Agreement on sixty (60) days' prior notice. Upon the delivery and receipt of such notice, the parties agree to actively and cooperatively work together to transition the performance of the Services to the Person designated by the Management Committee. The Construction Manager further agrees that if the transition requires additional Services to be performed beyond such sixty (60) day period, it shall continue to perform such Services for a reasonable period of time. The costs incurred to effect any such transition Services constitute Wisconsin CM Costs.
- 15.2.1.2 Termination by Owners For Convenience. The Management Committee will have, at any time during the Term, the right to terminate this Agreement without Cause, upon not less than ninety (90) days' notice to the Construction Manager if: (i) the Management Committee votes to terminate or suspend the Wisconsin Project for more than one hundred eighty (180) days as provided in **Section 9.9**; (ii) the Management Committee votes to adopt a Windup Plan (as defined in **Section 19.3.1** of the **Wisconsin Project Participation Agreement**); or (iii) the Wisconsin Project Participation Agreement terminates.
- 15.2.1.3 Termination of Agreement by Owners for Cause. Subject to the Construction Manager's opportunity to cure (if applicable) as provided in **Section 15.2.1.4**, the Management Committee may terminate this Agreement for one or more of the following reasons ("**Cause**") upon not less than three (3) Business Days' prior written notice to the Construction Manager, if the Construction Manager has:

- (i) committed an act of dishonesty or fraud involving the Construction Work or in connection with performance of the Services under this Agreement;
- (ii) failed to follow any material policy or directive of the Management Committee of which the Construction Manager had knowledge or of which the Construction Manager should have had knowledge;
- (iii) intentionally abandoned or suspended performance of the Services for at least fourteen (14) consecutive days (other than as contemplated by the Construction Work Schedule) resulting in a suspension in the prosecution of Construction Work for any reason other than by directive of the Management Committee, Force Majeure or as otherwise permitted by this Agreement;
- (iv) assigned its rights or obligations as the Construction Manager under this Agreement or any part thereof to any Person without the prior written consent of the Management Committee, or the interest of the Construction Manager in this Agreement passes to any Person otherwise than as herein permitted (**provided**, that the use of CM Subcontractors as permitted under this Agreement will not be deemed to constitute such transfer);
- (v) failed or refused to perform any obligation under the Agreement, which failure or refusal results in a material adverse effect on the Construction Work, other aspects of the Wisconsin Project or any of the Owners;
- (vi) failed or refused to comply with any Applicable Law, which failure or refusal results in a material adverse effect on the Construction Work, other aspects of the Wisconsin Project or any of the Owners;
- (vii) breached a Major Contract as a result of intentional misconduct or willful misconduct, the consequences of which results in the termination of such Major Contract, material liability, or the acceleration of the Owners' obligations thereunder;
- (viii) experienced an Insolvency Event; or
- (ix) committed a breach of fiduciary duty when acting as an agent hereunder.

15.2.1.4 Construction Manager Opportunity to Cure. Notwithstanding anything in this Agreement to the contrary, the events described in **clauses (ii) through (v) and (ix) of Section 15.2.1.3** will not constitute Cause unless and until the Construction Manager has failed to cure such default within thirty (30) days after delivery of notice from the Management Committee asserting one or more such events have occurred, or, in the case of a curable default that cannot be cured within thirty (30) days, has failed to initiate, within such thirty (30) days, actions reasonably likely to cure such default and to diligently pursue such cure to completion within ninety (90) days after notice to the Construction Manager concerning such default.

15.2.1.5 Termination of this Agreement by the Construction Manager for Good Reason. The Construction Manager may terminate this Agreement for Good Reason upon not less than thirty (30) days' prior written notice to the Management Committee. "**Good Reason**" means:

- (i) failure of the Owners to make the payments required hereunder and the Owners' failure to cure such default within fifteen (15) days of the date of a notice by the Construction Manager to each Owner, the Chair and Vice Chair demanding cure;
- (ii) except as provided in **clause (iii)** below, suspension of all or nearly all Services or Construction Work by the Management Committee for ninety (90) consecutive days through no act or fault of the Construction Manager or its CM Subcontractors;
- (iii) suspension of all or nearly all Construction Work by Order or Emergency for one hundred eighty (180) days through no act or fault of the Construction Manager; or
- (iv) failure or refusal of an Owner or the Management Committee, as applicable, to perform any other obligation under this Agreement which failure or refusal results in a material adverse effect on the Construction Work, the Services or the Construction Manager; **provided, however,** such failure or refusal will not constitute Good Reason unless and until such Owner or the Management Committee, as applicable, has failed to cure such default within thirty (30) days after delivery of a notice from the Construction Manager, or, in the case of a curable default which cannot be cured with thirty (30) days, has failed to initiate, within such thirty (30) days, actions reasonably

likely to cure such default and to diligently pursue such cure to completion within ninety (90) days after such notice concerning such default.

15.2.2 **Construction Manager Suspension Right.** In addition to the termination rights set forth in **Section 15.2.1**, if: (i) the Owners fail to: (a) pay amounts due by the Owners hereunder as and when due; (b) maintain the insurance required to be maintained by the Owners hereunder; or (c) perform any of its/their other obligations hereunder, such that continued performance of the Services by the Construction Manager hereunder becomes commercially unreasonable, would violate Applicable Law or would subject the Construction Manager to unreasonable liability; (ii) the Construction Manager receives any directive from the Management Committee to continue Construction Work when such work is not authorized hereunder or will exceed the Wisconsin Maximum CM Cost Amount; (iii) the Management Committee materially expands the Scope of Work and/or the Services required in support thereof (without offsetting reductions) without an adjustment of the Wisconsin Project Budget and the Wisconsin Maximum CM Cost Amount, as required under this Agreement, and corresponding verification of the availability from each Owner (other than Owners that may be excused from funding pursuant to the terms of the Wisconsin Project Participation Agreement) individually of its share of any necessary increase in funding requirements; or (v) the Construction Manager is subject to unreasonable interference by the Management Committee by the issuance of directives and guidelines to the Construction Manager, which render infeasible the ability of the Construction Manager to properly perform its duties and obligations hereunder, the Construction Manager will have the right to suspend the performance of the Services hereunder until such failure has been remedied. The Construction Manager shall provide notice to the Management Committee of its election to suspend the Services, setting forth the reason(s) for such suspension and will not be liable or responsible to the Owners for any delays caused by suspending the Services in accordance with this **Section 15.2.2**.

15.2.3 **Effect of Termination.**

15.2.3.1 **Duties Upon Termination.** If this Agreement is terminated under **Section 15.2.1**, the Construction Manager, subject to the contrary provisions of an Order, shall:

- (i) promptly and cooperatively assist in the transition process to the Person designated by the Management Committee to undertake the performance of the Construction Manager's duties hereunder, including the transfer as the Management Committee may direct of all uncommitted funds held by the Construction Manager under this Agreement, security instruments provided by Contractors and informational documents possessed or under the control of the Construction Manager, including Records, contracts,

reports, studies, business plans, budgets and other financial accounting records, Wisconsin Project goods and Equipment Materials, Consumables or Construction Aids, and all other confidential, proprietary or other records with respect to the Services and Construction Work performed or to be performed by the Construction Manager, as directed by the Management Committee or such Person; and

- (ii) promptly complete its other wind-up duties and responsibilities hereunder, including the timely compilation and transmittal of reports and timely submittal of billings to each Owner or its designee, the Chair and Vice Chair.

15.2.3.2 Property Rights. Upon expiration of the Term or the earlier termination of this Agreement, the Construction Manager shall provide to each Owner a copy of all studies, reports, contracts, drawings, specifications and other similar data and other similar information constituting Construction Work that is in the possession or under the control of the Construction Manager. All such information and instruments constitute the Property of the Owners.

15.2.3.3 Wind-Up and Cooperation Following Termination as a Result of a Project Termination Decision. Upon termination of this Agreement, the Owners shall promptly and cooperatively assist the Construction Manager, at the request of the Construction Manager, with the process of winding up the Services and the Construction Work, including notification of appropriate Governmental Bodies and Contractors, termination of outstanding Wisconsin Construction Agreements and other engagements, and payment of all remaining outstanding obligations and liabilities associated with the Services or the Construction Work or otherwise arising under this Agreement or the activities arising hereunder. The Owners and the Construction Manager shall use commercially reasonable efforts to cooperate and complete the wind-up process as expeditiously as possible.

15.2.3.4 Third Party Costs and Expenses of Wind-Up. The Management Committee shall advise the Construction Manager of the action to be taken, if any, with respect to Wisconsin Construction Agreements and Real Property Agreements in connection with any termination of this Agreement. Costs and expenses incurred in connection therewith will be deemed Wisconsin CM Costs that are subject to the Application for Deposit process and the funding and payment requirements under **Article 6**.

15.2.3.5 Termination Payment. In the event of a termination of this Agreement pursuant to **Sections 15.2.1.1, 15.2.1.2 or 15.2.1.5**, the Construction Manager will be entitled, in addition to all other amounts due hereunder (including under **Section 6.1**) as of the date of termination of the Construction Manager's Services hereunder, and regardless of the reason for termination, to a termination payment from each Owner severally, up to its Asset Ownership Percentage of all costs and expenses reasonably incurred by the Construction Manager as a direct result of such termination for: (i) all relocation and severance costs incurred with respect to the Construction Manager's employees that the Construction Manager is contractually or legally obligated to pay such employees, or that are incurred with the prior written consent of the Owners in accordance with established personnel policies of the Construction Manager and (ii) the costs reasonably incurred by the Construction Manager to continue as Construction Manager through the period of the Construction Manager's Services hereunder, including the costs to demobilize its operations with respect to the Services.

## ARTICLE 16

### LIMITATIONS OF LIABILITY

**16.1 Limitation on Consequential Damages.** No party will be liable to any other party under this Agreement for any special, incidental, consequential, indirect, exemplary, treble, or punitive Damages (including loss of revenue, loss of profits, diminution in value, cost of capital, loss of goodwill or increased operating costs) or any other penalty; **provided, however**, the foregoing exclusion will not apply to liability to indemnify for Damages arising from any Third Party Claim or Third Party Environmental Claim pursuant to **Section 13.1**.

**16.2 Construction Manager Limits of Liability.**

16.2.1 Cap Upon Damages to Owners.

### PRIVILEGED INFORMATION

**16.3 Liability Exclusions.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE CONSTRUCTION MANAGER SHALL HAVE NO LIABILITY TO THE OWNERS FOR DAMAGES SUFFERED OR INCURRED BY THE OWNERS TO THE EXTENT RESULTING FROM:

- (i) the Construction Manager's reliance upon, or compliance with, any agreement, waiver, consent, approval, instruction, direction or communication given to the Construction Manager by the Management Committee, the E&O Committee or all of the Owners, in writing, except to the extent caused by the negligent act or omission (but only to the extent of Wisconsin Project Insurance coverage therefor), gross negligence, intentional misconduct or willful misconduct of the Construction Manager;
- (ii) the failure of any party (other than the Construction Manager) to comply with the provisions of any Wisconsin Project Agreement;
- (iii) the absence, lapse or voidance of any required approval of a Governmental Body or any warranty, other than any such absence, lapse or voidance resulting from the gross negligence, intentional misconduct or willful misconduct of the Construction Manager; or
- (iv) a design or construction defect in the Facilities or any component incorporated therein other than a design or construction defect resulting from the negligent act or omission (but only to the extent of Wisconsin Project Insurance coverage therefor), gross negligence, intentional misconduct or willful misconduct of the Construction Manager.

16.3.2 **Limited Recourse.** The obligations of a party to this Agreement are obligations of that party only, and no recourse will be available against any director, officer, shareholder, member, partner, employee, or agent of that party or of its Affiliates in connection therewith.

## ARTICLE 17

### MISCELLANEOUS PROVISIONS

**17.1 Survival.** Schedule 1, Sections 5.2, 6.2.2, 6.5, 6.6, 6.7, 6.11, 6.12, 6.13, 7.19, 7.21, 8.4, 9.1, 9.11, 11.1.1, 11.5 and 15.2.3; Articles 10 (but only for purposes of asserting a claim for breach of any of the representations and warranties contained therein that arose on or prior to the date of termination of this Agreement), 12, 13, 14, 15, 16 and 17; Appendices D, I and L; and all other sections providing for indemnification or limitation or protection against liability of any party will survive the termination, cancellation or expiration of this Agreement.

- 17.2 Forward Contracts; Single Agreement.** The Owners and the Construction Manager acknowledge and agree that this Agreement and the other Wisconsin Project Agreements are “forward contracts” and that the Owners are “forward contract merchants,” as those terms are defined in the United States Bankruptcy Code. The Owners and the Construction Manager further acknowledge and agree that this Agreement and the other Wisconsin Project Agreements form a single, integrated agreement, and this Agreement and the other Wisconsin Project Agreements are entered into in reliance on the fact that this Agreement and the other Wisconsin Project Agreements collectively form a single agreement among the Owners.
- 17.3 Force Majeure.** No party (in any capacity) will be liable hereunder to the extent that its performance of an obligation hereunder is delayed or prevented by an event of Force Majeure. Such party shall use its commercially reasonable efforts to overcome the limitations imposed by the occurrence of such event of Force Majeure and to mitigate the consequences of its inability to perform on the other parties.

[SIGNATURE PAGE FOLLOWS]

PUBLIC DOCUMENT  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
AND TRADE SECRET DATA EXCISED

IN WITNESS WHEREOF, the Owners and the Construction Manager have caused this Agreement to be executed as of the date above recited.

**OWNERS, IN THEIR RESPECTIVE CAPACITIES AS OWNERS AND IN EACH OTHER CAPACITY IN WHICH THEY HAVE AGREED TO BE BOUND UNDER THIS AGREEMENT:**

**DAIRYLAND POWER COOPERATIVE**

BY Chuck Collins  
ITS Vice President, Power Delivery

**CONSTRUCTION MANAGER:**  
**NORTHERN STATES POWER, a Minnesota corporation**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

**WPPI ENERGY**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

**NORTHERN STATES POWER COMPANY, a Wisconsin corporation**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

PUBLIC DOCUMENT  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
AND TRADE SECRET DATA EXCISED

IN WITNESS WHEREOF, the Owners and the Construction Manager have caused this Agreement to be executed as of the date above recited.

**OWNERS, IN THEIR RESPECTIVE  
CAPACITIES AS OWNERS AND IN  
EACH OTHER CAPACITY IN WHICH  
THEY HAVE AGREED TO BE BOUND  
UNDER THIS AGREEMENT:**

**DAIRYLAND POWER COOPERATIVE**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

**WPPI ENERGY**

BY *[Signature]*  
ITS President/CEO

**NORTHERN STATES POWER  
COMPANY, a Wisconsin corporation**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

**CONSTRUCTION MANAGER:**

**NORTHERN STATES POWER, a  
Minnesota corporation**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

PUBLIC DOCUMENT  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
AND TRADE SECRET DATA EXCISED

IN WITNESS WHEREOF, the Owners and the Construction Manager have caused this Agreement to be executed as of the date above recited.

**OWNERS, IN THEIR RESPECTIVE  
CAPACITIES AS OWNERS AND IN  
EACH OTHER CAPACITY IN WHICH  
THEY HAVE AGREED TO BE BOUND  
UNDER THIS AGREEMENT:**

**DAIRYLAND POWER COOPERATIVE**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

**WPPI ENERGY**

BY \_\_\_\_\_  
ITS \_\_\_\_\_

**NORTHERN STATES POWER  
COMPANY, a Wisconsin corporation**

BY *[Signature]*  
ITS Sr. Vice President

**CONSTRUCTION MANAGER:**

**NORTHERN STATES POWER, a  
Minnesota corporation**

BY *[Signature]*  
ITS Sr. Vice President

**SCHEDULE 1  
TO  
WISCONSIN PROJECT PARTICIPATION AGREEMENT, WISCONSIN  
CONSTRUCTION MANAGEMENT AGREEMENT AND WISCONSIN OPERATION  
AND MAINTENANCE AGREEMENT**

**GENERALLY APPLICABLE PROVISIONS**

**ARTICLE 1  
DEFINITIONS**

The following terms, whether in the singular or in the plural, when used in this **Schedule 1** or in notices given under the Wisconsin Project Participation Agreement, Wisconsin Construction Management Agreement, Wisconsin Operation and Maintenance Agreement or any Wisconsin Project Agreement to the extent any provisions of this **Schedule 1** are expressly incorporated therein by reference (individually, an “**Applicable Project Agreement**” and collectively, the “**Applicable Project Agreements**”) and initially capitalized, have the meanings specified below. All other initially capitalized terms used in this **Schedule 1** have the meanings specified in the Wisconsin Project Participation Agreement, and if not specified therein, then in the Wisconsin Construction Management Agreement, and if not specified therein, then in the Wisconsin Operation and Maintenance Agreement. All references in this **Schedule 1** to an Owner mean such Owner in any of its capacities under an Applicable Project Agreement, unless expressly stated otherwise in this **Schedule 1**.

“**Applicable Project Agreement(s)**” has the meaning given in the preamble to this **Schedule 1**.

