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Minneapolis, MN 55401

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October 3, 2019

—Via Electronic Filing—

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

RE: PETITION FOR APPROVAL OF AFFILIATED INTEREST REQUEST FOR THE POWER
PURCHASE AGREEMENTS FOR MANKATO ENERGY CENTER I AND II
DOCKET NO. E002/AI-19-___

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits this Petition to the Minnesota Public Utilities Commission for approval of affiliated interest agreements between the Company and both Mankato Energy Center LLC and Mankato Energy Center II LLC, which will become non-regulated affiliates and wholly-owned subsidiaries of Xcel Energy Inc.

This Petition includes information the Company considers to be trade secret data as defined by Minn. Stat. § 13.37(1)(b). The information derives independent economic value from not being generally known or readily ascertainable by others who could obtain a financial advantage from its use. Thus, Xcel Energy considers this non-public data.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service lists. Please contact me at bria.e.shea@xcelenergy.com or (612) 330-6064 if you have any questions regarding this filing.

Sincerely,

/s/

BRIA E SHEA
DIRECTOR, REGULATORY AND STRATEGIC ANALYSIS

Enclosures
c: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben
Dan Lipschultz
Valerie Means
Matthew Schuerger
John Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

IN THE MATTER OF NORTHERN STATES
POWER COMPANY'S AFFILIATED
INTEREST REQUEST FOR THE POWER
PURCHASE AGREEMENTS FOR MANKATO
ENERGY CENTER I AND II

DOCKET NO. E002/AI-19-____

PETITION

INTRODUCTION

Northern States Power Company (the "Company") submits this Petition to the Minnesota Public Utilities Commission ("Commission" or "MPUC") for approval of affiliated interest agreements between the Company and both Mankato Energy Center LLC ("MEC I LLC") and Mankato Energy Center II LLC ("MEC II LLC") (collectively, the "MEC LLCs"), which will become non-regulated affiliates and wholly-owned subsidiaries of Xcel Energy Inc.

The Company has existing Power Purchase Agreements ("PPAs") with each of MEC I LLC and MEC II LLC for the capacity and energy produced by the Mankato Energy Center I and II (collectively, the "Facility" or "MEC").¹ Those PPAs were approved by the Commission in August 2004 (MEC I) and February 2015 (MEC II). At the time of those Commission approvals, MEC was owned by Calpine Corporation, which ultimately sold the plant (along with its rights and obligations under the PPAs) to Southern Power Company ("Southern") in late 2016.

In August 2018, the Company learned that Southern was planning to sell MEC. After evaluating the potential costs and benefits of its options, the Company concluded that taking ownership over MEC was likely to be beneficial to the Company's customers over the life of the Facility. The Company therefore entered into negotiations with Southern, which ultimately resulted in the execution of a Membership Interest Purchase Agreement ("MIPA") for the Company's purchase of the corporate entities MEC I LLC and MEC II, LLC from Southern including the Facility, the PPAs for the output of MEC I and MEC II, and all related assets.

¹ Southern Company is the corporate parent of Mankato Energy Center, LLC and Mankato Energy Center II, LLC – the entities that own the Facility and all related assets, including the PPAs.

On November 28, 2018, the Company submitted a Petition to the Commission for approval of the MIPA in Docket No. IP6949, E002/PA-18-702 (the “Retail Purchase Docket”). As part of the Retail Purchase Docket, the Company submitted a letter dated August 1, 2019, indicating that if the Commission denied the Company’s request to acquire MEC I and MEC II from Southern as a regulated asset, XEL would acquire MEC I and MEC II through an unregulated affiliate. After a ten-month proceeding, the Commission held a hearing on September 27, 2019, and voted to deny the Company’s Petition in the Retail Purchase Docket.

On October 2, 2019, Xcel Energy Inc. formed MEC Holdings LLC (“MEC Holdings”) as a non-regulated affiliate, and the Company intends to assign the MIPA to MEC Holdings, consistent with the MIPA’s terms (as amended on September 13, 2019). MEC Holdings intends to close on the purchase no later than January 20, 2020 (the “Transaction”). Upon the closing of the Transaction, MEC Holdings will own the MEC LLCs and, through these corporate entities will own, and operate the Facility and assume all of Southern’s rights and obligations under the existing PPAs—the terms of which will remain unchanged from those that were negotiated at arm’s length and approved by the Commission in 2004 and 2015, respectively.