“**Arbitration Procedures**” has the meaning given in **Section 3.3** of this **Schedule 1**.

“**Arbitrator**” has the meaning given in **Section 3.4.1** of this **Schedule 1**.

“**CEII**” has the meaning given in **Section 4.6.2** of this **Schedule 1**.

“**Claim Subject to Mandatory Arbitration**” has the meaning given in **Section 3.3.1** of this **Schedule 1**.

“**Complying Party**” has the meaning given in **Section 3.2.5** of this **Schedule 1**.

“**Confidential Information**” has the meaning given in **Section 4.1** of this **Schedule 1**.

“**Dispute**” has the meaning given in **Section 3.1** of this **Schedule 1**.

“**Dispute Notice**” has the meaning given in **Section 3.2.1** of this **Schedule 1**.

“**Disputing Parties**” has the meaning given in **Section 3.2.1** of this **Schedule 1**.

“**FERC Standards of Conduct**” has the meaning given in **Section 4.6.1** of this **Schedule 1**.

“**Initiating Party**” has the meaning given in **Section 3.2.1** of this **Schedule 1**.

“**Owner Confidential Information**” has the meaning given in **Section 4.1** of this **Schedule 1**.

“**Project Confidential Information**” has the meaning given in **Section 4.1** of this **Schedule 1**.

“**Responding Parties**” has the meaning given in **Section 3.2.1** of this **Schedule 1**.

“**Transmission Information**” has the meaning given in **Section 4.6.1** of this **Schedule 1**.

## ARTICLE 2 NOTICES

- 2.1** **Notices Generally.** All notices, requests or other communications required or permitted under any Applicable Project Agreement will be in writing and will be deemed “given”: (i) if delivered in person or by courier, upon receipt by the intended recipient or upon the date of delivery (as confirmed by, if delivered by courier, the records of such courier); (ii) if sent by facsimile transmission, when the sender receives confirmation from the sending facsimile machine that such facsimile transmission was transmitted to the facsimile number of the addressee; (iii) if mailed, upon the date of delivery as shown by the return receipt therefor; or (iv) if delivered by a nationally recognized mail delivery service, upon the date of delivery. Notices must be sent to the addresses of the Persons set forth on **Exhibit 1** attached to this **Schedule 1**. Notwithstanding the foregoing, notices of default must be delivered in accordance with **clause (i)** and by any other means described in **clauses (ii)-(iv)** above.
- 2.2** **Informal Communications.** Informal communications of a routine nature may be given in such manner as the parties deem appropriate.
- 2.3** **Designation of Different Addresses and Persons.** A party may, at any time, by written notice to each other party, designate different or additional Persons or different addresses for giving of notices, demands or requests to it under an Applicable Project Agreement.

## ARTICLE 3 DISPUTE RESOLUTION

- 3.1** **Scope of Dispute Resolution Provisions.** Except for Excluded Matters or any dispute, claim or controversy arising under **Articles 14** or **15** of the **Wisconsin Project Participation Agreement**, the provisions of this **Section 3** will govern any dispute, claim or controversy arising out of, or relating to, an Applicable Project Agreement (a “**Dispute**”) between or among (i) the Owners under any Applicable Project Agreement; (ii) the Owners acting through the Management Committee and the Construction Manager under the Wisconsin Construction Management Agreement; or (iii) the Owners acting through the Management Committee and a Responsible Entity under the Wisconsin Operation and Maintenance Agreement. The provisions of **Section 3.2** (but

not the other provisions of this **Article 3**) will also govern any Dispute arising under **Articles 14** or **15** of the **Wisconsin Project Participation Agreement**.

**3.2 Required Steps Before Initiating Arbitration or Other Remedies.** Except for Excluded Matters or Disputes arising under **Sections 4.1.2.4** or **4.2.2.4** of the **Wisconsin Project Participation Agreement**, no Owner may seek any remedy in connection with a Dispute without first complying with the provisions of this **Section 3.2**; **provided, however**, that an Owner may, at any time and without first complying with the provisions of this **Section 3.2**, seek appropriate equitable relief, including injunctive relief and specific performance; **provided, further, however**, that neither the Owners nor the Management Committee must first comply with the provisions of this **Section 3.2** prior to exercising or implementing the remedies set forth in **Articles 14** or **15** of the **Wisconsin Project Participation Agreement** for a Default. Any Claim Subject to Mandatory Arbitration will be subject to the additional terms set forth in **Section 3.3** of this **Schedule 1**.

**3.2.1 Notice of Dispute.** Any party wishing to assert a claim or pursue any other remedy in connection with a Dispute (the “**Initiating Party**”) will provide written notice (a “**Dispute Notice**”), which must: (i) be dispatched at the same time and in the same manner to all other parties; (ii) describe in reasonable detail the nature of the Dispute; (iii) identify all parties that are indispensable to the resolution of the Dispute (the “**Responding Parties**”); (iv) specify the resolution sought by the Initiating Party; (v) provide the name, title and contact information of the Senior Executive appointed by the Initiating Party; and (vi) indicate the proposed place, date and time (within the limits set forth in **Section 3.2.3** of this **Schedule 1**) for Senior Executives of the Initiating Party and Responding Parties (together, the “**Disputing Parties**”) to conduct an initial meeting to discuss and attempt to resolve the Dispute.

**3.2.2 Appointment of Senior Executives.** Within three (3) Business Days following receipt of a Dispute Notice, each Responding Party will appoint and provide written notice to the other Disputing Parties of a Senior Executive assigned to participate in efforts to settle the Dispute.

**3.2.3 Initial Meeting of Senior Executives.** Within five (5) Business Days following receipt of a Dispute Notice, the Senior Executives will meet in accordance with the place within \_\_\_\_\_ or \_\_\_\_\_ County, Wisconsin, date and time specified in the Dispute Notice, unless all Disputing Parties agree to modify one or more of the place, date and time for the initial meeting. Any Senior Executive who is unable to attend the initial meeting in person will be entitled to participate by telephone conference or any other means by which all Senior Executives can simultaneously hear one another. The purpose of the initial meeting will be for the Senior Executives to attempt in good faith to reach a mutually acceptable resolution of the Dispute.

**3.2.4 Additional Meeting of Senior Executives.** If the Disputing Parties are unable to resolve the Dispute at the initial meeting of Senior Executives held in accordance

with **Section 3.2.3** of this **Schedule 1**, the Senior Executives will hold at least one (1) additional meeting, which all Senior Executives must attend in person during the ten (10) Business Days following the initial meeting, to continue to attempt in good faith to reach a mutually acceptable resolution of the Dispute (unless the Disputing Parties agree otherwise). If the Disputing Parties have not resolved the Dispute by the end of the additional meeting held in accordance with this **Section 3.2.4**, then if the Dispute is a Claim Subject to Mandatory Arbitration or if all Disputing Parties agree to resolve the Dispute through binding arbitration, the Disputing Parties will proceed to binding arbitration in accordance with **Section 3.3** of this **Schedule 1**. If the Dispute is not a Claim Subject to Mandatory Arbitration or there is no agreement to resolve the Dispute through binding arbitration, all Disputing Parties will retain all rights and remedies available at law or in equity.

**3.2.5 Deemed Satisfaction of Obligations Under Section 3.2 of this Schedule 1.** If a party has made good faith efforts to comply with the requirements set forth in **Sections 3.2.1** through **3.2.4** of this **Schedule 1** (the “**Complying Party**”), but has been unable to do so because of another party’s failure or refusal to comply for a period of not less than fifteen (15) Business Days following delivery of a Dispute Notice, the obligations set forth in **Section 3.2** of this **Schedule 1** will be deemed satisfied for purposes of the Complying Party’s right to pursue other remedies or invoke the Arbitration Procedures set forth in **Section 3.3** of this **Schedule 1**, as applicable.

**3.2.6 Tolling of Statute of Limitations.** If an Initiating Party provides the Dispute Notice prior to the expiration of the statute of limitations applicable to the Dispute that is the subject of the Dispute Notice and otherwise complies with the requirements set forth in **Sections 3.2.1** through **3.2.4** of this **Schedule 1**, then the statute of limitations for such Dispute will be tolled by the number of days that have lapsed between the date of the Dispute Notice and (i) the last additional meeting of Senior Executives held in accordance with **Section 3.2.4** of this **Schedule 1** if the Senior Executives hold one or more additional meetings, (ii) the tenth (10th) Business Day following the initial meeting of Senior Executives held in accordance with **Section 3.2.3** of this **Schedule 1** if the Senior Executives do not hold an additional meeting, or (iii) the fifteenth (15th) Business Day following the Dispute Notice if the Senior Executives do not hold the initial meeting of Senior Executives in accordance with **Section 3.2.3** of this **Schedule 1** on or prior to such date.

**3.3 Arbitration Procedures.** The arbitration provisions set forth in this **Section 3.3** (the “**Arbitration Procedures**”) will be the sole and exclusive remedy for: (i) any Claim Subject to Mandatory Arbitration and (ii) any Dispute that all Disputing Parties agree in writing to submit to binding arbitration. Any provision of these Arbitration Procedures may be modified with respect to a specific arbitration by agreement of all of the Disputing Parties.

**3.3.1 Definition of Claim Subject to Mandatory Arbitration.** For purposes of each Applicable Project Agreement, the term “**Claim Subject to Mandatory Arbitration**” means a Dispute (i) for which the Initiating Party’s and all other Persons that have brought claims of the same subject matter, sole requested remedy is monetary relief of not more than One Million Dollars (\$1,000,000) in the aggregate or (ii) arising under **Section 4.1.2.4** or **4.2.2.4** of the **Wisconsin Project Participation Agreement**.

**3.4 Arbitration Rules.** Any Dispute subject to **Section 3.3** of this **Schedule 1** will be conclusively decided by binding arbitration pursuant to (i) the Commercial Arbitration Rules for the **Wisconsin Project Participation Agreement** (other than with respect to Disputes arising under **Section 4.1.2.4** or **4.2.2.4** thereof) and **Wisconsin Operation and Maintenance Agreement**, and (ii) the fast track procedures of the Construction Industry Arbitration Rules for the **Wisconsin Construction Management Agreement**, the **Wisconsin Project Participation Agreement** with respect to Disputes arising under **Section 4.1.2.4** or **4.2.2.4** thereof, in each case of the American Arbitration Association, except as modified and to the extent supplemented below.

**3.4.1 Preliminary Actions to Facilitate Expedited Arbitration Process; Meaning of “Arbitrator”.** Within ninety (90) days following the Effective Time of each Applicable Project Agreement, the parties to such Applicable Project Agreement will establish and memorialize in writing, for purposes of any Dispute submitted to arbitration in accordance with **Section 3.3** of this **Schedule 1**: (i) a special pool of arbitrators who are pre-qualified to serve on an expedited basis and who will agree to enter into a confidentiality agreement on terms substantially similar to the confidentiality provisions in **Article 4** of this **Schedule 1** and (ii) a process for expedited appointment of an arbitrator with party input. All references to the “**Arbitrator**” in **Section 3.3** of this **Schedule 1** will be deemed to mean the arbitrator or panel of arbitrators appointed pursuant to the foregoing provisions.

**3.4.2 Demand for Arbitration.** Demand for arbitration will be filed in writing with the parties against whom the claim is made or relief is sought and with the American Arbitration Association. A demand for arbitration must be made within ten (10) Business Days following the last meeting of Senior Executives held in accordance with **Section 3.2.4** of this **Schedule 1** (if the Dispute has not been settled and if the Dispute is subject to the provisions of **Section 3.2.4**), and in any case no later than the date when institution of legal or equitable Proceedings based on the underlying Dispute would be barred by the applicable statutes of limitations (as extended, if applicable, pursuant to **Section 3.2.6** of this **Schedule 1**).

**3.4.3 No Joinder.** No arbitration arising out of, or relating to, an Applicable Project Agreement will include, by consolidation, joinder, or in any manner, an additional Person without the written consent of the Disputing Parties, except that additional Person(s) may be joined without all Disputing Parties’ consent if: (i) the additional Person(s) have furnished services, labor or materials to the Wisconsin Project and (ii) the joinder of the additional Person(s) will not cause any remedy

sought in the arbitration to be other than monetary or the aggregate amount in dispute to be greater than the limit specified in **Section 3.3.1** of this **Schedule 1**. Further, nothing in these Arbitration Procedures will create any privity between the Disputing Parties or create or give rise to a duty owed by one Disputing Party to another that does not otherwise arise by operation of law or by the terms of the contract(s) between the Disputing Parties to which these Arbitration Procedures have been attached and made a part. Consent to arbitration involving an additional Person will not constitute consent to arbitrate any claim, dispute or other matter, or with a Person not named or described in the written consent, and will be subject to all of the terms and limitations set forth in these Arbitration Procedures, including the waiver and other provisions set forth in **3.4.9** of this **Schedule 1**.

- 3.4.4 Procedures.** The Arbitrator will establish reasonable procedures and requirements for the arbitration process; **provided, however**, unless all Disputing Parties agree otherwise, the procedures established by the Arbitrator will provide for: (i) a sixty (60) day time standard for case completion (measured from the date of the prehearing meeting convened under **Section 3.4.5** of this **Schedule 1**, or, if the prehearing meeting is waived, from the date of the demand notice delivered under **Section 3.4.2** of this **Schedule 1**); (ii) direct testimony to be submitted in writing, **provided** that the proponent thereof is made available for cross examination; (iii) the requirement of a hearing within thirty (30) calendar days following the Arbitrator's appointment; (iv) a single day hearing, if the Arbitrator deems it reasonable in the circumstances; and (v) a binding decision to be rendered in no more than fourteen (14) days after completion of the hearing.
- 3.4.5 Prehearing Meeting.** Unless all Disputing Parties agree otherwise, within five (5) days following appointment of the Arbitrator, the Arbitrator will convene a prehearing meeting, at which each Disputing Party will present a memorandum disclosing the factual basis of its claims and defenses and all legal issues raised. At the prehearing meeting, the Arbitrator will set a schedule for submissions and hearings consistent with the Arbitrator's powers as set forth in these Arbitration Procedures.
- 3.4.6 Discovery.** Subject to any reasonable time limitations and expedition procedures established by the Arbitrator to comply with **Section 3.4.5** of this **Schedule 1**, the Disputing Parties will be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration, and the parties may use all methods of discovery available under the Federal Rules of Civil Procedure and will be governed thereby.
- 3.4.7 Abuse of Discovery.** If the Arbitrator finds, after affording an opportunity to be heard, that a Disputing Party has abused the discovery process or has failed to act in good faith with regard to discovery or these Arbitration Rules, the Arbitrator will have, in addition to any other powers conferred by law or the Construction Industry Arbitration Rules of the American Arbitration Association, those powers

conferred upon trial courts by the Federal Rules of Civil Procedure, subject to the same conditions and limitations set forth therein.

**3.4.8 Rules of Evidence.** The Arbitrator will apply the Federal Rules of Evidence, but construe them liberally to allow for the admission of evidence that is helpful in resolving the Dispute. Rulings on the admission of evidence made by the Arbitrator at the hearing will be final, binding and not subject to any appeal.

**3.4.9 Authority of Arbitrator.** Unless the Disputing Parties agree otherwise, in deciding the substance of the Dispute brought before the Arbitrator, the Arbitrator will have the authority, power and right to award damages and provide for other remedies as are available at law or in equity, except that: (i) with respect to a Claim Subject to Mandatory Arbitration, the Arbitrator will have no authority to award monetary relief greater than that sought by the Initiating Party as stated in its Dispute Notice or to award non-monetary relief (except to the extent otherwise authorized under **Section 3.4.7** of this **Schedule 1**); (ii) the Arbitrator will not have the authority to grant temporary or permanent injunctive relief; (iii) the Arbitrator will have the authority only to interpret and apply the provisions of a Project Agreement; and (iv) in all cases the Arbitrator will have no authority to award Consequential Damages against any Owner under any circumstances other than in accordance with **Section 15.5.2.2** of the **Wisconsin Project Participation Agreement**. All Owners hereby waive their right, if any, to recover such excluded damages in connection with any Dispute sought to be resolved under these Arbitration Procedures.

**3.4.10 Award Final and Binding; No Precedential Effect.** At the time of the award, the Arbitrator will prepare and provide to the Disputing Parties findings of fact and conclusions of law supporting the award. The award of the Arbitrator, as well as the findings of fact and conclusions of law, will be final, binding and not subject to any appeal, but will have no precedential effect with respect to any matter or Proceeding other than the arbitration to which they relate; **provided, however**, that any issue or claim that was or could have been raised in the arbitration by a party to the Applicable Project Agreements that were the subject of the Dispute for which the Arbitrator has issued an award, shall be given preclusive effect and shall be deemed to be *res judicata* in any subsequent Proceeding.

**3.4.11 Costs and Expenses.** Except as otherwise decided by the Arbitrator under the provisions of **Section 3.4.7** of this **Schedule 1**, and as otherwise permitted by the terms of any Applicable Project Agreement, each Disputing Party will bear its own costs and expenses of the arbitration, including attorneys and expert witness fees, and will equally share the expense of the Arbitrator and the administrative expenses of the arbitration.