Consequently, the PPAs will become affiliated interest agreements as defined in Minn. Stat. § 216B.48, and the Company requests Commission approval of the MEC I and MEC II PPAs as affiliated interest agreements that are reasonable and consistent with the public interest. The substitution of MEC Holdings for Southern will not change the terms or overall reasonableness of the PPAs, which are both the product of competitive acquisition processes and were previously approved by the Commission. Additionally, as discussed in detail later in this petition, the Company intends to institute various protections to ensure that neither MEC Holdings nor the MEC LLCs are advantaged by their affiliation to NSPM and that all costs of supporting those entities are accurately assigned to them and not subsidized by NSPM or any of its other affiliates. For these reasons, we respectfully ask the Commission to approve this petition as consistent with the public interest.

The Company submits the following Attachments in support of its Petition.

- | | |
|---------------|--|
| Attachment A: | Power Purchase Agreement Between Mankato Energy Center, LLC and Northern States Power Company (“MEC I PPA”). |
| Attachment B: | Power Purchase Agreement Between Northern States Power Company and Mankato Energy Center II, LLC (“MEC II PPA”). |

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 Department of Commerce and the Office of the Attorney General – Antitrust and Utilities Division. A summary of this filing has been served on all parties on the enclosed service lists.

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, a Minnesota corporation
414 Nicollet Mall
Minneapolis, MN 55401
(612) 330-5500

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

Ryan Long
Lead Assistant General Counsel
Xcel Energy
414 Nicollet Mall, 401 8th Floor
Minneapolis, MN 55401
(612) 215-4659
ryan.j.long@xcelenergy.com

C. Date of Filing

The date of this filing is October 3, 2019.

D. Statute Controlling Schedule for Processing the Filing

Minn. Stat. § 216B.48 and Minn. R. 7825.2200(B) set forth the substantive criteria applicable to the agreements between MEC Holdings and the Company. These provisions do not establish an explicit timeframe for Commission action. However given our contractual obligation to close the transaction with Southern no later than January 20, 2020, we respectfully request that the Commission establish a procedural schedule such that the Commission can decide the Company's petition by January 10, 2020.

E. Utility Employee Responsible for Filing

Bria Shea
Director, Regulatory and Strategic Analysis
Xcel Energy
414 Nicollet Mall, 401 7th Floor
Minneapolis, MN 55401
(612) 330-6613
bria.e.shea@xcelenergy.com

IV. MISCELLANEOUS INFORMATION

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

Ryan Long
Lead Assistant General Counsel
Xcel Energy
414 Nicollet Mall, 401 8th Floor
Minneapolis, MN 55401
ryan.j.long@xcelenergy.com

Lynnette Sweet
Regulatory Administrator
Xcel Energy
414 Nicollet Mall, 401 7th Floor
Minneapolis, MN 55401
regulatory.records@xcelenergy.com

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

V. DESCRIPTION AND PURPOSE OF FILING

Through this Petition, the Company is requesting Commission approval of two PPAs between the Company and the MEC LLCs, which are non-regulated affiliates of the Company. Specifically, the Company requests approval of the Mankato Energy Center I Power Purchase Agreement ("MEC I PPA") between the Company and MEC I LLC and the Mankato Energy Center II Power Purchase Agreement ("MEC II PPA") between the Company and MEC II LLC.

The PPAs contemplate the purchase by the Company of the available capacity and energy dispatched from MEC I through 2026 and MEC II through 2039, and contain the same terms and conditions as the original PPAs that were negotiated at arms-length. The Company seeks approval by the Commission of such agreements.

In support of this filing, the Company provides:

- Compliance Information;
- Background; and

- Standard of Review and Description of Public Interest for Approval of the PPAs.

VI. COMPLIANCE INFORMATION

Minn. Stat. § 216B.48, subd. 3 establishes the Commission's authority regarding affiliate arrangements, as follows:

No contract or arrangement, including any general or continuing arrangement, providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing...between a public utility and any affiliated interest...is valid or effective unless and until the contract or arrangement has received the written approval of the commission....Every public utility shall file with the commission a verified copy of the contract or arrangement, or a verified summary of the unwritten contract or arrangement...

When the Company requests approval of an affiliate agreement, Minn. Stat. § 216B.48 and Minn. R. 7825.2200 require that certain information be provided. Pursuant to these requirements, the Company provides the following information.

VII. BACKGROUND

This section provides background information on the history of Mankato Energy Center, including Mankato Energy Center I, Mankato Energy Center II, and the PPAs associated with each project.

A. Mankato Energy Center I

MEC I is a 375 MW natural gas combined-cycle generating facility located in the City of Mankato in Blue Earth County, Minnesota.² MEC I was originally constructed in a one-on-one configuration, meaning there was one combined cycle power train and one steam turbine used to generate electricity.³ MEC I is owned by MEC I LLC, which is a counterparty to NSPM under a 20-year PPA in effect through 2026.⁴

MEC I was originally developed in response to a need identified in the Company's 2000-2014 Resource Plan. In approving the 2000-2014 Resource Plan, the Commission authorized the Company to meet future demand for electricity through a competitive

² Docket No. IP-6949/GS-15-620, Site Permit Application at 1-1 (Aug. 5, 2015).

³ *Id.* As discussed in Section VII.B, the MEC II project added a second combined cycle power train to the MEC Facility.

⁴ Docket No. E-002/M-04-451, Petition at Ex. 1 (Mar. 23, 2004).

bidding process.⁵ Pursuant to the approved Resource Plan, on December 6, 2001, the Company issued an All-Source Request for Proposals to fill its resource needs between May 1, 2005 and May 1, 2009.⁶ A total of 27 firms submitted 47 proposals.⁷ Taking into consideration all options offered to each of the base bids, the total number of discrete proposals to examine became 113.⁸

After narrowing the proposals to a short list of projects, the Company filed its final report on June 19, 2003, identifying a portfolio of seven projects totaling 808 MW.⁹ As part of this report, the Company stated its intention to enter contract negotiations with Mankato Energy Center, LLC, then a wholly-owned subsidiary of Calpine Corporation (“Calpine”), to construct a natural gas facility.

The Company’s evaluation of proposals and final selection of suppliers was the subject of considerable comment and deliberation before the Commission. On August 1, 2003, the Department of Commerce filed comments recommending the Commission take no action on the objections filed by competing developers. In particular, the Department stated that it had thoroughly reviewed the final selection report filed by the Company and concluded that the final selection was appropriate and fair.

Following the Department of Commerce’s recommendation, the Commission denied a request that it investigate the method used by the Company in assigning capacity accreditation and the assumptions it used for natural gas prices. In its Order, the Commission explained that it found “no evidence that the bidding process was unfair or otherwise contrary to law.”

On March 23, 2004, following an arms-length negotiation between the parties, the Company filed a petition with the Commission for approval of the MEC I PPA pursuant to which MEC I would supply capacity and energy to the NSPM integrated system for twenty years. The Commission approved the MEC I PPA on August 17, 2004, finding in its Order “that Xcel Energy’s proposal is reasonable and in the public interest.”¹⁰ MEC I was

⁵ Docket No. E-002/RP-00-787, Order Approving Xcel Energy’s 2000-2014 Resource Plan as Modified (Aug. 29, 2001).

⁶ Docket No. E-002/M-01-1618, Order Denying Requests for Investigation and Requiring Discussions and Report at 1 (Nov. 19, 2003) (“Nov. 19, 2003 Order”).

⁷ *Id.*

⁸ *Id.*

⁹ Docket No. E-002/M-01-1618, 2001 All Source Request for Proposals Final Report (June 19, 2003).

¹⁰ Docket No. E-002/M-04-451, Order Approving Power Purchase Agreement at 2 (Aug. 17, 2004).

subsequently completed by Calpine in 2006 and has operated since that time under the MEC I PPA.¹¹ A copy of the MEC I PPA is attached hereto at Attachment A.