**3.5 Enforcement.** These Arbitration Procedures, together with a final award of the Arbitrator, will be enforceable in any state or federal court of competent jurisdiction located in Dane County in the State of Wisconsin. The enforcement of the Owners'

agreement to arbitrate and all procedural aspects thereof, including the construction and interpretation of these Arbitration Procedures, the scope of issues subject to arbitration, allegations of waiver, delay or defenses as to arbitrability, and the rules (except as otherwise provided in these Arbitration Procedures) governing the conduct of the arbitration will be governed by and construed pursuant to the United States Arbitration Act.

- 3.6 Confidentiality of Proceedings.** All Proceedings related to resolution of a Dispute pursuant to these Arbitration Procedures, including all documents prepared or obtained during discovery or produced during a hearing or meeting (other than documents already in the public domain) and all testimony or recordings of testimony, including depositions, affidavits and expert reports exchanged by the Disputing Parties or produced during a hearing or meeting, will be deemed to be Confidential Information. In addition to the enforcement powers set forth in **Section 3.5** of this **Schedule 1**, the courts described in **Section 3.5** of this **Schedule 1** will have jurisdiction to enter and enforce such protective orders and to grant and enforce such appropriate injunctive relief sought by a Disputing Party to maintain the confidentiality of the Proceedings and to protect the Disputing Parties from inappropriate disclosure. No bond or other security will be required in connection with such injunctive relief. The prevailing party in any such action will be entitled to all of its reasonable attorneys' fees and other costs and expenses associated with the enforcement of these confidentiality provisions.

## ARTICLE 4

### CONFIDENTIALITY PROVISIONS

- 4.1 Confidential Information.** Each Owner has a proprietary interest in unique, specific information about itself that is not directly germane to the Wisconsin Project which it furnishes to one or more of the other Owners under any Applicable Project Agreement or any other Wisconsin Project Agreement (other than the Joint Cooperation Agreement and the Transmission Capacity Exchange Agreement because the confidentiality provisions with respect thereto are set forth in Schedule 1 thereto), including information relating to its governance, financial condition, business operations or prospects and regulatory matters ("**Owner Confidential Information**"). Each Owner has a proprietary interest in information (i) relating to each Owner's participation in the Wisconsin Project or performance under any Applicable Project Agreement; (ii) relating to the Wisconsin Project that is developed by one or more of the Owners for the benefit of the Wisconsin Project or exchanged among the Owners; or (iii) that otherwise arises under any Applicable Project Agreement or any other Wisconsin Project Agreement (other than the Joint Cooperation Agreement and the Transmission Capacity Exchange Agreement because the confidentiality provisions with respect thereto are set forth in Schedule 1 thereto) ("**Project Confidential Information**" and collectively with Owner Confidential Information "**Confidential Information**"). Project Confidential Information does not include Owner Confidential Information. Except as otherwise provided in this **Article 4**, each Owner:

- (i) unless otherwise required by Applicable Law, shall keep in confidence and shall not disclose Owner Confidential Information, without the prior written consent of the Owner that originally disclosed such information; **provided, however**, if an Owner is compelled by a Governmental Body to disclose Owner Confidential Information, it must provide immediate notice of such requirement to the original disclosing Owner in order to allow such disclosing Owner to seek, before such Governmental Body, confidential treatment of such Owner Confidential Information; **provided, further**, the Owner that is being compelled to disclose such information shall not oppose the original disclosing Owner's efforts to obtain such confidential treatment;
- (ii) shall keep in confidence and shall not disclose any Project Confidential Information that in good faith is proprietary and which if written (including electronic information) is specifically marked as "confidential", or if oral, is identified by the declarant as "confidential," which declaration is followed by written notice confirming such declaration, without the prior written consent of the Management Committee;
- (iii) shall keep Confidential Information in confidence and shall not use Confidential Information for a purpose unrelated to this Project or the CapX 2020 Transmission Capacity Expansion Initiative;
- (iv) agrees to the disclosure by the other parties to an Applicable Project Agreement of Confidential Information to their respective consultants, representatives and to such other Persons as may be necessary for each Owner to perform its respective obligations under any Applicable Project Agreement, any other Wisconsin Project Agreement (other than the Joint Cooperation Agreement and the Transmission Capacity Exchange Agreement because the confidentiality provisions with respect thereto are set forth in Schedule 1 thereto), any Wisconsin Construction Agreement or any Real Property Agreement;
- (v) shall be responsible for requiring any Third Party (excluding officers, directors, employees and counsel of each Owner (and those of its Affiliates) who, in each case, will be informed of the requirement to comply with the terms of this **Section 4.1**) to whom it is permitted to disclose Confidential Information in accordance with this **Article 4** to enter into a confidentiality agreement prior to any disclosure of Confidential Information on reasonable terms and conditions that are similar to the terms of this **Article 4** or are otherwise customary for confidentiality agreements for similarly situated parties receiving confidential information comparable to the Confidential Information; and
- (vi) agrees that the obligations set forth in this **Article 4** shall survive the termination of any Applicable Project Agreement .

**4.2 Exclusions.** The provisions of this **Article 4** will not apply to information which the receiving party can demonstrate is:

- (i) information that, at the time of disclosure by the disclosing party, is publicly available, or information that later becomes publicly available through no act or omission of the receiving party or its representatives in violation of the terms hereof;
- (ii) information that was in the receiving party's possession prior to disclosure by the disclosing party (subject to **clause (iii)** hereof);
- (iii) information received by the receiving party from a Third Party that, to the best of the receiving party's knowledge, it was not under an obligation to maintain on a confidential basis;
- (iv) information that the receiving party either independently developed or had independently developed for it and was not obtained, in whole or in part, from the disclosing party; or
- (v) information that the disclosing party authorizes the receiving party to disclose.

#### **4.3 Permitted Disclosures.**

**4.3.1 Disclosures to Governmental Bodies.** If an Owner (or any Affiliate of such Person): (i) is required by Applicable Law, an arbitrator or a court to disclose Project Confidential Information or (ii) discloses any Project Confidential Information to any Governmental Body in the ordinary course of conducting its business, it shall use commercially reasonable efforts to secure confidential treatment for such Project Confidential Information unless such treatment is unavailable or not customary with such Governmental Body. If confidential treatment is unavailable or not customary with such Governmental Body, the disclosing party may make such disclosure and any requirement to obtain confidential treatment will not apply.

**4.3.2 Disclosures in Connection with Financing or Sales.** The parties agree to the disclosure of Project Confidential Information by an Owner for the purpose of obtaining financing or in connection with any sale or transfer of any of its Percentages. When permitted by Applicable Law or consistent with customary practice, the disclosing Owner shall use commercially reasonable efforts to enter into a confidentiality agreement with Persons who are to receive Project Confidential Information on reasonable terms and conditions that are similar to the terms of this **Article 4** or are otherwise customary for confidentiality agreements for similarly situated parties receiving confidential information comparable to the Project Confidential Information. To the extent a confidentiality agreement is not permitted by Applicable Law or is inconsistent with customary financing or sale or transfer practices, the disclosing Owner may make such disclosure and any requirement to obtain confidential treatment will not apply.

**4.4 Public Disclosure Laws.** Each Owner intends that nothing in an Applicable Project Agreement will: (i) cause Confidential Information that would otherwise have been

exempt from public access or inspection to become subject to public access or inspection under any Applicable Law regarding public access to information or (ii) make unavailable or waive any exception to or protection under Applicable Law that would otherwise enable any Owner to preserve the confidentiality of Confidential Information.

**4.5 Inadequate Remedy at Law.** Monetary damages alone would be inadequate to compensate a party for another party's breach of its obligations under this **Article 4**. Each party accordingly agrees that the original disclosing party will be entitled to specific performance and other equitable relief by way of an Order granting an injunction or otherwise if the receiving party breaches or threatens to breach its obligations under this **Article 4**, which specific performance or other equitable relief will be granted without bond or proof of Damages and in addition to any other remedies that the original disclosing party may have under Applicable Law, and the receiving party shall not plead in defense that there would be an adequate remedy at law.

**4.6 Additional Regulatory Requirements.**

**4.6.1 Compliance with FERC Standards of Conduct.** Each Owner shall not, directly or indirectly, reveal any non-public transmission function information (as defined in 18 C.F.R. §§ 358.3j, as such rules may be interpreted, amended, or replaced by FERC from time to time, and hereinafter referred to as "**Transmission Information**") in a manner that violates 18 C.F.R. §§ 358.6 and 358.7, as such rules may be interpreted, amended, or replaced by FERC from time to time (the "**FERC Standards of Conduct**"). To the extent applicable, a disclosure (inadvertent or otherwise) of Transmission Information by an Owner must be appropriately addressed by such Owner pursuant to 18 C.F.R. § 358.7 or any successor provision.

**4.6.2 Critical Energy Infrastructure.** Each Owner certifies for itself and its representatives who may be granted access to "critical energy infrastructure information" ("**CEII**") as defined in 18 C.F.R. § 388.113(c)(1) or any successor provision that: (i) it and each of its representatives are aware of the requirements of 18 C.F.R. Part 388 with regard to CEII and (ii) it has no reason to believe that it or its representatives would be restricted from access to CEII. To the extent applicable, a disclosure (inadvertent or otherwise) of CEII by an Owner must be appropriately addressed by such Owner pursuant to 18 C.F.R. § 358.7 or any successor provision.

**ARTICLE 5  
MISCELLANEOUS PROVISIONS**

**5.1 Headings.** The headings of the articles, sections and subsections of each Applicable Project Agreement are intended for the convenience of the Owners only and will in no way be held to explain, modify, construe, limit, amplify or aid in the interpretation of the provisions hereof. The terms "this Agreement," "hereof," "herein," "hereunder," "hereto," "hereby" and similar expressions refer to, as applicable, each Applicable Project Agreement as a whole and not to any particular article, section, subsection or

other portion thereof and include the appendices, schedules and exhibits thereto and any document, instrument or agreement executed and/or delivered pursuant thereto unless expressly so limited, and the terms “this Section” or “this Article” refer to the section or article in which such words occur.

- 5.2 Scope of Agreement.** Unless the context otherwise requires, all references in an Applicable Project Agreement or in any appendix, schedule, exhibit or instrument thereto, to the assets, property interests, operations, business, financial statements, employees, books and records, accounts receivable, accounts payable, contracts or other attributes thereunder will mean such items or attributes as they are used in, apply to, or relate to such Applicable Project Agreement.
- 5.3 Interpretation.** The Owners have participated jointly in the negotiation and drafting of each Applicable Project Agreement. If an ambiguity or question of intent or interpretation arises, each Applicable Project Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of such Applicable Project Agreement. The terms and phrases used in each Applicable Project Agreement, unless the context otherwise requires, are to be interpreted as follows: (i) the words “including,” “include” or “includes” mean including without limitation; (ii) reference to any agreement (including an Applicable Project Agreement), appendix, schedule, exhibit, instrument or coverage policy means as such is amended, modified or supplemented, including by Change Order, waiver or consent; (iii) reference to any Applicable Law or Applicable Energy Regulation means such Applicable Law or Applicable Energy Regulation as amended, modified, codified or reenacted, in whole or part, and in effect from time to time; (iv) reference to any Owner includes such Owner’s successors and assigns, to the extent that such successors and assigns are permitted by the applicable Applicable Project Agreement; (v) pronouns in masculine, feminine and neuter genders are to be construed to state and include any other gender; (vi) the words “will” and “shall” have the same meaning; and (vii) unless the context otherwise requires, all defined terms in this **Schedule 1** or in any Applicable Project Agreement include the singular and the plural.
- 5.4 Relationship of Owners; New Owners.** The covenants, obligations and liabilities of the parties to each Applicable Project Agreement are several, and not joint or collective, and nothing contained in any Applicable Project Agreement will ever be construed to create an association, joint venture, trust, partnership or other legal relationship, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the parties to an Applicable Project Agreement. The Owners agree that every Person that desires to acquire an interest in the Wisconsin Project will do so in accordance with the terms of the **Wisconsin Project Participation Agreement** and will become a signatory to all of the Wisconsin Project Agreements by executing the applicable Transfer Agreement. No member or customer of an Owner or customer of a member of an Owner will be deemed an Owner or party under an Applicable Project Agreement, unless such Person has signed a Joinder. Each Owner will be individually responsible for its own covenants, obligations and liabilities in each Applicable Project Agreement to which it is a party. No Owner will be under the control of, or will be deemed to control, any other Owner or

the Owners as a group. No Owner is the agent of, or has a right or power to bind, any other Owner without its express written consent, except to the extent Agency Authority has been granted to the Construction Manager.

- 5.5 No Rights or Benefits to Third Parties.** Except as otherwise specifically provided in an Applicable Project Agreement or the Joint Cooperation Agreement, the Owners do not intend to create rights in, or to grant remedies to, any Third Party as a beneficiary of any Applicable Project Agreement or to create any duty to, or standard of care on behalf of, any Third Party by any covenant, obligation or undertaking established in any Applicable Project Agreement. There are no incidental Third Party beneficiaries to any Applicable Project Agreement and, by way of clarification and not of limitation, no Governmental Body, customer or member of an Owner or customer of an Owner's member is an intended or incidental Third Party beneficiary thereof.
- 5.6 Binding Obligations.** Each Applicable Project Agreement is binding upon and inures to the benefit of the permitted successors and assigns, if any, of the Owners. Owners may assign their rights and obligations under an Applicable Project Agreement only in strict accordance with the provisions of the **Wisconsin Project Participation Agreement**.
- 5.7 Severability.** If any term, covenant or condition of an Applicable Project Agreement or the application of such term, covenant or condition is held invalid or unenforceable as to any Person or circumstance by any Governmental Body, all other terms, covenants or conditions of such Applicable Project Agreement and their application will not be affected thereby, but will remain in force and effect unless such a Governmental Body holds that the provisions are not separable from all other provisions of such Applicable Project Agreement. The Owners and each other party to an Applicable Project Agreement specifically consent to the "blue-penciling" of such Applicable Project Agreement by any Governmental Body to construe as valid and enforceable the terms and conditions of such Applicable Project Agreement, consistent with the intent of the parties thereto. Such Governmental Body will have the authority to reform and interpret the terms and conditions of an Applicable Project Agreement to find a valid and enforceable construction of such Applicable Project Agreement that is consistent with the intent of the parties thereto and hold all invalid and unenforceable provisions, if any, as separable from all other remaining provisions.
- 5.8 Amendment and Waiver.** No purported amendment of an Applicable Project Agreement will be effective unless in a writing specifically referring to such Applicable Project Agreement, which is executed and delivered by all of the parties to such Applicable Project Agreement. The terms, conditions, warranties, representations and covenants contained in an Applicable Project Agreement, including the documents, instruments and agreements executed and delivered by any of the parties thereto pursuant to such Applicable Project Agreement, may be waived only by a written instrument executed by all of the parties thereto waiving compliance. Any such waiver will only be effective in the specific instance and for the specific purpose for which it was given and will not be deemed a waiver of any other provision thereof or of the same breach or default upon any recurrence thereof. No failure on the part of any party to an Applicable Project Agreement, as applicable in the circumstances, to exercise, and no delay in

exercising, any right thereunder will operate as a waiver thereof nor will any single or partial exercise of any right thereunder preclude any other or further exercise thereof or the exercise of any other right.

- 5.9 Execution in Counterparts and Delivery of Electronic Signatures.** Each Applicable Project Agreement may be executed in any number of counterparts. All such counterparts will be deemed to be originals and will together constitute but one and the same instrument. Each Applicable Project Agreement will become effective upon its execution by the applicable parties thereto. The executed counterparts of an Applicable Project Agreement and any ancillary documents thereto, such as amendments, may be delivered by electronic means, such as email and/or facsimile, and the receiving party may rely on the receipt of such executed counterpart as if the original had been received.
- 5.10 Governing Law; Venue; Waiver of Jury Trial.** Each Applicable Project Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin (exclusive of conflicts of law provisions of any jurisdiction and the principles of comity). With respect to disputes that are not governed by the dispute resolution provisions in **Article 3** of this **Schedule 1** or **Article 17** of the **Wisconsin Project Participation Agreement** or if the dispute resolution provisions in **Article 3** of this **Schedule 1** or **Article 17** of the **Wisconsin Project Participation Agreement** are not enforceable for any reason, the parties to each Applicable Project Agreement agree and consent that any Proceeding seeking to enforce any provision of such Applicable Project Agreement will be instituted and adjudicated solely and exclusively in any state or federal court of competent jurisdiction located in Dane County in the State of Wisconsin. Each party to an Applicable Project Agreement agrees that each such court will have personal jurisdiction over it with respect to such Proceeding, and waives any objections it may have, and expressly consents, to such personal jurisdiction. EACH PARTY TO AN APPLICABLE PROJECT AGREEMENT WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY APPLICABLE PROJECT AGREEMENT.
- 5.11 Assignment.** No Owner may assign, sublet or otherwise Transfer its interest in any Wisconsin Project Agreement, except as provided in a **Wisconsin Project Agreement**.
- 5.12 Payment in Business Days.** Except with respect to an Applicable Project Agreement that specifically provides otherwise, if any payment required to be made under an Applicable Project Agreement falls due on a day that is not a Business Day, such payment will be due on the next succeeding Business Day.
- 5.13 Further Assurances.** Each party to an Applicable Project Agreement will use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under Applicable Law to consummate and make effective the transactions contemplated by each Applicable Project Agreement to which it is a party in a manner consistent with Applicable Law.