B. Mankato Energy Center II

MEC II is a 345 MW expansion to the existing MEC I Facility completed in June 2019. MEC II adds a second combined cycle power train, allowing the Facility to operate in a two-on-one configuration, meaning there are two combined cycle power trains providing steam to the existing steam turbine.¹² MEC II is owned by Mankato Energy Center II, LLC, which is a wholly owned subsidiary of Southern Power. MEC II LLC and the Company are parties to the MEC II PPA, a 20-year PPA in effect until 2039.¹³

The MEC II PPA stems from the need identified in the Company's 2010 Resource Plan proceeding.¹⁴ After filing the Resource Plan in 2010, the Company filed a petition for a certificate of need for its proposed Black Dog Generating Plant repowering project.¹⁵ At the time, the Company anticipated that Black Dog would provide resources needed to address a generation deficit that was then projected to arise in 2014. The then-owner of MEC, Calpine, petitioned to intervene in the Black Dog certificate of need proceeding with an alternative proposal, and the Commission referred the proceeding to Office of Administrative Hearings for contested case proceedings.¹⁶

Due to changing circumstances at the time, including updated demand forecasts and costs of alternative resource options, the Company concluded that it should revisit the size, type, and timing of its capacity needs. It therefore requested to withdraw its certificate of need application, and the Commission approved that request in order to allow for further analysis of resource needs in the Company's resource plan.¹⁷ At the same time, the Commission concluded that once the Company's resource need was determined through analysis in the Resource Plan, a resource acquisition process would need to be initiated to solicit and evaluate project proposals to meet that need.

The Commission initiated the competitive acquisition process on November 21, 2012.¹⁸ In its initial Order, the Commission directed the Company to solicit proposals to

¹¹ Docket No. IP6949, E002/PA-18-702, Petition at 9 (Nov. 28, 2018).

¹² Docket No. IP-6949/GS-15-620, Site Permit Application at 2-2.

¹³ Docket No. IP6949, E002/PA-18-702, Petition at 9.

¹⁴ Docket No. E002/RP-10-825.

¹⁵ Docket No. E-002/CN-11-184, Petition (Mar. 15, 2011).

¹⁶ Docket No. E-002/CN-11-184, Calpine Corporation Alternative Proposal (July 22, 2011).

¹⁷ Docket No. E-002/CN-11-184, Order Closing Docket, Establishing New Docket, and Schedule for Competitive Resource Acquisition Process (Nov. 21, 2012).

¹⁸ Docket No. E-002/CN-12-1240, Order Closing Docket, Establishing New Docket, and Schedule for Competitive Resource Acquisition Process (Nov. 21, 2012).

provide the additional resources needed to serve the Company's customers,¹⁹ which was later determined in the Resource Plan proceeding to be additional capacity of 150 MW by 2017, increasing up to 500 MW by 2019.²⁰ These findings provided the context in which project developers submitted their proposals in the resource acquisition docket.²¹

After lengthy proceedings, on May 23, 2014, the Commission issued an Order directing the Company to negotiate draft agreements with Geronimo (solar), Invenergy, and Calpine, and to develop price terms for Black Dog Unit 6 ("May 2014 Order").²² The May 2014 Order required the Company to submit the terms for Commission approval no later than September 23, 2014.²³ The Order also required the Company to submit status updates by October 2014 and October 2015 regarding any changes in the Company's resource needs.²⁴

Following the Commission's May 2014 Order, the Company began arms-length negotiations with each of Geronimo, Invenergy, and Calpine. On September 23, 2014, the Company made the compliance filing required by the May 2014 Order,²⁵ and submitted a revised filing on October 2, 2014.²⁶ The compliance filings contained, among other things, a draft of the MEC II PPA between the Company and MEC II LLC.²⁷

On February 5, 2015, the Commission selected three projects, including Calpine's MEC II PPA.²⁸ The Commission found that the "terms appear quite economical by historical standards" and "are consistent with the public interest," and that "[t]his fact, combined with forecasts of plant retirements due to new regulations, persuade the Commission to authorize Xcel Energy to lock in these favorable terms on behalf of ratepayers."²⁹

¹⁹ *Id.*

²⁰ Docket No. E002/RP-10-825, Order Approving Plan, Finding Need, Establishing Filing Requirements, and Closing Docket (Mar. 5, 2013).