- 5.14 Cooperation.** Each Owner will make good faith efforts to cooperate with the other Owners to comply with the terms and conditions of the Wisconsin Project Agreements, all Critical Permits, the Wisconsin Project Construction Contracts, contracts and agreements and other obligations and commitments assumed by or imposed on it in connection with the Wisconsin Project.
- 5.15 Independent Covenants and Obligations.** The obligations of the Owners contained in any Applicable Project Agreement are independent covenants, not dependent covenants, and the obligation of any Owner to keep and perform all of the covenants and obligations assumed by or imposed on it in any such Applicable Project Agreement is not conditioned upon the performance of any other Owner of all or any of the covenants and obligations to be kept and performed by it thereunder.
- 5.16 Currency.** All payments under all Applicable Project Agreements will be made in such currency as is legal tender for the payment of debts in the United States.
- 5.17 Entire Agreement.** Each Applicable Project Agreement, together with all other Wisconsin Project Agreements, constitutes the entire agreement among the parties thereto with respect to the subject matter thereof, and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealings among the parties thereto on the subject matter thereof.

**EXHIBIT 1**

**NOTICES**

***TO THE WISCONSIN OWNERS IN ANY CAPACITY UNDER AN APPLICABLE PROJECT AGREEMENT:***

**IF TO DAIRYLAND POWER  
COOPERATIVE:**

**DAIRYLAND POWER COOPERATIVE  
3200 EAST AVE. S.  
PO BOX 817  
LA CROSSE, WI 54602  
ATTENTION: BEN PORATH  
FAX: 608-787-1475**

**IF TO NORTHERN STATES POWER  
COMPANY, A WISCONSIN CORPORATION:**

**NORTHERN STATES POWER COMPANY, A  
MINNESOTA CORPORATION  
414 NICOLLET MALL, MP-8  
MINNEAPOLIS, MN 55401  
ATTENTION: TERESA MOGENSEN, VP OF  
TRANSMISSION  
FAX: 612-573-1815**

**WITH A MANDATORY COPY TO:**

**WHEELER, VAN SICKLE & ANDERSON,  
S.C.  
25 WEST MAIN STREET, SUITE 801  
MADISON, WI 53703  
ATTENTION: JEFFREY LANDSMAN, ESQ.  
FAX: 608-255-6006**

**WITH A MANDATORY COPY TO:**

**NORTHERN STATES POWER COMPANY, A  
MINNESOTA CORPORATION  
414 NICOLLET MALL, 5<sup>TH</sup> FLOOR  
MINNEAPOLIS, MN 55401  
ATTENTION: GENERAL COUNSEL  
FAX: 612-573-9025**

**IF TO WPPI ENERGY:**

**WPPI ENERGY  
1425 CORPORATE CENTER DRIVE  
SUN PRAIRIE, WI 53590-9109  
ATTENTION: TIM NOELDNER  
FAX: 608-837-0274**

**WITH A MANDATORY COPY TO:**

**WPPI ENERGY  
1425 CORPORATE CENTER DRIVE  
SUN PRAIRIE, WI 53590-9190  
ATTENTION: GENERAL COUNSEL  
FAX: 608-837-0274**

PUBLIC DOCUMENT  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
AND TRADE SECRET DATA EXCISED

***TO THE AUTHORIZED OWNER REPRESENTATIVES:***

**FOR DAIRYLAND POWER COOPERATIVE:**

REPRESENTATIVE: BEN PORATH  
TELEPHONE: (608) 787-1429  
FAX: (608) 787-1475  
EMAIL: BLP@DAIRYNET.COM

ALTERNATE: STEVE PORTER  
TELEPHONE: (608) 787-1229  
FAX: (608) 787-1475  
EMAIL: SCP@DAIRYNET.COM

ADDRESS:  
DAIRYLAND POWER COOPERATIVE  
3200 EAST AVE. S.  
PO BOX 817  
LA CROSSE, WI 54602

**FOR SOUTHERN MINNESOTA MUNICIPAL POWER  
AGENCY:**

REPRESENTATIVE: RICHARD HETTWER  
TELEPHONE: (507) 292-6451  
FAX: (507) 292-6414  
EMAIL: RJ.HETTWER@SMMPA.ORG

ALTERNATE: MARK MITCHELL  
TELEPHONE: (507) 292-6460  
FAX: (507) 292-6414  
EMAIL: MS.MITCHELL@SMMPA.ORG

ADDRESS:  
SOUTHERN MINNESOTA MUNICIPAL POWER  
AGENCY  
500 FIRST AVE. SW  
ROCHESTER, MN 55902

**FOR CITY OF ROCHESTER:**

REPRESENTATIVE: RANDY ANDERTON  
TELEPHONE: 507-280-1503  
FAX: 507-280-1542  
EMAIL: RANDERTON@RPU.ORG

ALTERNATE: LARRY KOSHIRE  
TELEPHONE: 507-280-1601  
FAX: 507-280-1542  
EMAIL: LKOSHIRE@RPU.ORG

ADDRESS:  
ROCHESTER PUBLIC UTILITIES  
4000 E. RIVER ROAD NE  
ROCHESTER, MN 55906

**FOR WPPI ENERGY:**

REPRESENTATIVE: TIM NOELDNER  
TELEPHONE: (608) 220-1263  
FAX: (608) 837-0274  
EMAIL: TNOELDNER@WPPENERGY.ORG

ALTERNATE: PAT CONNORS  
TELEPHONE: (608) 834-4559  
FAX: (608) 837-0274  
EMAIL: PCONNORS@WPPENERGY.ORG

ADDRESS:  
WPPENERGY  
1425 CORPORATE CENTER DRIVE  
SUN PRAIRIE, WI 53590-9109

PUBLIC DOCUMENT  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
AND TRADE SECRET DATA EXCISED

Docket No. E002/AI-13-\_\_\_\_  
Petition  
Attachment B  
Page 134 of 193

FOR NORTHERN STATES POWER COMPANY,  
A MINNESOTA CORPORATION, AND NORTHERN  
STATES POWER COMPANY, A WISCONSIN  
CORPORATION:

REPRESENTATIVE: GREG P. CHAMBERLAIN  
TELEPHONE: 612-337-2158  
FAX: 612-573-9430  
EMAIL:GREG.P.CHAMBERLAIN@XCELENERGY.COM

ALTERNATE: PRITI PATEL  
TELEPHONE: 612-215-4546  
FAX: 612-318-4334  
EMAIL:PRITIR.PATEL@XCELENERGY.COM

ADDRESS:  
NORTHERN STATES POWER COMPANY, A  
MINNESOTA CORPORATION  
414 NICOLLET MALL, MP-8  
MINNEAPOLIS, MN 55401

**Appendix A  
To  
Construction Management Agreement**

**CapX La Crosse**

**Wisconsin Project**

**Appendix B  
To  
Construction Management Agreement  
  
DESIGN  
  
CapX La Crosse  
Wisconsin Project**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**APPENDIX C-1  
TO  
CONSTRUCTION MANAGEMENT AGREEMENT  
CAPX 2020 SUBSTATION DESIGN CRITERIA**

**THIS DOCUMENT CONTAINS PRIVILEGED AND CRITICAL  
ENERGY INFRASTRUCTURE INFORMATION (CEII)**

**APPENDIX C-2  
TO  
CONSTRUCTION MANAGEMENT AGREEMENT  
CAPX 2020 TRANSMISSION LINE DESIGN CRITERIA**

**THIS DOCUMENT CONTAINS PRIVILEGED AND CRITICAL  
ENERGY INFRASTRUCTURE INFORMATION (CEII)**

**APPENDIX D-1**

**NSP, MN REIMBURSEMENT OF COST FOR SERVICES**

**THIS DOCUMENT CONTAINS PRIVILEGED INFORMATION**

**APPENDIX D-2**

**DPC REIMBURSEMENT OF COST FOR SERVICES**

**THIS DOCUMENT CONTAINS PRIVILEGED INFORMATION**

**APPENDIX E**

**Pre-Effective Time Management Committee Approved CM Costs**

Authorized Costs incurred in the performance of Authorized Work with respect to the following activities relating to Phase 1 of the Project:

- Aerial and ground survey work
- Initial right of way activities between Briggs Road and the Mississippi River
- Beginning engineering and design activity

**Incorporation of Definitions:**

“**Authorized Costs**” and “**Authorized Work**” have the meanings ascribed thereto in the Project Development Agreement, the definitions of which are incorporated by this reference as if fully set forth in this Appendix.

**APPENDIX F-1**  
**TO**  
**CONSTRUCTION MANAGEMENT AGREEMENT**  
**FORM OF LIEN WAIVER**

**EXHIBIT \_\_**

**FORM OF LIEN WAIVERS AND RELEASES**

The Contractor shall provide lien waivers as follows:

- a. in the form of attached Exhibit \_\_-1 for the Contractor's lien waiver to be provided with every Application for Payment other than for final payment;
- b. in the form of attached Exhibit \_\_-2 for the Contractor's lien waiver to be provided for final payment;
- c. in the form of attached Exhibit \_\_-3 for lien waivers from Subcontractors, Sub-subcontractors, and suppliers to be provided with every Application for Payment other than for final payment; and
- d. in the form of attached Exhibit \_\_-4 for lien waivers from Subcontractors, Sub-subcontractors, and suppliers to be provided for final payment.

EXHIBIT \_\_-1

PARTIAL LIEN WAIVER AND RELEASE  
FOR THE CONTRACTOR

\_\_\_\_\_ (the "Contractor") has furnished or will furnish certain labor, materials, skill, or equipment on the \_\_\_\_\_ (the "Owner") \_\_\_\_\_ Project at [fill in address] \_\_\_\_\_ (the "Project"). In consideration of payments to date and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor waives and releases any right which it now has or in the future may have to claim a mechanic's lien or any other lien rights, and waives and releases all other claims of any kind (whether billed or unbilled), against (a) the real property where the Project is located ; (b) the improvements and other property located thereon; (c) the Owner and its members, title company and lender, and their employees, officers, and agents; and (d) the surety or sureties of the Owner, for anything whatsoever related to the Project through the date hereof, except those claims listed as follows:

- Retainage in the amount shown on the Application for Payment
- Pending change orders for which the Contractor has provided to the Owner written notice specifically requesting a change order or for which there is a written document entitled a Construction Change Directive approved by the Owner.
- \_\_\_\_\_

(If a claim is not listed above, it is not reserved, and any claims or potential claims not listed are waived and released.)

In order to induce payment to be made to the undersigned, the Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items connected with the above-referenced Project all amounts owed for the Work covered by payments which the Contractor has received for the Project prior to the date hereof; and the Contractor agrees to indemnify, defend and hold harmless the Owner, its members, lender, and title company from and against all claims, liabilities, damages, losses, costs, and expenses, including attorneys' fees, relating to or arising out of any claims or liens waived or released herein but asserted or pursued after the date hereof by the Contractor or any claims (or related liens) that any of the Contractor's subcontractors (of any tier) or suppliers (of any tier) or employees of the Contractor or any subcontractors (of any tier) have not been paid or relating to the enforcement of this paragraph. The foregoing is in addition to other rights and remedies the Owner may have and shall not relieve the Contractor of its obligations under the provisions of its contract with the Owner.

The undersigned has executed this waiver voluntarily and with full knowledge of the undersigned's rights under law.

Dated: \_\_\_\_\_  
[Date of Pay Application through which  
waiver and release is effective.]

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

PUBLIC DOCUMENT  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
AND TRADE SECRET DATA EXCISED

CONTRACTOR'S AFFIDAVIT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The undersigned, being duly sworn, deposes and says that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the Contractor for the \_\_\_\_\_ work on the \_\_\_\_\_ (the "Owner") \_\_\_\_\_ Project (the "Project"); that the total amount of the current contract between the Contractor and the Owner, including extras authorized by executed change orders, is \$ \_\_\_\_\_, on which the Contractor has received payments to date (prior to the current payment) in the total amount of \$ \_\_\_\_\_, with a current payment requested of \$ \_\_\_\_\_ Dollars for a sum total of \$ \_\_\_\_\_ Dollars; that there is no claim either legal or equitable to defeat the validity of the waivers and releases provided by the Contractor; that the attached sworn statement contains the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each; and that the items mentioned include all labor, skill, equipment, and material required to complete said Work according to the Contract Documents; that there are no other contracts for said work outstanding; and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with the Project other than above stated.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Signature: \_\_\_\_\_

EXHIBIT \_\_-2

FINAL LIEN WAIVER AND RELEASE  
FOR THE CONTRACTOR

\_\_\_\_\_ (the "Contractor") has furnished or will furnish certain labor, materials, skill, or equipment on the \_\_\_\_\_ (the "Owner") \_\_\_\_\_ Project at [fill in address] \_\_\_\_\_ (the "Project").

In consideration of the payments to date and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor waives and releases any right which it now has or in the future may have to claim a mechanic's lien or any other lien rights, and waives and releases all other claims of any kind (whether billed or unbilled) related to the Project, including, without limitation, claims and liens against (a) the real property where the Project is located ; (b) the improvements and other property located thereon; and (c) the Owner and its members, title company, and lender and their employees, officers, and agents; and (d) the surety or sureties of the Owner. The undersigned acknowledges receipt of payment in full for anything and everything in connection with or related to the Project.

In order to induce payment to be made to the Contractor, the Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items connected with the Project, and the Contractor agrees to indemnify, defend and hold harmless the Owner, its members, lender and title company from and against all claims, liabilities, damages, losses, costs, and expenses, including attorneys' fees, relating to or arising out of any claims or liens waived or released herein but asserted or pursued after the date hereof by the Contractor or any claims (or related liens) that any of the Contractor's subcontractors (of any tier) or suppliers (of any tier) or employees of the Contractor or any subcontractors (of any tier) have not been paid or relating to the enforcement of this paragraph. The foregoing is in addition to other rights and remedies the Owner may have and shall not relieve the Contractor of its obligations under the provisions of its contract with the Owner.

The Contractor has executed this waiver voluntarily and with full knowledge of the Contractor's rights under law.

Dated: \_\_\_\_\_  
[Date of signing.]

By \_\_\_\_\_  
Its \_\_\_\_\_



EXHIBIT \_\_-3

**PARTIAL LIEN WAIVER AND RELEASE  
FOR SUBCONTRACTORS AND SUPPLIERS**

\_\_\_\_\_ has furnished or will furnish certain labor, materials,  
skill, or equipment on the \_\_\_\_\_ (the "Owner")  
\_\_\_\_\_ Project at [fill in address]

\_\_\_\_\_ (the "Project"). In consideration of  
\$ \_\_\_\_\_ representing the sum total of payments received by the undersigned for the  
Project to date and other good and valuable consideration, the receipt and sufficiency of which  
is hereby acknowledged, the undersigned waives and releases any right which it now has or in  
the future may have to claim a mechanic's lien or any other lien rights, and waives and releases  
all other claims of any kind (whether billed or unbilled), against (a) the real property where the  
Project is located ; (b) the improvements and other property located thereon; (c) the Owner and  
its members, title company and lender, and their employees, officers, and agents; and (d) the  
surety or sureties of the Owner, for anything whatsoever related to the Project through the date  
hereof, except those claims listed as follows:

Retainage in the amount of \$ \_\_\_\_\_ ( retainage shall  
be deemed to be zero if no amount is filled in)

\_\_\_\_\_  
\_\_\_\_\_  
(if a claim is not listed above, it is not reserved, and any claims or potential claims not listed are  
waived and released).

In order to induce payment to be made to the undersigned, the undersigned certifies that  
it has paid all of its subcontractors, suppliers, and employees for all items connected with the  
Project, and the undersigned agrees to indemnify, defend, and hold harmless the Owner and its  
members, lender, and title company, and \_\_\_\_\_ from and  
against all claims, liens, liabilities, damages, costs and expenses, including attorneys' fees,  
related to or arising from any claim by the undersigned for any claims or liens waived or  
released herein or any claims (or related liens) that any of the undersigned's subcontractors,  
suppliers or employees have not been paid or relating to the enforcement of this paragraph.

The undersigned has executed this waiver voluntarily and with full knowledge of the  
undersigned's rights under law.

Dated: \_\_\_\_\_  
[Date of Pay Application through which  
waiver and release is effective.]

By \_\_\_\_\_  
Its \_\_\_\_\_

**SUBCONTRACTOR'S/SUB-SUBCONTRACTOR'S/SUPPLIER'S AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The undersigned, being duly sworn, deposes and says that the undersigned is the \_\_\_\_\_ of \_\_\_\_\_ who is the Subcontractor/Sub-subcontractor/Supplier for the \_\_\_\_\_ work on the \_\_\_\_\_ (the "Owner") \_\_\_\_\_ Project (the "Project"); that the total amount of the current contract to which the undersigned is a party relating to the Project including extras authorized by executed change orders is \$ \_\_\_\_\_ on which the party signing this waiver and release has received the sum total of previous payments to date of \$ \_\_\_\_\_, with a current payment of \$ \_\_\_\_\_ received on \_\_\_\_\_, for a sum total of payments received as of this date of \$ \_\_\_\_\_; that all waivers and releases provided by the party signing this waiver and release are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers; that the attached sworn statement contains the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each; that the items mentioned include all labor and material required to complete said work according to the contract relating to the Project and to which the party signing the waiver and release is a party; that there are no other contracts for said work outstanding relating to the Project and to which the party signing the waiver and release is a party; and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with the Project other than above stated.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Signature: \_\_\_\_\_

PUBLIC DOCUMENT  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
AND TRADE SECRET DATA EXCISED

EXHIBIT \_\_-4

FINAL LIEN WAIVER AND RELEASE FOR  
SUBCONTRACTORS, SUB-SUBCONTRACTORS, AND SUPPLIERS

\_\_\_\_\_ has furnished or will furnish certain labor, materials,  
skill, or equipment on the \_\_\_\_\_ (the "Owner")  
\_\_\_\_\_ Project at [fill in address]

\_\_\_\_\_ (the "Project"). In consideration of  
\$ \_\_\_\_\_ representing the sum total of payments to date and other good and valuable  
consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned waives  
and releases any right which it now has or in the future may have to claim a mechanic's lien or any  
other lien rights, and waives and releases all other claims of any kind (whether billed or unbilled)  
related to the Project, including, without limitation, claims and liens against (a) the real property  
where the Project is located ; (b) the improvements and other property located thereon; (c) the  
Owner and its members, title company, and lender, \_\_\_\_\_,  
and their employees, officers, and agents; and (d) the surety or sureties of the Owner or  
\_\_\_\_\_. The undersigned acknowledges receipt of payment  
in full for anything and everything in connection with or related to the Project.

In order to induce payment to be made to the undersigned, the undersigned certifies that it  
has paid all of its subcontractors, suppliers, and employees for all items connected with the  
above-referenced Project, and the undersigned agrees to indemnify, defend, and hold harmless the  
Owner and its members, lender, and title company, and  
\_\_\_\_\_ from and against all claims, liens, liabilities,  
damages, costs and expenses, including attorneys' fees, related to or arising from any claim by  
the undersigned for any claims or liens waived or released herein or any claims (or related liens)  
that any of the undersigned's subcontractors (of any tier), suppliers (of any tier), or employees  
have not been paid or relating to the enforcement of this paragraph.

The undersigned has executed this waiver and release voluntarily and with full  
knowledge of the undersigned's rights under law. This waiver and release shall inure to the benefit  
of the Owner and its successors and assigns and be binding upon the undersigned and its  
successors and assigns.

Dated: \_\_\_\_\_  
[Date of signing.]

By \_\_\_\_\_  
Its \_\_\_\_\_



**APPENDIX F-2**  
**TO**  
**CONSTRUCTION MANAGEMENT AGREEMENT**  
**FORM OF APPLICATION FOR DEPOSIT**

**PUBLIC DOCUMENT**  
**CRITICAL ENERGY INFRASTRUCTURE INFORMATION**  
**AND TRADE SECRET DATA EXCISED**

**CapX2020 La Crosse Appendix F -2 (to the CMA)**

**APPLICATION FOR DEPOSIT**

**MINNESOTA**

**WISCONSIN**

**Wire Due:**

**Wire Due:**

**1/2/2013**

**1/2/2013**

Date of Application: **12/21/2012**

Project Costs to Date through (November 2012) GAAP Actuals	9,025,827.78	-
Fargo 3 Paid via the Permitting Phase	(9,025,827.78)	-
Project to Date Actual cost Vs. Cash Flow	-	-
Project To Date Requisitions from the Trust - Cash Flow	-	-
Current Month (December 2012) Cash Flow Forecast	2,601,925.41	653,324.00
Following Month (January 2012) Cash Flow Forecast	1,000,000.00	1,000,000.00
<b>Actuals to Date Plus Forecast:</b>	<b>3,601,925.41</b>	<b>1,653,324.00</b>
Less Total Deposits to date:	-	-
Less Total Trust Account Interest Credits to date:	-	-
Less Buy-the-Farm Sales Proceeds to Date:	-	-
Other Adjustments:	-	-
<b>Total Credits to Construction Fund to Date:</b>	<b>-</b>	<b>-</b>
<i>(Actuals to Date Plus Forecast Less Total Credits to Date)</i>	<b>3,601,925.41</b>	<b>1,653,324.00</b>

Owners:	Owner's % of Net Deposit Required:	Owner's \$ Amount of Net Deposit Required:
NSP-MN	48.4804%	1,746,227.84
SMMPA	23.8994%	860,838.56
DPC	12.2703%	441,967.05
RPU	15.3499%	552,891.95
<b>Total</b>	<b>100.0000%</b>	<b>3,601,925.40</b>

<b>Owner's \$ Amount of Net Deposit Required:</b>
---

NSP-WI	77.3686%
DPC	13.0127%
WPPI	9.6187%
<b>Total</b>	<b>100.0000%</b>

1,279,153.63
215,142.09
159,028.28
<b>1,653,324.00</b>

Total Deposits to date:	-	-
Total Trust Account Interest Credits to date:	-	-
Less Buy-the-Farm Sales Proceeds to Date:	-	-
Application for Deposit due:	3,601,925.40	1,653,324.00
Actuals to Date Plus Forecast:	<u>3,601,925.40</u>	<u>1,653,324.00</u>
	(0.01)	-

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**APPENDIX F-3**  
**TO**  
**CONSTRUCTION MANAGEMENT AGREEMENT**  
**FORM OF PROJECT CHANGE REQUEST**

PUBLIC DOCUMENT  
 CRITICAL ENERGY INFRASTRUCTURE INFORMATION  
 AND TRADE SECRET DATA EXCISED



**CAPX2020 PROJECT CHANGE REQUEST (PCR) FORM F-3**

<p><b>PCR Type:</b> <i>Project Change Request (CMA Section 5.3) Refer to Project Procedures Manual Section (5.1.2)</i></p> <p> <input type="checkbox"/> Construction Manager Adjustment    <input type="checkbox"/> Minor Change Order (PM Approval)  <input type="checkbox"/> Owner Directed Project Change    <input type="checkbox"/> Major Change Order (Per CMA Processes)         </p> <p> <b>CMA Change Classification</b>  <input type="checkbox"/> Change Without Budgetary Effect    <input type="checkbox"/> Change With Budgetary Effect         </p>	<p><b>Chain of Custody</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">Name</th> <th>Send Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>	Name	Send Date																									
Name	Send Date																											
<p><b>Request Changes:</b>    <input type="checkbox"/> Scope    <input type="checkbox"/> Schedule    <input type="checkbox"/> Project Budget    <input type="checkbox"/> Maximum CM Cost Amount (CMA 5.1.3)</p> <p><b>Category:</b>    <input type="checkbox"/> Scope Change    <input type="checkbox"/> Labor Cost Increase    <input type="checkbox"/> Material Change    <input type="checkbox"/> Outage Restriction    <input type="checkbox"/> Permit Status    <input type="checkbox"/> Other</p>																												
<p><b>Project Asset Information:</b></p> <p>             Project Name: <input style="width: 150px;" type="text"/>    Line/ Sub/ Land Right: <input style="width: 100px;" type="text"/>    Contract(s) Impacted: <input style="width: 80px;" type="text"/>              Parent Work Order #: <input style="width: 130px;" type="text"/>    Child Work Order #: <input style="width: 100px;" type="text"/> </p> <p>Summary / description of the change requested with justification, consequences and analysis.              Attach copies of the change details including any risk analysis. <span style="float: right;"><input type="checkbox"/> Documents Attached.</span></p> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>																												
<p><b>Financial Changes by Parent Asset:</b> <span style="float: right;"><input type="checkbox"/> Detailed Cash Flow Attached.</span></p> <p style="text-align: center;">ENTER CASH FLOW ADJUSTMENTS IN THOUSANDS OF DOLLARS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Pre 2010</th> <th>2010</th> <th>2011</th> <th>2012</th> <th>2013</th> <th>2014</th> <th>2015</th> <th>Total Project</th> </tr> </thead> <tbody> <tr> <td>Current Asset Approved Budget</td> <td>\$ -</td> </tr> <tr> <td>Requested New Asset Amount</td> <td>\$ -</td> </tr> </tbody> </table> <p>             Request Changes the Current Year Budget? <input type="checkbox"/> YES    <input type="checkbox"/> NO    Estimate of Added or Decreased Cost: \$ <input style="width: 80px;" type="text"/> -              Is this a Major Change Order? <input type="checkbox"/> YES    <input type="checkbox"/> NO    Available Project Contingency after change: \$ <input style="width: 80px;" type="text"/> -              Remaining Contingency as % of Project: <input style="width: 80px;" type="text"/> 0%         </p>			Pre 2010	2010	2011	2012	2013	2014	2015	Total Project	Current Asset Approved Budget	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	Requested New Asset Amount	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Pre 2010	2010	2011	2012	2013	2014	2015	Total Project																				
Current Asset Approved Budget	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -																				
Requested New Asset Amount	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -																				
<p><b>In-Service Date Changes:</b> <span style="float: right;"><input type="checkbox"/> Documents Attached.</span></p> <p>             Current ISD: <input style="width: 70px;" type="text"/>    Revised ISD: <input style="width: 90px;" type="text"/> </p>																												
<p><b>Impact to Related Projects:</b> <span style="float: right;"><input type="checkbox"/> Documents Attached.</span></p> <p> <input type="checkbox"/> NO - PCR Does NOT Impact Other Projects.  <input type="checkbox"/> YES - PCR Impacts Other Projects         </p> <p>Describe impact to other projects below.</p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div>																												
<p><b>CapX Approvals:</b>    <input type="checkbox"/> APPROVED    <input type="checkbox"/> RETURNED FOR FURTHER CLARIFICATION    <input type="checkbox"/> DENIED    <span style="float: right;"><input type="checkbox"/> Documents Attached.</span></p> <p>             Signature: <input style="width: 230px; height: 25px;" type="text"/>    Requested By Date: <input style="width: 110px;" type="text"/>              Title: <input style="width: 230px; height: 25px;" type="text"/>    Approval / Denial Date: <input style="width: 110px;" type="text"/> </p> <p> <b>Requested increase to Max. CM Amount:</b> \$ <input style="width: 120px;" type="text"/> -    <span style="float: right;"><b>PCR #:</b> <input style="width: 80px;" type="text"/></span> </p>																												

**APPENDIX F-4**  
**TO**  
**CONSTRUCTION MANAGEMENT AGREEMENT**  
**FORM OF PROGRESS REPORT**

**Appendix F-4**

**Progress Report Form**

**II. PROGRESS REPORT (Sample)**

**1.0 Safety**

a. Monthly summary – Safety

<b>Safety</b>	<b>Month</b>	<b>Project to Date</b>
Hours Worked	16,051	68,217
FTE's (People)	68	62
Near Miss	1	2
OSHA Recordable	1	1
Injury	1	1
Illness	0	3
Restricted or Transferred Workday	0	2
Lost Workday Cases	2	2
OSHA Rate Calculation	1.4	1.6
DART Rate	2.8	6.2

**Monthly Summary**

- We experience one near miss this month when a rebar foundation cage fell near a worker.
- We experienced a lost time incident this month when a contract worker tripped over a tree root. The worker was out two days and returned to full duty.

b. Vehicle

<b>Vehicle Accidents</b>	<b>Month</b>	<b>Project to Date</b>
Incident	0	1
Damage Value	\$ -	\$ 8,000

**Monthly Summary**

- No Vehicle incidents this month.

Material Damage	Month	Project to Date
Incident	1	2
Damage Value	\$ 4,275	\$ 10,575

**Monthly Summary**

- Rebar cage fell and had to be repaired.

**2.0 Permitting (SAMPLE)**

a. State Permits and Filings

Permit/Decision	Jurisdiction	Status
<b>Minnesota State Approvals</b>		
MN Certificate of Need	MPUC	Done
MN Route Permit	MPUC	23-Jun-2010
Cultural and Historic Resources Review	State Historic Preservation Office	3-May-2010
Endangered Species Consultation - Take Permit. This permit applies to any land regardless of who owns the property. We would propose to meet with the DNR monthly to get the take permits as needed by parcel.  We may need to have a construction work around on these properties. Mats or winter construction might work.	Department of Natural Resources - Ecological Services	1-Nov-2010
License to Cross Public Waters - Tony to follow up with Cindy Buttleman. This would be one submittal with all the individual locations	Department of Natural Resources - Waters	1-Nov-2010
License to Cross Public Lands. Tony to follow up with Cindy Buttleman. This would be one submittal with all the individual locations	Department of Natural Resources - Lands and Minerals	1-Nov-2010

**Route.** The Project team continues to work with the OES to update a route permit schedule. The Contested Case hearings are set to be held April 21-23, 2010.

**Deadline.** The deadline for the DEIS comments is April 26, 2010.

**Comments.** All comments are to be sent to Suzanne Steinhauer at the OES.

**Certificate of Need (CON).** PUC issued CON order 7-14-09

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**Coordination.** Coordination continues with MN DNR in regards to how much additional Field Survey work will be required before the MN DNR will issue a Take permit. HDR is developing a table of required surveys.

**b. Federal Permits**

Permit/Decision	Jurisdiction	Status
<b>Federal Approvals</b>		
DEIS	RUS and OES	26-Feb-2010
FEIS	RUS and OES	28-May-2010
Programmatic Agreement (PA) - Section 106 Consultation	Rural Utilities Service (lead federal agency), Army Corps of Engineers, Chippewa National Forest, Environmental Protection Agency	3-May-2010 (PA Signed)
Biological Assessment/Evaluation (BA/E); Section 7 Consultation	Fish and Wildlife Service (FWS)	3-May-2010 (BO Letter Signed)
	Chippewa National Forest (and Leech Lake Department of Resource Management)	3-May-2010 (BE Signed by CNF, DNR & LLBO)
AD 1006 - Farmland Protection Policy Act/Farmland Conversion Impact rating	Department of Agriculture/ Natural Resource Conservation Service	NA

**Federal Permitting Status Update**

- The Project Team has not recently contacted any of the MN Congressional delegation. The RUS and OES have completed the DEIS.
- The Project Team is waiting on the RUS to complete the Programmatic Agreement. This agreement needs to be signed and issued as part of the FEIS. A meeting has been set in Walker, MN on May 6 to complete and sign the Programmatic Agreement.
- HDR has been tasked to extend the offer to write the RUS ROD. RUS has been reluctant to allow this to happen.
- The Project Team met with them again to further clarify what their design requirements will be to allow them to issue their Special Use Permit SUP.
- CNF is also considering whether or not they will allow the Utilities to use wood poles treated with preservatives vs. steel poles.

**2.0 Siting and land Rights (Real Property Plan)**

**a. Acquisition progress**

**Land Management – Right of Way** – It has been a struggle to get in contact with Enbridge representatives. Enbridge easements are not descriptive easement; therefore it is becoming complicated to move forward. In discussion with Steve Quam from Fredrickson and Byron, it was recommended the Project find Enbridge’s centerline of their new pipeline and be a minimum of 90 feet from Enbridge’s centerline to the centerline of the Transmission line that we are constructing.

# of landowner's	# Contacted		Easements Acquired		\$ Paid/Received		% Complete
	Monthly	Total	Monthly	Total	Monthly	Total	
160	10						

**b. Issues Log Update**

No.	Category	Issue	Date Logged	Mitigation Options	Owner	Resolution date
1	Sub	Briggs Road substation cement truck (cement-gate)	13-May	Ready mix vs. piped vs. cement truck in substation	Chezik	1-Jun-10
2	Reg	Permit application delay	18-May	TBD	Chezik	5-Jun-10
3	Engr	TBD	TBD	TBD	TBD	TBD

**c. Condemnation proceedings**

<< INSERT TRACKING TOOL OR UPDATE TABLE >>



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c. Claims & disputes

No claims or disputes.

d. Liens filed against the Project

No Liens filed against the project this month.

Contractor	Description of Lien	Value of Lien	Status

e. Status of procured materials

Materials	Ordered	Delivered last month	Delivered Total	Remaining	% Delivered
Foundation Materials	439	10	10	429	2%
Poles	439	6		433	1%
Pole Accessories	17,560	240		17,320	1%
Line	439,250	-		439,250	0%

Status update / assumptions: TBD.

f. Other

No other procurement issued raised.

**5. Engineering Summary**

The La Crosse project team selected \_\_\_\_ firm to complete their line engineering requirements. On the substation side, La Crosse is continuing to utilize internal Xcel resources to complete this segment of work.

**a. Substations**

June 15, 2012 – North Rochester soil boring was completed utilizing Braun Intertec.

**b. Line segments**

June 5, 2012 – started to review the ROW...  
 July 2, 2012 – survey crew was told to...

**6. Construction Summary**

June 15, 2012 – La Crosse team utilized PAR to prepare a report to review cost impact of hot line work vs. taking outages.  
 July 1, 2012 – Tree clearing began on....