²¹ Docket No. E-002/CN-12-1240, Order Approving Power Purchase Agreement with Calpine, Approving Power Purchase Agreement with Geronimo, and Approving Price Terms with Xcel Energy at 23 (Feb. 5, 2015).

²² Docket No. E-002/CN-12-1240, Order Directing Xcel Energy to Negotiate Draft Agreements with Selected Parties (May 23, 2014).

²³ *Id.*

²⁴ *Id.*

²⁵ Docket No. E-002/CN-12-1240, Compliance Filing (Sept. 23, 2014).

²⁶ Docket No. E-002/CN-12-1240, Correction to September 23, 2014 Compliance Filing (Oct. 2, 2014).

²⁷ Docket No. E-002/CN-12-1240, Compliance Filing at Attachment A.

²⁸ Docket No. E-002/CN-12-1240, *see also* Docket No. E-002/M-14-789, Order Approving MEC II PPA (Feb. 5, 2015).

²⁹ *Id.* at 19.

The Company submitted the executed MEC II PPA to the Commission on May 6, 2015.³⁰ The MEC II PPA has a 20-year term, with an in-service date of June 2019.³¹ On August 27, 2015, the Company and MEC II LLC executed and filed with the Commission a First Amendment to the MEC II PPA.³² A copy of the MEC II PPA is attached hereto at Attachment B.

The Commission issued a Site Permit for MEC II on June 23, 2016.³³ In late 2016, prior to starting construction of MEC II, Calpine sold MEC I LLC and MEC II LLC, including its rights and obligations under the MEC I PPA and MEC II PPA, to Southern.³⁴ Construction of MEC II was completed and the plant was placed in-service in June 2019.³⁵

C. Retail Purchase Docket

In late August 2018, the Company became aware of Southern's plan to sell MEC I and MEC II. Responding to that news, we quickly undertook efforts to explore the costs and benefits associated with the Company's potential purchase of MEC I and MEC II in comparison to a third party purchasing the Facility and stepping into Southern's role under the PPAs. Our initial modeling demonstrated that it could secure benefits for its customers by proceeding with an offer to purchase the plants, so the Company and Southern entered into an exclusive negotiation period beginning on October 2, 2018. The parties then negotiated the terms of the transaction throughout October 2018 and ultimately signed the MIPA on November 5, 2018.³⁶

On November 28, 2018, the Company filed a Petition to the Commission for approval to acquire MEC I and MEC II from Southern.³⁷ On September 27, 2019, the Commission held a hearing and voted to deny the Company's Petition.

D. Creation of MEC Holdings

³⁰ Docket No. E-002/M-14-789, Compliance Filing (May 6, 2015).

³¹ Docket No. IP6949, E002/PA-18-702, Petition at 9.

³² Docket No. E-002/CN-12-1240, First Amendment to a Power Purchase Agreement with Mankato Energy Center II, LLC (Aug. 27, 2015).

³³ Docket No. IP-6949/GS-15-620, Order Issuing Site Permit with Conditions (June 23, 2016) ("MEC I Permit").

³⁴ Docket No. IP6949, E002/PA-18-702, Petition at 13.

³⁵ See Press Release, Southern Power, Southern Power Announces Completion of Mankato Energy Center Expansion (June 6, 2019), available at <https://www.southerncompany.com/newsroom/2019/june-2019/mankato-energy-center-expansion.html>.