**7. QA/QC**

**a. Inspections**

Inspection Description	Date/Time	Approval	Location
Foundation 1-8	5/1/13 12:00 AM	Yes	XYZ Substation

**b. Vendor Review**

**8. Testing & Commissioning**

No significant activity is planned for June 2012.

Tests	Date/Time	Approval	Location
Boring Sample	6-19-2012 4p.m.	Yes	I-94 2 miles from XYZ sub.

**9. Project Progress Schedule Review**

**a. Variance to schedule**

The schedule development has been an ongoing effort this month



**12. Risk Register Update**

No updates to the Risk Register were entered in June 2013. See Appendix for latest version of the Register.

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**APPENDIX F-5**  
**TO**  
**CONSTRUCTION MANAGEMENT AGREEMENT**  
**FORM OF FINANCIAL SUMMARY REPORT**



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Company: **Enbridge**  
 2014 (2) & (3) - Appendix F-4 - Financial Summary Report  
 Volume Analysis

Reporting Month: **0000**  
 Forward End of Fiscal Year: **201412**  
 Last Refresh Date: **201412**

	Quarter			Year to Date (Calendar Year)			Percent to Date			To End of Fiscal Year		
	Actual	Forecast	Variance	Actual	Budget	Variance	Actual	Budget	Variance	Actual + Forecast	Budget	Variance
<b>GRAND TOTAL</b>												
Grand Total (Grand)	1,280,249	1,214,349	65,899	12,281,077	12,281,077	-	12,281,077	12,281,077	-	382,947,222	382,947,222	-
Grand Total Subscribers	6,181,147	5,782,272	3,988,875	1,172,268	1,172,268	-	6,910,140	6,910,140	-	24,241,250	24,241,250	-
Grand Total Services	14,400	14,400	-	14,400	14,400	-	14,400	14,400	-	14,700,000	14,700,000	-
<b>GRAND TOTAL</b>	<b>8,222,717</b>	<b>7,011,021</b>	<b>3,222,717</b>	<b>13,467,745</b>	<b>13,467,745</b>	<b>-</b>	<b>19,205,617</b>	<b>19,205,617</b>	<b>-</b>	<b>411,888,472</b>	<b>411,888,472</b>	<b>-</b>

**Asset Ownership Percentage (SUMMARY) - Forecast**

	To End of Fiscal Year
<b>REGULATORY</b>	
REG-REG	49.4541%
REG-REG	20,622,046
REG-REG	10,270,000
REG-REG	18,248,000
<b>REG-REG</b>	<b>49,140,046</b>
<b>REGULATORY</b>	
REG-REG	77,344,000
REG-REG	12,012,000
REG-REG	1,012,000
REG-REG	1,012,000
<b>REG-REG</b>	<b>81,378,000</b>
<b>Asset Ownership Percentage - Enbridge + Subsidiary - Forecast</b>	
REG-REG	23,142,046
REG-REG	32,352,000
REG-REG	384,200
REG-REG	1,424,000
REG-REG	1,282,000
<b>REG-REG</b>	<b>68,584,246</b>
<b>Asset Ownership Percentage - per Agreement</b>	
REG-REG	31,646,000
REG-REG	22,248,000
REG-REG	63,000,000
REG-REG	11,000,000
REG-REG	10,000,000
REG-REG	3,000,000
<b>REG-REG</b>	<b>119,994,000</b>

Confidential Restricted

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**APPENDIX G  
TO  
CONSTRUCTION MANAGEMENT AGREEMENT**

**PROJECT MANAGER**

**Primary**

Grant Stevenson  
Xcel Energy  
MP-8  
414 Nicollet Mall  
Minneapolis, MN 55401

612-330-6330

**Alternate**

Jerry Chezik  
Xcel Energy  
MP-8  
414 Nicollet Mall  
Minneapolis, MN 55401

612-330-6546

APPENDIX H  
TO  
CONSTRUCTION MANAGEMENT AGREEMENT  
  
ADDITIONAL REQUIRED PROVISIONS

FOR USE WITH CAPX2020 AGREEMENTS AND PURCHASE ORDERS THAT ARE SUBJECT TO RUS REQUIREMENTS. THIS EXHIBIT SHOULD BE LISTED AS AN EXHIBIT IN SECTION 2 OF THE AGREEMENT. DELETE ALL INSTRUCTIONAL TEXT WHEN PREPARING OR ELECTRONICALLY TRADING THIS EXHIBIT.

EXHIBIT \_\_\_\_  
BUY AMERICAN, EEOC AND UNANTICIPATED DISCOVERIES PROVISIONS

This is Exhibit \_\_\_\_ to the \_\_\_\_ [ENTER THE APPROPRIATE NAME OF THE AGREEMENT] (the "Agreement") dated \_\_\_\_ [ENTER THE DATE OF THE AGREEMENT].

- I. Capitalized words, phrases and other expressions used herein that are not otherwise defined in this Exhibit are as defined in the Agreement. The capitalized words, phrases or other expressions used herein shall have the following meanings:

"ACHP" means Advisory Council on Historic Preservation.

"Administrator" shall mean the Administrator of the Rural Utilities Service of the United States of America and his or her duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

"Bidder" shall mean [CHOOSE APPROPRIATE DESIGNATION OF VENDOR AS USED IN THE AGREEMENT, SUCH AS "CONTRACTOR," "SUPPLIER," "CONSULTANT," OR "AGENCY"].

"Consulting Tribes" shall mean the Ho-Chunk Nation, the Ketegitigaaning Ojibwe Nation, the Mille Lacs Band of Ojibwa, and the Shakopee Mdewakanton Sioux.

"Contract" shall mean the "Agreement."

"MIAC" shall mean the Minnesota Indian Affairs Council.

"OSA" shall mean Minnesota Office of the state Archaeologist.

"Owner" shall mean the "Company."

"RUS" shall mean Rural Utilities Services of the United States of America.

"SHPO" shall mean the Minnesota and Wisconsin State Historic Preservation Offices, as applicable.

“USACE” shall mean the U.S. Army Corps of Engineers.

“USFWS” shall mean the United States Fish and Wildlife Service.

- II. In addition to the requirements set forth in the Agreement, Bidder shall comply with the following clauses:

**A. BUY AMERICAN MATERIALS AND SUPPLIES**

*In the performance of this Contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an “eligible country” is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative. The Bidder agrees to submit to the Owner such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.*

**B. Equal Opportunity CLAUSE**

- a. *Bidder’s Representations.*

*The Bidder represents that:*

**[THE VENDOR SHOULD PLACE A CHECK MARK IN THE APPROPRIATE LINE FOR AGREEMENTS SUBJECT TO RUS REQUIEMENTS].** *It has \_\_, does not have \_\_, 100 or more employees, and if it has, that it has \_\_, has not \_\_ furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.*

*The Bidder agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.*

*The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than \$10,000, the Bidder will file such report, as*

*required by law, and notify, the owner in writing of such filing prior to the Owner's acceptance of this Contract.*

- b. *Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:*
- (1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.*
  - (2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.*
  - (3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*
  - (4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.*
  - (5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*
  - (6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other*

*sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.*

*(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.*

- c. *Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.*

#### **C. POST-REVIEW UNANTICIPATED DISCOVERIES**

- a. *If previously unidentified historic properties or unanticipated effects to historic properties are discovered during construction of the proposed project, the construction contractor will immediately halt all activity within one hundred (100) feet of the discovery, notify the Owner of the discovery and implement interim measures to protect the discovery from looting and vandalism.*

- b. *Immediately upon receipt of the notification required in clause (a) above the Owner will inspect the construction site to determine the extent of the discovery and ensure that construction activities have halted, clearly mark the area of the discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify RUS, USFWS, USACE, the relevant SHPO and other Consulting Tribes.*
- c. *Upon receipt of notification, RUS or USFWS as appropriate, will treat the discovery in accordance with 36 CFR § 800.13(b)(3) and (c).*
- d. *Treatment of Human Remains*
  - (i) *When the discovery contains human remains and is located on federal property, USFWS will comply with NAGPRA [25 U.S.C. 3001 et. Seq.] and its implementing regulations (43 CFR Part 10). The Owner will implement the procedures in Attachment C<sup>1</sup> for inadvertent discoveries of NAGPRA human remains and cultural items on the Upper Mississippi River National Wildlife and Fish Refuge.*
  - (ii) *If the Bidder for the Owner believes that a discovery contains human remains and the discovery is not located on federal lands, the construction contractor will comply with Section II(C)(a). Immediately upon receipt of such notification, the Owner will comply with the procedures required by Minnesota Statutes Section 390.005 for discoveries in Minnesota, and the procedures required by Wisconsin Statutes Section 157.70 for discoveries in Wisconsin. At the request of the Wisconsin consulting party, the Wisconsin Burial Sites Preservation Law and associated administrative rules are included as Attachment B [the Wisconsin Burial Sites Preservation Law and associated administrative rules]. However, the Owner is responsible for compliance with the laws and regulations in effect at the time the work is completed. The following applies to discoveries in Minnesota:*
    - a. *The Owner will notify the county coroner or medical examiner.*
    - b. *If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts which indicated antiquity of greater than fifty (50) years, the coroner or medical examiner will notify the Minnesota Office of the State Archaeologist (OSA) and the Minnesota Indian Affairs Council (MIAC) in compliance with Minnesota Statute 307.08.*
    - c. *If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts which indicate*

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<sup>1</sup> “Plans For The Unanticipated Discovery Of Human Remains Or Burials On USFWS Refuge Lands During Construction Or Modification Of Hampton – Rochester – La Crosse Transmission System Improvement Project”.

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*age of less than fifty (50) years, the coroner or medical examiner will handle the remains in accordance with Minnesota Statute 390.21.*

- d. Suspected human remains will not be disturbed further or removed until disposition has been determined by the OSA and the MIAC consistent with the guidance titles State Archaeologist's Procedures for Implementing Minnesota' Private Cemeteries Act. (Anfinson, 2008).*
- (iii) At all times human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects (February 23, 2007).*
- e. The Owner will ensure that the requirements of Section II(C) are incorporated into all construction contracts. (Emphasis added.)*

**APPENDIX I  
TO  
WISCONSIN CONSTRUCTION MANAGEMENT AGREEMENT  
INSURANCE**

**THIS DOCUMENT CONTAINS PRIVILEGED INFORMATION**

**Appendix J-1  
to the WI Construction Management Agreement  
Existing Distribution Lines and Existing Distribution Line  
Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-2  
to the WI Construction Management Agreement  
Existing Transmission Lines and Existing Transmission Line  
Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-3  
to the WI Construction Management Agreement  
Underbuild Owner Lines and Underbuild Owner Line Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-4**  
**to the WI Construction Management Agreement**  
**Underbuild Third Party Lines and Underbuild Third Party**  
**Line Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-5  
to the WI Construction Management Agreement  
Relocated Project Owner Transmission Lines and Relocated  
Project Owner Transmission Line Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
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**Appendix J-6**  
**to the WI Construction Management Agreement**  
**Relocated Third Party Transmission Lines and Relocated**  
**Third Party Transmission Line Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-7**  
**to the WI Construction Management Agreement**  
**Relocated Project Owner Distribution Lines and Relocated**  
**Project Owner Distribution Line Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
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**Appendix J-8**  
**to the WI Construction Management Agreement**  
**Relocated Third Party Distribution Lines and Relocated Third**  
**Party Distribution Line Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-9**  
**to the WI Construction Management Agreement**  
**Remote Credited Owner USIs and Remote Credited**  
**USI Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-10**  
**to the WI Construction Management Agreement**  
**Remote Third Party USIs and Remote Third Party USI**  
**Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-11  
to the WI Construction Management Agreement  
Co-located Owner Lines and Co-located Owner Line Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**Appendix J-12**  
**to the WI Construction Management Agreement**  
**Non-Credited USIs and Non-Credited USI Owners**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION (CEII)**

**APPENDIX K-1 TO WISCONSIN CONSTRUCTION MANAGEMENT AGREEMENT**

**FORM OF ADMINISTRATIVE AGENT AGREEMENT  
(Easements)**

**ELECTRIC LINE EASEMENTS**

**THIS DOCUMENT CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION (CEII)**

**EXHIBIT G-2 TO WISCONSIN PROJECT PARTICIPATION AGREEMENT  
AND  
APPENDIX K-2 TO WISCONSIN CONSTRUCTION MANAGEMENT AGREEMENT  
FORM OF ADMINISTRATIVE AGENT AGREEMENT  
(General Contracting Powers)**

**THIS ADMINISTRATIVE AGENT AGREEMENT** (this “**Agreement**”) is entered into and effective at 12:01 a.m. Central Time as of December 21, 2012 (the “**Effective Time**”) by and among **Dairyland Power Cooperative**, a cooperative association incorporated under the laws of the State of Wisconsin, **WPPI Energy**, a municipal electric company, political subdivision and body public and corporate of the State of Wisconsin, and **Northern States Power Company**, a Wisconsin corporation (collectively, the “**Owners**”).

**RECITALS**

A. The Owners participate in a project within the state of Wisconsin Southeast Twin Cities – Rochester – La Crosse electric transmission project (Wisconsin) (the “**Wisconsin Project**”).

B. In connection with the Wisconsin Project, the Owners, as tenants in common, have obtained and benefit from certain agreements pursuant to which the Owners have the right to construct, operate, maintain, use, rebuild, relocate and remove transmission lines with towers, structures, poles, foundations, crossarms, cables, wires, guys, supports, counterpoises, fixtures, and equipment related to such lines, together with communication equipment relating to the operation of such lines (the “**Transmission Facilities**”) which, in the aggregate, with certain discreetly owned substations and underlying system improvements, constitute the Wisconsin Project.

C. The Owners are desirous of appointing an administrative agent to act on behalf of the Owners in connection with certain matters relating to the Wisconsin Project, pursuant to the terms and conditions set forth herein.

**AGREEMENT**

In consideration of the foregoing Recitals, the definitions of which are incorporated by reference herein, the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Participant agrees as follows.

1. Appointment of Administrative Agent. **Northern States Power Company**, a Minnesota corporation, is hereby appointed as the administrative agent to act on behalf of the Owners in certain matters relating to construction of the Wisconsin Project until the completion of construction of the Wisconsin Project (the “**Administrative Agent**”).

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2. Authority of Administrative Agent. The Administrative Agent shall be authorized to act on behalf of the Owners in the following matters, and undertake the following tasks, applicable to construction of the Wisconsin Project:

- a. Execution and delivery of all Wisconsin Project construction contracts, documents and instruments, including all amendments and change orders thereto, necessary or desirable (as determined by the Administrative Agent), to procure labor, equipment, materials, consumables and construction aids (including Owner procured materials) necessary or (as determined by the Administrative Agent) desirable to perform and complete the construction work;
- b. To the extent permitted by applicable law, execution and filing of all applications (and amendments and supplements thereto), certifications and instruments for, and submittal of all associated documentation required to obtain, governmental approvals from all governmental bodies;
- c. Execution, delivery and recordation of all contracts, documents and instruments necessary or (as determined by the Administrative Agent) desirable, including all amendments thereto, in order to perform or cause to be performed services to acquire real property required to complete the Wisconsin Project and all services associated therewith, including the execution and delivery (to the extent permitted by applicable law) of real property agreements;
- d. Exercising the rights of the Owners under Wisconsin Project contracts, documents and instruments relating to the construction of the Wisconsin Project, and enforcing the obligations of the contractors and subcontractors thereto and, when necessary, instituting, defending and settling disputes and Proceedings with respect to any right, obligation, or other matter arising from or in connection with the construction of the Wisconsin Project, or claims of the Owners (individually or collectively) or third parties arising out of or, attributable to, the construction of the Wisconsin Project; and
- e. Any other activity specifically authorized by a certificate from the management committee for the Owners.

The Administrative Agent shall undertake the foregoing activities in a commercially reasonable manner, properly, adequately, safely and economically, and in accordance with good utility practices, on behalf of the Owners.

3. Limits on Authority. The Administrative Agent shall not be authorized to act on behalf of the Owners except as specifically authorized in paragraph 2 above. Without limiting the foregoing, the Administrative Agent is expressly not authorized to:

- a. Mortgage, grant liens against, or otherwise encumber the assets of and other interests of the Owners in the Wisconsin Project;

**APPENDIX L**

**SALES AND USE TAX OBLIGATIONS**

- A.** Sales Tax principles applicable to the Wisconsin Project, other than with respect to Underbuild Owner Lines and Co-located Owner Lines are as follows:
1. Sales Taxes are due on tangible personal property (“**TPP**”) and the labor to construct TPP.
  2. Contractors, including vendors will charge sales tax on goods and services which will be paid by the Construction Manager on an on-going basis as CM Costs.
  3. The Construction Manager will require Contractors, including vendors, to transfer title to TPP directly to the Owners as tenants-in-common under the Wisconsin Project Participation Agreement.
  4. If the Construction Manager itself engages in the construction of TPP, it will invoice for sales taxes on the labor to construct the TPP and remit sales taxes to the Wisconsin Department of Revenue on behalf of the Owners.
  5. Management Services (e.g., administration, engineering, design, construction management (but excluding construction services) are not subject to sales tax in Wisconsin.
- B.** Sales Tax principles applicable to Underbuild Owner Lines and Co-located Owner Lines are as follows:
1. TPP and labor to install TPP will be procured by the Construction Manager on behalf of the Owners on a sale for resale basis. Accordingly, the Construction Manager will issue wholesale certificates to all Contractors, including vendors, and the Construction Manager will not pay sales tax on such procurements to Contractors.
  2. The Construction Manager will require Contractors and Subcontractors to transfer title to TPP directly to the Owners as tenants-in-common under the Wisconsin Project Participation Agreement.
  3. If the Construction Manager (or its Affiliates) engage in labor to construct TPP, it will invoice for sales taxes on the labor to construct TPP.
  4. Management Services (e.g., administration, construction management, engineering, design (but excluding construction services) are not subject to sales tax in Wisconsin.