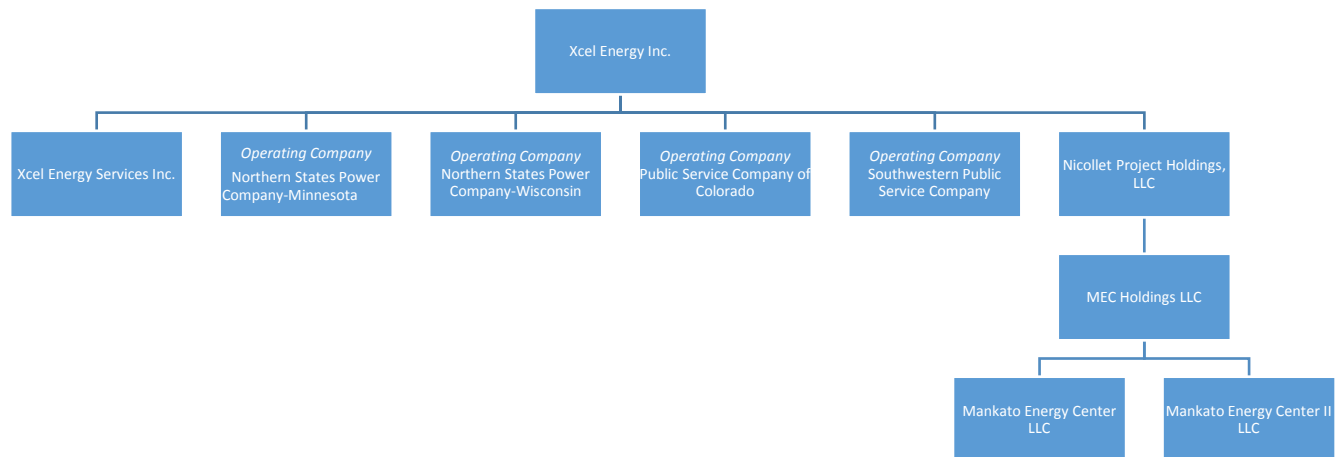
³⁶ Docket No. IP6949, E002/PA-18-702, Petition at 13-14.

³⁷ Docket No. IP6949, E002/PA-18-702, Petition.

On October 2, 2019, Xcel Energy Inc. formed MEC Holdings for the purpose of acquiring the MEC LLCs and, through those corporate entities, owning and operating the Facility on a FERC-regulated, wholesale basis. MEC Holdings is a Delaware Limited Liability Company headquartered in Minneapolis, Minnesota and is a wholly-owned subsidiary of Nicollet Project Holding LLC, which itself is a wholly owned subsidiary of Xcel Energy Inc.

The following diagram shows how MEC Holdings and the MEC LLCs fit within the overall Xcel Energy corporate structure:

Xcel Energy Corporate Structure (Simplified)³⁸



Northern States Power Company intends to assign the MIPA to MEC Holdings, which intends to close the transaction no later than January 20, 2020. Upon the closing of the Transaction, the MEC LLCs will become wholly-owned subsidiaries of MEC Holdings. Through those entities, MEC Holdings will own and operate the MEC facility and, subject to the Commission’s approval, will step into the shoes of Southern under the MEC I PPA and MEC II PPA.

E. Operations & Oversight

As noted in our August 30, 2019 letter to the Retail Purchase Docket, the Company intends to institute various protections to ensure that neither MEC Holdings nor the MEC LLCs are advantaged by their affiliation to NSPM.

First, all plant employees at MEC will be employed directly by MEC Holdings and not by NSPM. The leadership of MEC Holdings will also be different from NSPM’s leadership. The Executive Vice President and Group President, Operations for Xcel Energy Services was appointed President of MEC Holdings. Other XES employees will provide

³⁸ Simplified to show entities relevant to this filing.

accounting, finance, regulatory, legal, procurement and other services to MEC Holdings.

Second, all XES employees who provide support to MEC Holdings (or its subsidiaries) will be required to directly charge MEC Holdings for all time and expenses associated with that work.³⁹ This will ensure that MEC Holdings accurately incurs all costs associated with work completed to support its operations, accounting, and corporate activity.

Third, MEC Holdings and the MEC Entities will execute standard form Service Agreements with XES. The terms of the Service Agreements will be substantively identical to those contained in the Service Agreement between the Company and XES. Pursuant to the agreements, XES will provide services to MEC Holdings and the MEC Entities on an “at-cost” basis using the same allocation methods applied to allocate XES costs to the Company and other Xcel Energy subsidiaries.

Fourth, an employee of MEC Holdings will be responsible for managing the MEC LLC’s side of each PPA and that employee will be segregated from the Company’s existing Purchased Power group, which will be responsible for managing NSP’s side of the agreements. The Purchased Power group’s management of NSP’s side of the agreements will remain unchanged and will ensure the Company’s customers receive all of the benefits to which they are entitled under the PPAs. We believe this structure and “wall” will protect against any potential conflicts of interest arising in connection with management of each parties’ rights and obligations under the PPAs.

Fifth, we note that FERC—which will regulate the MEC LLCs as market-regulated power sales affiliates under its regulations—prohibits certain sharing of information between NSP and the MEC LLCs. Specifically, FERC’s Affiliate Restrictions provide that a franchised public utility with captive customers “may not share market information with a market regulated power sales affiliate if the sharing could be used to the detriment of captive customers, unless simultaneously disclosed to the public.” 18 C.F.R. § 35.39(d)(1).

Finally, to the extent MEC Holdings wishes to continue selling power to NSPM following the expiration of the existing PPAs, it will do so only by bidding the units into a competitive bidding process that uses an independent evaluator. If the MEC LLCs are selected through that bidding process, the Company would negotiate a contract and file a petition for approval of the contract with the Commission. A new FERC approval under section 205 of the Federal Power Act would also be required for any such continued sales.

Together, we believe these structures and protections will ensure that MEC Holdings is not subsidized or unfairly supported by NSPM either during the course of the PPAs or after their expiration.

³⁹ We do not currently anticipate that any NSPM employees will support MEC Holdings. If that were to change in the future, the Company would bring forward a separate affiliate petition seeking approval of the services agreement between NSP and MEC Holdings. FERC regulations require that any services provided by NSPM to MEC Holdings be provided at the higher of cost or market price.

VIII. STANDARD OF REVIEW – PUBLIC INTEREST

A. Standard of Review

Minn. Stat. § 216B.48, subd. 3 establishes the public interest as the standard of review for affiliate arrangements, as follows:

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.... The burden to establish the reasonableness of the contract or arrangement is on the public utility.

B. The Agreements Are Reasonable and in the Public Interest

The MEC I PPA was selected pursuant to a Commission-approved bidding process and negotiated as an arms-length transaction. The Commission's August 17, 2004 Order in Docket No. E-002/M-04-451 authorized the terms of the MEC I PPA on the basis that the terms were reasonable and consistent with the public interest.⁴⁰

The MEC II PPA was selected pursuant to a Commission-approved competitive acquisition process and negotiated as an arms-length transaction. In approving the MEC II PPA, the Commission similarly concluded that those terms and conditions were reasonable and in the public interest.⁴¹

In stepping into the shoes of the seller and becoming the counterparty to the Company in the MEC I PPA and MEC II PPA, MEC Holdings is bound by contractual terms that the Commission has already found to be reasonable and in the public interest. The substitution of MEC Holdings for Southern will not change the reasonableness or beneficial effect of the PPAs. Rather, the MEC I PPA and MEC II PPA, as modified by the proposed Transaction, remain reasonable and will continue to serve the public interest.

Moreover, Xcel Energy's ownership of the MEC Facility will bring additional community benefits to the Mankato region. Mankato is one of the fastest growing economies in the state, with a regional population of 100,000 and Xcel Energy has been a partner in developing that growth and will continue to do so through its non-regulated ownership of MEC. We have also committed to honoring the majority voice of the Facility's employees wishes regarding future third party representation by a union. To that end, we have had discussions with the International Brotherhood of Electrical Workers

⁴⁰ Docket No. E-002/M-04-451, Order Approving MEC I PPA at 2.

⁴¹ Docket No. E-002/M-14-789, Order Approving MEC II PPA.

(IBEW) on potential next steps for a positive transition should the employees ultimately choose to unionize.

We believe these benefits—in combination with the commitments and protections described above—squarely align our petition with the public interest.

CONCLUSION

For all of the above reasons, the Company respectfully requests that the Commission issue an order approving the Power Purchase Agreements between MEC Holdings and the Company in anticipation of these two entities becoming affiliates.