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5. Title to the Underbuild Owner Line is to be transferred to the Underbuild Project Owner just prior to Substantial Completion. Sales tax will be due to the Wisconsin Department of Revenue on the full value of TPP and the labor to construct the TPP upon such transfer. Accordingly, upon such transfer the Construction Manager will pay such sales tax directly to the Wisconsin Department of Revenue on behalf of the Underbuild Project Owner. Such payment of sales tax by the Construction Manager will constitute a CM Cost.
  
6. The Underbuild Project Owner is responsible for determining the income tax and accounting treatment to be accorded such transfer.

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**CAPX 2020 OPERATING UTILITIES AGREEMENT**  
**FOR**  
**LA CROSSE PROJECT - BRIGGS ROAD (WISCONSIN) SUBSTATION**

**THIS CAPX 2020 OPERATING UTILITIES AGREEMENT** (this "**Agreement**") is effective as of this 6th day of June, 2013, by and between two of the operating utility subsidiaries (the "**Operating Utilities**") of **XCEL ENERGY, INC.**, a registered public utility holding company. These wholly-owned Operating Utility company subsidiaries are **NORTHERN STATES POWER COMPANY**, a Minnesota corporation ("**NSP- MN**"), and **NORTHERN STATES POWER COMPANY**, a Wisconsin corporation ("**NSP- WI**").

**RECITALS**

- A. NSP- WI, along with Dairyland Power Cooperative and WPPI Energy, are the owners ("Owners") in the Southeast Twin-Cities La Crosse Transmission Project (Wisconsin) (the "**Wisconsin Project**"). NSP- MN is not an owner in the Wisconsin Project.
- B. NSP- MN is the Construction Manager of the Wisconsin Project.
- C. NSP- WI has agreed to construct, and will be the sole owner of, a substation that is referred to as the "Briggs Road Substation" located in North La Crosse, Wisconsin (the "**Substation**"). The Substation construction will also include construction of applicable Substation underlying system improvements.
- D. In connection with NSP-WI's obligation to the other Owners to perform such construction with respect to the Substation, NSP-WI has requested that NSP-MN assist in the construction of the Substation on behalf of NSP-WI. The charges between NSP-WI and NSP-MN shall be at cost, without mark-up, with respect to the charges allowed to NSP-WI.
- E. As Operating Utilities, each of NSP-WI and NSP-MN desire to memorialize the basis on which NSP-MN will construct the Substation on behalf of NSP-WI and covenant that such charges in relation to the Substation shall be consistent with the requirements of all regulatory authorities.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, each of which are incorporated by reference as essential terms of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, each of NSP-WI and NSP-MN covenant and agree as follows:

1. **Construction of Substation**. NSP-MN agrees to design and/or construct the Substation and to charge for its materials and services in accordance with the attached **Schedule A**, "Costs for Services."
2. **Costs for Services**. In furtherance and in clarification of the costs for services to be charged by NSP-MN to NSP-WI, such costs shall include labor-related charges as set forth in the attached **Schedule A** with respect to use of NSP-MN's employees to perform, undertake, and carry-out the services for construction of the Substation. Such cost charges are based on agreed-upon Xcel Energy, Inc. Direct Labor Costs, Additive Expenses, General and Administrative Costs

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on Direct Labor that were negotiated at arms-length between NSP-WI and the other Owners. As with labor-related charges, all material charges under this Agreement shall be at cost.

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have read and executed this Agreement.

**NORTHERN STATES POWER COMPANY,**  
a Minnesota corporation

**NORTHERN STATES POWER COMPANY,** a Wisconsin corporation

BY \_\_\_\_\_

BY  \_\_\_\_\_

ITS \_\_\_\_\_

ITS \_\_\_\_\_

MARK STOERING  
PRESIDENT & CEO  
NORTHERN STATES  
POWER CO.

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on Direct Labor that were negotiated at arms-length between NSP-WI and the other Owners. As with labor-related charges, all material charges under this Agreement shall be at cost.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have read and executed this Agreement.

NORTHERN STATES POWER COMPANY, a Minnesota corporation  
NORTHERN STATES POWER COMPANY, a Wisconsin corporation

BY David Spkey BY \_\_\_\_\_  
ITS SUPEG Group President ITS \_\_\_\_\_  
President & CEO

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Docket No. E002/AI-13-\_\_\_\_  
Petition  
Attachment B  
Pages 4-8 of 8

**SCHEDULE A**

**COSTS FOR SERVICES**

**PAGES 4-8 CONTAIN PRIVILEGED INFORMATION AND HAVE BEEN REDACTED**

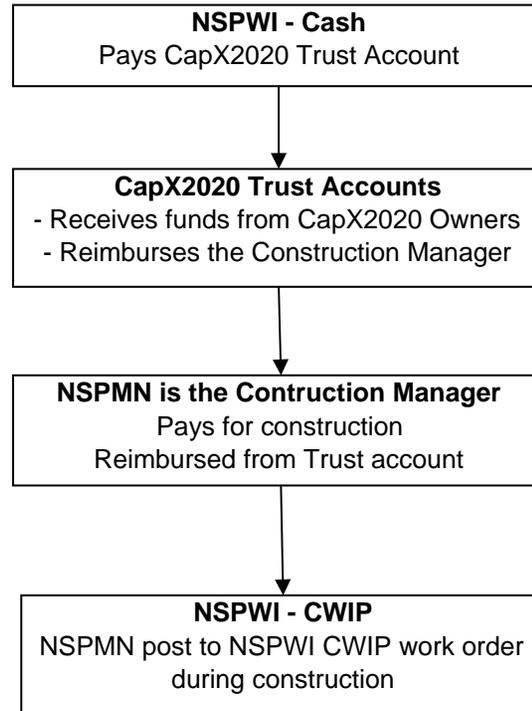
Dir Transm Const XS	8650
Transm Const MN	8653
Transm Const NSPW	8654
Transm Civil Const MN	8660
Transm FO Hauling MN	8661
Substation Construction NSP	8640

NSPM: O&M Split %		2010	2011	2012	2013	2014	2015	2016	2017	2018
8640		3.1%	1.8%	2.4%	2.7%	2.4%	2.0%	2.0%	2.0%	2.0%
8650		100%	100%	100%	100%	100%	100%	100%	100%	100%
8653		16.5%	9.1%	10.0%	9.3%	9.7%	9.7%	9.7%	9.7%	9.7%
8660		1.7%	1.7%	1.1%	2.2%	2.1%	2.1%	2.1%	2.1%	2.1%
8661		16.0%	16.5%	16.0%	17.4%	19.0%	19.0%	19.0%	19.0%	19.0%

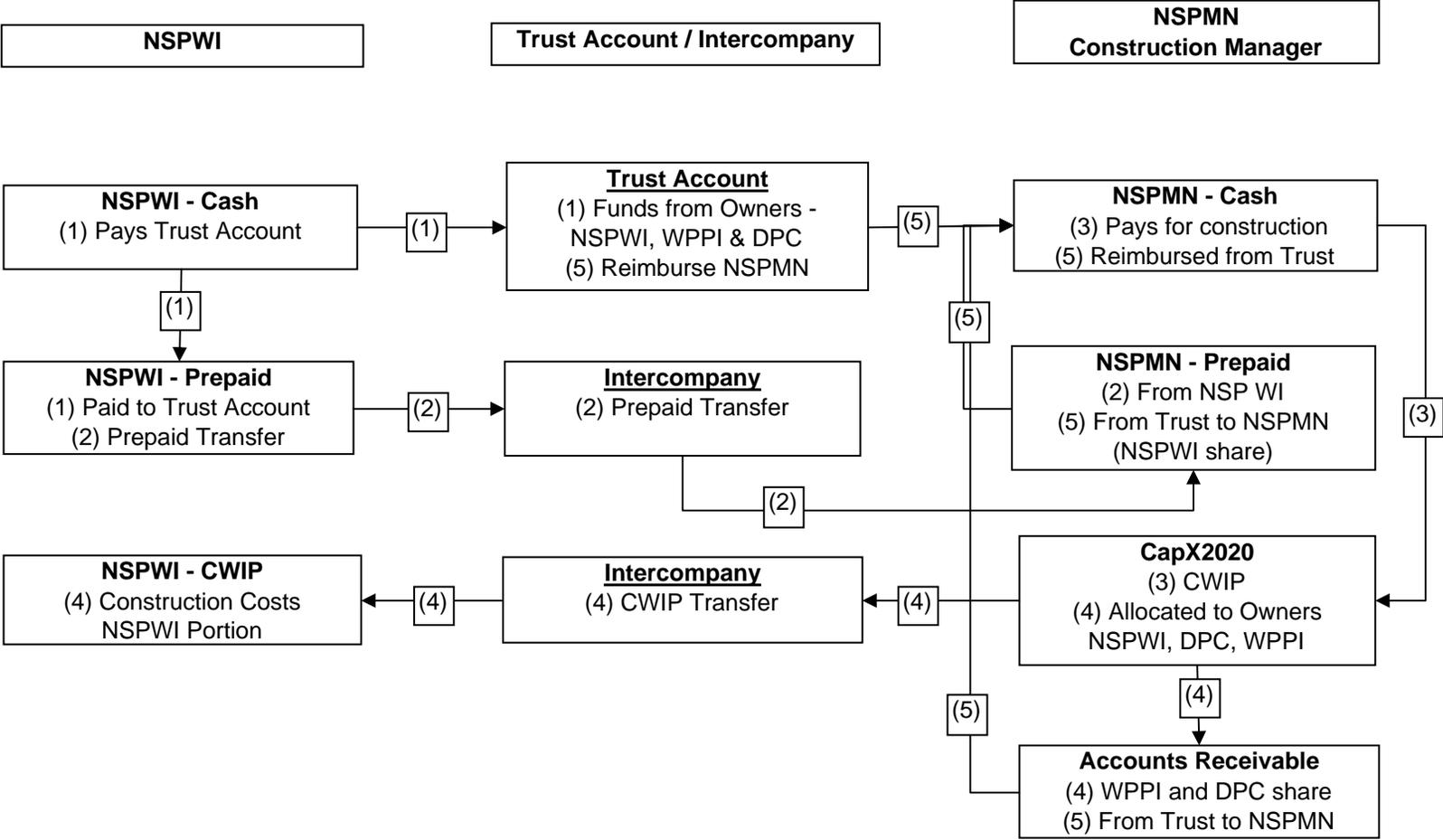
NSPW: O&M Split %		2010	2011	2012	2013	2014	2015	2016	2017	2018
8650		100%	100%	100%	100%	100%	100%	100%	100%	100%
8654		45.1%	39.4%	27.3%	29.5%	26.6%	26.6%	26.6%	26.6%	26.6%

Legal Entity Group	Lvl 5 Cd BC29	Line Item Desc AC3	2010	2011	2012	2013	2014	2015	2016	2017	2018	Grand Total
10 Northern States Power - MN	8640	CWIP Detail	7,512,037	7,497,039	7,026,848	8,559,922	8,963,310	9,265,186	9,540,518	9,785,917	10,115,573	63,257,274
		Operating & Maintenance	248,979	146,303	185,737	240,228	217,589	189,087	194,705	199,713	206,440	1,433,499
		RWIP Details	197,512	476,776	373,582	78,363						451,945
	8640 Total		7,958,528	8,120,118	7,586,167	8,878,513	9,180,899	9,454,273	9,735,223	9,985,630	10,322,013	65,142,718
	8650 Operating & Maintenance		7,074	5,212	4,241	10,867	13,126	13,358	13,597	13,790	14,095	83,074
	8650 Total		7,074	5,212	4,241	10,867	13,126	13,358	13,597	13,790	14,095	83,074
	8653	CWIP Detail	4,339,677	6,247,532	4,859,084	5,980,616	6,388,734	6,683,468	6,883,971	7,062,971	7,302,741	45,161,585
		Operating & Maintenance	970,899	683,030	652,555	632,186	684,272	715,547	737,013	756,178	781,847	4,959,598
		RWIP Details	588,080	552,663	1,003,801	194,815						1,198,616
	8653 Total		5,898,656	7,483,225	6,515,440	6,807,617	7,073,006	7,399,015	7,620,984	7,819,149	8,084,588	51,319,799
	8655 Operating & Maintenance			238	313							313
	8655 Total			238	313							313
	8660	CWIP Detail	5,035,111	5,864,221	8,101,611	11,019,862	11,008,136	11,333,812	11,667,957	11,964,789	12,365,230	77,461,397
		Operating & Maintenance	88,662	105,089	90,453	250,183	238,427	245,481	252,718	259,147	267,821	1,604,230
RWIP Details		65,863	38,383	54,746	4,870						59,616	
8660 Total		5,189,636	6,007,693	8,246,810	11,274,915	11,246,563	11,579,293	11,920,675	12,223,936	12,633,051	79,125,243	
8661	CWIP Detail	954,450	1,194,998	1,328,129	1,704,379	1,699,830	1,750,958	1,803,487	1,850,348	1,913,173	12,050,304	
	Operating & Maintenance	187,530	238,913	258,308	363,722	398,726	410,718	423,039	434,031	448,770	2,737,314	
	RWIP Details	27,391	15,819	29,081	16,907						45,988	
8661 Total		1,169,371	1,449,730	1,615,518	2,085,008	2,098,556	2,161,676	2,226,526	2,284,379	2,361,943	14,833,606	
10 Northern States Power - MN Total			20,223,265	23,066,216	23,968,489	29,056,920	29,612,150	30,607,615	31,517,005	32,326,884	33,415,690	210,504,753
11 Northern States Power - WI	8650 Operating & Maintenance		6,887	5,395	4,226	5,437	5,251	5,344	5,439	5,517	5,637	36,851
	8650 Total		6,887	5,395	4,226	5,437	5,251	5,344	5,439	5,517	5,637	36,851
	8653 Operating & Maintenance				638							638
	8653 Total				638							638
	8654	CWIP Detail	319,273	339,796	526,210	593,417	750,916	768,255	786,105	801,406	823,418	5,049,727
		Operating & Maintenance	284,487	279,830	232,478	259,848	272,129	278,414	284,884	290,429	298,406	1,916,588
		RWIP Details	26,471	90,315	92,168	28,426						120,594
	8654 Total		630,231	709,941	850,856	881,691	1,023,045	1,046,669	1,070,989	1,091,835	1,121,824	7,086,909
	8655 Operating & Maintenance				193							193
	8655 Total				193							193
	8660 CWIP Detail					2,304						2,304
	8660 Total					2,304						2,304
	8661	CWIP Detail				1,311						1,311
		Operating & Maintenance	1,972	3,449	4,789	3,661						8,450
8661 Total		1,972	3,449	4,789	4,972						9,761	
11 Northern States Power - WI Total			639,053	718,761	860,702	894,404	1,028,296	1,052,013	1,076,428	1,097,352	1,127,461	7,136,656
Grand Total			20,862,318	23,784,977	24,829,191	29,951,324	30,640,446	31,659,628	32,593,433	33,424,236	34,543,151	217,641,409