Dated: October 3, 2019

Northern States Power Company

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben
Dan Lipschultz
Valerie Means
Matthew Schuerger
John Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

IN THE MATTER OF NORTHERN STATES
POWER COMPANY'S AFFILIATED
INTEREST REQUEST AND
INFORMATIONAL FILING

DOCKET NO. E002/AI-19-____

PETITION

SUMMARY OF FILING

Please take notice that on October 3, 2019, Northern States Power Company submitted a Petition to the Minnesota Public Utilities Commission seeking approval of affiliated interest agreements between the Company and both Mankato Energy Center LLC ("MEC I LLC") and Mankato Energy Center II LLC ("MEC II LLC") (collectively, the "MEC LLCs"), which will become non-regulated affiliates and wholly-owned subsidiaries of Xcel Energy Inc.

Execution copy

***PUBLIC DOCUMENT
TRADE SECRET DATA EXCISED
EXHIBIT 1***

PURCHASED POWER AGREEMENT

between

MANKATO ENERGY CENTER, LLC

and

NORTHERN STATES POWER COMPANY

MARCH 11, 2004

****** this Agreement includes a binding arbitration clause ******

PUBLIC DOCUMENT
TRADE SECRET DATA EXCISED

Execution copy

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**PURCHASED POWER AGREEMENT
BETWEEN
MANKATO ENERGY CENTER, LLC
AND
NORTHERN STATES POWER COMPANY**

THIS PURCHASED POWER AGREEMENT (this "Agreement") is made as of this 11th day of March, 2004, by and between (i) Mankato Energy Center, LLC ("Seller"), a Delaware limited liability company with a principal place of business in Lincolnshire, Illinois, and (ii) Northern States Power Company ("NSP"), a Minnesota corporation with headquarters in Minneapolis, Minnesota. Seller and NSP are hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS, Seller responded to NSP's solicitation of bids for the supply of firm electric capacity and energy, and NSP has accepted Seller's offer in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, to support its sale and supply of capacity and energy to NSP, Seller and NSP desire for Seller to develop, design, construct, own, and operate at Mankato, Minnesota, a combined cycle, natural gas-fired, electric generating plant with a projected total net winter generating capability of approximately 365 MW, including approximately 280 MW of Base Capacity and approximately 85 MW of duct firing capacity, which is further defined below as the "Mankato Facility"

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

Article 1 – Definitions and Rules of Interpretation

1.1 Rules of Construction The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

(A) The masculine shall include the feminine and neuter genders.

(B) References to "Articles," "Sections," "paragraphs," "clauses" or "Exhibits" shall be to articles, sections, paragraphs, clauses and/or exhibits of this Agreement. Unless otherwise specified, references to "Articles," "Sections," "paragraphs,"

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"clauses" or "Exhibits" shall refer to separate articles, sections, paragraphs, clauses or exhibits in which the reference occurs.

(C) The Exhibits attached hereto are incorporated in and are intended to be a part of this Agreement; *provided*, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.

(D) This Agreement was negotiated and prepared by both Parties with advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification, or similar action shall be reasonable.

(F) As used in this Agreement, best efforts shall mean a level of effort that, in the exercise of reasonable judgment in the light of facts known at the time a decision is made, can be expected to accomplish the desired result at a reasonable cost, in a timely manner, and consistent with Good Utility Practice.

1 2 Interpretation with Interconnection Agreement. Seller will be required to enter into a separate Mankato Interconnection Agreement with MISO and the Mankato Interconnection Provider. Seller expressly recognizes that, for purposes of this Agreement, the Mankato Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Mankato Interconnection Provider is NSP or an Affiliate of NSP. Accordingly,

(A) The Parties acknowledge and agree that the Mankato Interconnection Agreement shall be a separate and free-standing contract, and that the terms of this Agreement are not binding upon the Mankato Interconnection Provider.

(B) Except as otherwise specifically set forth below, nothing in the Mankato Interconnection Agreement shall alter or modify Seller's or NSP's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Mankato Interconnection Provider.

1 3 House Power

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(A) Seller shall timely apply for and use its best efforts to arrange adequate House Power for construction and testing of the Mankato Facility, prior to the Facility Acceptance Date, separately from this Agreement ("Separate House Power") Seller shall pay for Separate House Power as and when due, independent of this Agreement Following the Facility Acceptance Date, Seller shall obtain House Power as a parasitic load of the Mankato Facility and/or via reverse flows through the Direct Assignment Facilities

(B) Seller's arrangements for Separate House Power shall be