**CapX2020 - La Crosse**  
**Cash Flow through Trust Accounts**



**CapX2020 - La Crosse**  
**Cash Flow through Trust Accounts & Allocation to Owners**



Number	Description	Co	Object	FERC	Posting Account Description	Debit / Credit Amount	NSP-WI Cash	NSP-MN Cash	SC Cash	NSP-WI Prepaid	NSP-MN Prepaid	NSP-MN A/R DPC	NSP-MN A/R WPPI	NSP-MN A&G Costs	NSP-WI A/P Clearing	Co. 72 A/R NSP-WI	Co. 72 A/R DPC	Co. 72 A/R WPPI	Co. 72 Clearing	Intercompany	Co. 72 CWIP	NSP-WI CWIP	
1) NSP-WI Pays Trust account	Payment to Trust account billed by NSP-MN	11	154810.5000	165	Prepaid	12,653,308.19				12,653,308.19													
		11		131	Cash	(12,653,308.19)	(12,653,308.19)																
2) Prepaid Transfer to NSP-MN	Transfer NSP-WI prepaid to NSP-MN prepaid	11	121540	146	Intercompany from NSP-MN	12,653,308.19														12,653,308.19			
		11	154810.5000	165	Prepaid	(12,653,308.19)				(12,653,308.19)													
		10	154810.5000	165	Prepaid	12,653,308.19					12,653,308.19												
		10	121540	146	Intercompany to NSP-WI	(12,653,308.19)															(12,653,308.19)		
3) NSP-MN Pays for CWIP	CWIP paid by NSP-MN	10	121946	146	Intercompany from Co 72	6,835,561.10														6,835,561.10			
		10		131	Cash	(6,835,561.10)		(6,835,561.10)															
		72		107	CapX2020 CWIP	6,835,561.10																	
		72	121946	146	Intercompany to NSP-MN	(6,835,561.10)															(6,835,561.10)		
	CWIP paid by Service Co.	50	121946	146	Intercompany from Co 72	563,040.56															563,040.56		
		50		131	Cash	(563,040.56)			(563,040.56)														
		72		107	CapX2020 CWIP	563,040.56																	
		72	121946	146	Intercompany to Service Co.	(563,040.56)															(563,040.56)		563,040.56
3a) Appendix D of CMA	A&G costs incurred as part of normal business; this amount only represents A&G reimbursed from joint owners	10		920-935	A&G Cost	67,065.10								67,065.10									
		10		131	Cash	(67,065.10)		(67,065.10)															
	Post A&G cost to owners A/R	72	127000.3015	143	Receivable from DPC 12.679%	8,503.18											8,503.18						
		72	127000.3040	143	Receivable from WPPI 10.208%	6,846.01													6,846.01				
		72	127000.4023	143	Receivable from NSP-WI 77.113%	51,715.91										51,715.91							
		72	121946	146	Intercompany to NSP-MN	(67,065.10)															(67,065.10)		
		10	121946	146	Intercompany from Co 72	67,065.10																	
		10	999430.724100	922	Misc. O&M Credits	(67,065.10)																	
		11	733300	107	CWIP	51,715.91								67,065.10									
		11	365486	232	A/P CapX2020	(51,715.91)									(51,715.91)								51,715.91
3b) Trust Interest	Interest earned by Trust account	72	265899	184	Trust Interest Clearing	1,067.52																	
		72	733370	107	Reimburse to Construction	(1,067.52)																	
		72	121946	146	Intercompany from NSP-MN	1,067.52																	
		72	265899	184	Trust Interest Clearing	(1,067.52)																	
		10	154810.5000	165	Prepaid	1,067.52					1,067.52												
		10	121946	146	Intercompany to Co 72	(1,067.52)																	
4) Allocation to Owners & CWIP transfer to NSP-WI	Allocation to Owners	72	127000.4023	143	Receivable from NSP-WI 77.113%	5,704,460.50										5,704,460.50							
		72	127000.3015	143	Receivable from DPC 12.679%	937,933.35											937,933.35						
		72	127000.3040	143	Receivable from WPPI 10.208%	755,140.29																	
		72		107	CapX2020 CWIP	(7,397,534.14)																	
		11		107	CWIP - NSP-WI	5,704,460.50																	
		11	365486	232	A/P CapX2020	(5,704,460.50)									(5,704,460.50)								5,704,460.50
5) From Trust to NSP-MN	Requisitions from Trust for actual costs incurred	10		131	Cash	5,685,128.38		5,685,128.38															
		10	154810.5000	165	Prepaid	(5,685,128.38)					(5,685,128.38)												
	Paid by owners during construction phase through the Trust	10	154810.5000	165	Prepaid	1,301,155.34					1,301,155.34												
		10	121946	146	Intercompany to 72	(1,301,155.34)																	
		72	121946	146	Intercompany from NSP-MN	1,301,155.34																	
		72	127000.3015	143	Receivable from DPC 12.679%	(720,817.43)											(720,817.43)						
		72	127000.3040	143	Receivable from WPPI 10.208%	(580,337.91)																	
5a) Paid during Permitting Phase	Paid by owners during permitting phase and credited to the construction phase	10		131	Cash from owners	325,172.59		325,172.59															
		10	127000.3015	143	Receivable from DPC	(129,285.49)						(129,285.49)											
		10	127000.3040	143	Receivable from WPPI	(195,887.10)							(195,887.10)										
		10	127000.3015	143	Receivable from DPC	129,285.49						129,285.49											
		10	127000.3040	143	Receivable from WPPI	195,887.10							195,887.10										
		10	121946	146	Intercompany to 72	(325,172.59)																	
		72	121946	146	Intercompany from NSP-MN	325,172.59																	
		72	127000.3015	143	Receivable from DPC	(129,285.49)											(129,285.49)						
		72	127000.3040	143	Receivable from WPPI	(195,887.10)																	
6) Month-end Intercompany	Intercompany Reclass	11	365486	232	A/P CapX2020	5,756,176.41																	
		11	121540	146	Intercompany to NSP-MN	(5,756,176.41)																	
		72	121946	146	Intercompany from NSP-MN	5,756,176.41																	
		72	127000.4023	143	A/R CapX2020 NSP-WI	(5,756,176.41)																	
		10	121540		Intercompany from NSP-WI	5,756,176.41																	
		10	121946		Intercompany to Co 72	(5,756,176.41)																	
	SC receivable reclassified from Co 72 to NSP-MN for reimbursement	50	121946	146	Intercompany to Co 72	(563,040.56)																	
		50	121540	146	Intercompany from NSP-MN	563,040.56																	
		10	121946	146	Intercompany from Co 72	563,040.56																	
		10	121540	146	Intercompany to SC	(563,040.56)																	
		72	121946	146	Intercompany from SC	563,040.56																	
		72	121946	146	Intercompany to NSP-MN	(563,040.56)																	
						-	(12,653,308.19)	(892,325.23)	(563,040.56)	-	8,270,402.67	-	-	-	-	-	96,333.61	(14,238.71)	-	-	-	5,756,176.41	

10 NSP-MN  
 11 NSP-WI  
 50 Service Company (SC)  
 72 CapX2020 (See Footnote 1)

**Reconciliation to NSP-WI CWIP Work Orders**

From Shared - Doc Type UK 11683905 - Line	2,975,165.96
From Shared - Doc Type UK 11689854 - ROW	2,729,294.57
A&G per CMA Appendix D	51,715.91
Total from shared work order	5,756,176.44
Permitting Phase allocation to Construction phase - batch 656301, 656468	4,768,761.36
Posted Directly to CWIP (Non-Shared) - Direct Costs	81,762.67
Posted Directly to CWIP (Non-Shared) - Overhead	310,544.31
<b>NSP-WI CWIP, 10/31/2013</b>	<b>10,917,244.78</b>

Footnotes:  
 (1) Company 72 is not a legal entity but a separate general ledger company established to allocate the total project costs and to track the receivables from each owner.  
 (2) The capital overhead applied to NSPW's Wisconsin Project work orders will not contain the A&G component due to A&G applied under CMA Appendix D.

CapX2020 La Crosse  
 Wisconsin Shared Transactions  
 Project-to-Date through October 2013

Number	Description	Co	Object	FERC	Posting Account Description	Debit / Credit Amount	Intercompany	Intercompany	Intercompany	Intercompany	Intercompany	Intercompany	Intercompany	Intercompany	Total	
							NSP-MN with Co 72	NSP-MN with NSP-WI	NSP-MN with SC	Co 72 with NSP-MN	Co 72 with SC	NSP-WI with NSP-MN	SC with NSP-MN	SC with Co 72		
1) NSP-WI Pays Trust account	Payment to Trust account	11	154810.5000	165	Prepaid	12,653,308.19									-	
	billed by NSP-MN	11		131	Cash	(12,653,308.19)									-	
2) Prepaid Transfer to NSP-MN	Transfer NSP-WI prepaid to NSP-MN prepaid	11	121540	146	Intercompany from NSP-MN	12,653,308.19					12,653,308.19				12,653,308.19	
		11	154810.5000	165	Prepaid	(12,653,308.19)									-	
		10	154810.5000	165	Prepaid	12,653,308.19										-
		10	121540	146	Intercompany to NSP-WI	(12,653,308.19)		(12,653,308.19)								(12,653,308.19)
3) NSP-MN Pays for CWIP	CWIP paid by NSP-MN	10	121946	146	Intercompany from Co 72	6,835,561.10	6,835,561.10								6,835,561.10	
		10		131	Cash	(6,835,561.10)									-	
		72		107	CapX2020 CWIP	6,835,561.10									-	
	72	121946	146	Intercompany to NSP-MN	(6,835,561.10)			(6,835,561.10)							(6,835,561.10)	
	CWIP paid by Service Co.	50	121946	146	Intercompany from Co 72	563,040.56							563,040.56		563,040.56	
		50		131	Cash	(563,040.56)									-	
		72		107	CapX2020 CWIP	563,040.56									-	
72		121946	146	Intercompany to Service Co.	(563,040.56)			(563,040.56)							(563,040.56)	
3a) Appendix D of CMA	A&G costs incurred as part of normal business; this amount only represents A&G reimbursed from joint owners	10		920-935	A&G Cost	67,065.10									-	
		10		131	Cash	(67,065.10)									-	
	Post A&G cost to owners A/R	72	127000.3015	143	Receivable from DPC 12.679%	8,503.18									-	
		72	127000.3040	143	Receivable from WPPI 10.208%	6,846.01									-	
		72	127000.4023	143	Receivable from NSP-WI 77.113%	51,715.91									-	
		72	121946	146	Intercompany to NSP-MN	(67,065.10)			(67,065.10)							(67,065.10)
		10	121946	146	Intercompany from Co 72	67,065.10	67,065.10									67,065.10
		10	999430.724100	922	Misc. O&M Credits	(67,065.10)										-
		11	733300	107	CWIP	51,715.91										-
		11	365486	232	A/P CapX2020	(51,715.91)										-
		3b) Trust Interest	Interest earned by Trust account	72	265899	184	Trust Interest Clearing	1,067.52								
72	733370			107	Reimburse to Construction	(1,067.52)									-	
72	121946			146	Intercompany from NSP-MN	1,067.52			1,067.52						1,067.52	
72	265899			184	Trust Interest Clearing	(1,067.52)									-	
10	154810.5000			165	Prepaid	1,067.52									-	
10	121946			146	Intercompany to Co 72	(1,067.52)		(1,067.52)								(1,067.52)
4) Allocation to Owners & CWIP transfer to NSP-WI	Allocation to Owners	72	127000.4023	143	Receivable from NSP-WI 77.113%	5,704,460.50									-	
		72	127000.3015	143	Receivable from DPC 12.679%	937,933.35									-	
		72	127000.3040	143	Receivable from WPPI 10.208%	755,140.29									-	
		72		107	CapX2020 CWIP	(7,397,534.14)										-
		11		107	CWIP - NSP-WI	5,704,460.50										-
		11	365486	232	A/P CapX2020	(5,704,460.50)										-
5) From Trust to NSP-MN	Requisitions from Trust for actual costs incurred	10		131	Cash	5,685,128.38									-	
		10	154810.5000	165	Prepaid	(5,685,128.38)									-	
	Paid by owners during construction phase through the Trust	10	154810.5000	165	Prepaid	1,301,155.34									-	
		10	121946	146	Intercompany to 72	(1,301,155.34)	(1,301,155.34)									(1,301,155.34)
		72	121946	146	Intercompany to NSP-MN	1,301,155.34			1,301,155.34							1,301,155.34
		72	127000.3015	143	Receivable from DPC 12.679%	(720,817.43)										-
		72	127000.3040	143	Receivable from WPPI 10.208%	(580,337.91)										-
5a) Paid during Permitting Phase	Paid by owners during permitting phase and credited to the construction phase	10		131	Cash from owners	325,172.59									-	
		10	127000.3015	143	Receivable from DPC	(129,285.49)									-	
		10	127000.3040	143	Receivable from WPPI	(195,887.10)									-	
		10	127000.3015	143	Receivable from DPC	129,285.49										-
		10	127000.3040	143	Receivable from WPPI	195,887.10										-
		10	121946	146	Intercompany to 72	(325,172.59)	(325,172.59)									(325,172.59)
		72	121946	146	Intercompany to NSP-MN	325,172.59			325,172.59							325,172.59
		72	127000.3015	143	Receivable from DPC	(129,285.49)										-
72	127000.3040	143	Receivable from WPPI	(195,887.10)										-		
6) Month-end Intercompany	Intercompany Reclass	11	365486	232	A/P CapX2020	5,756,176.41									-	
		11	121540	146	Intercompany to NSP-MN	(5,756,176.41)									-	
		72	121946	146	Intercompany from NSP-MN	5,756,176.41			5,756,176.41						5,756,176.41	
		72	127000.4023	143	A/R CapX2020 NSP-WI	(5,756,176.41)									-	
		10	121540		Intercompany from NSP-WI	5,756,176.41		5,756,176.41							5,756,176.41	
		10	121946		Intercompany to Co 72	(5,756,176.41)	(5,756,176.41)									(5,756,176.41)
	SC receivable reclassified from Co 72 to NSP-MN for reimbursement	50	121946	146	Intercompany to Co 72	(563,040.56)							(563,040.56)		(563,040.56)	
		50	121540	146	Intercompany from NSP-MN	563,040.56					563,040.56				563,040.56	
		10	121946	146	Intercompany from Co 72	563,040.56	563,040.56								563,040.56	
		10	121540	146	Intercompany to SC	(563,040.56)			(563,040.56)							(563,040.56)
72	121946	146	Intercompany from SC	563,040.56				563,040.56						563,040.56		
72	121946	146	Intercompany to NSP-MN	(563,040.56)			(563,040.56)							(563,040.56)		
							82,094.90	(6,897,131.78)	(563,040.56)	(82,094.90)	-	6,897,131.78	563,040.56	-		

10 NSP-MN  
 11 NSP-WI  
 50 Service Company (SC)  
 72 CapX2020 (See Footnote 1)

\* Intercompany accounts are settled the following month

Footnotes:  
 (1) Company 72 is not a legal entity but a separate general ledger company established to allocate the total project costs and to track the receivables from each owner.  
 (2) The capital overhead applied to NSPW's Wisconsin Project work orders will not contain the A&G component due to A&G applied under CMA Appendix D.

## CERTIFICATE OF SERVICE

I, SaGonna Thompson, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

xx electronic filing

### **XCEL ENERGY'S MISCELLANEOUS ELECTRIC SERVICE LIST**

Dated this 3rd day of December 2013

/s/

---

SaGonna Thompson  
Records Analyst

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christopher	Anderson	canderson@allete.com	Minnesota Power	30 W Superior St  Duluth, MN 558022191	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
James J.	Bertrand	james.bertrand@leonard.com	Leonard Street & Deinard	150 South Fifth Street, Suite 2300  Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Michael	Bradley	mike.bradley@lawmoss.com	Moss & Barnett	Suite 4800 90 S 7th St Minneapolis, MN 55402-4129	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Jeffrey A.	Daugherty	jeffrey.daugherty@centerpointenergy.com	CenterPoint Energy	800 LaSalle Ave  Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Ian	Dobson	ian.dobson@ag.state.mn.us	Office of the Attorney General-RUD	Antitrust and Utilities Division 445 Minnesota Street, BRM Tower St. Paul, MN 55101	Electronic Service 1400	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Lloyd	Grooms	lgrooms@winthrop.com	Winthrop and Weinstine	Suite 3500 225 South Sixth Street Minneapolis, MN 554024629	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Alan	Jenkins	aj@jenkinsatlaw.com	Jenkins at Law	2265 Roswell Road Suite 100 Marietta, GA 30062	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	90 South 7th Street Suite #4800 Minneapolis, MN 554024129	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Mark J.	Kaufman	mkaufman@ibewlocal949.org	IBEW Local Union 949	12908 Nicollet Avenue South  Burnsville, MN 55337	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Thomas G.	Koehler	N/A	Local Union #160, IBEW	2909 Anthony Ln  Minneapolis, MN 55418-3238	Paper Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Michael	Krikava	mkrikava@briggs.com	Briggs And Morgan, P.A.	2200 IDS Center 80 S 8th St Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W  Farmington, MN 55024	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E  St. Paul, MN 55106	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Andrew	Moratzka	apmoratzka@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
David W.	Niles	david.niles@avantenergy.com	Minnesota Municipal Power Agency	Suite 300 200 South Sixth Street Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Joseph V.	Plumbo		Local Union 23, I.B.E.W.	932 Payne Avenue  St. Paul, MN 55130	Paper Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	332 Minnesota Street Ste W2750  St. Paul, MN 55101	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Ken	Smith	ken.smith@districtenergy.com	District Energy St. Paul Inc.	76 W Kellogg Blvd  St. Paul, MN 55102	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Ron	Spangler, Jr.	rlspangler@otpc.com	Otter Tail Power Company	215 So. Cascade St. PO Box 496 Fergus Falls, MN 565380496	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Byron E.	Starns	byron.starns@leonard.com	Leonard Street and Deinard	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
James M.	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	470 U.S. Bank Plaza 200 South Sixth Street Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Eric	Swanson	eswanson@winthrop.com	Winthrop Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
SaGonna	Thompson	Regulatory.Records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7  Minneapolis, MN 554011993	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Lisa	Veith	lisa.veith@ci.stpaul.mn.us	City of St. Paul	400 City Hall and Courthouse 15 West Kellogg Blvd. St. Paul, MN 55102	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric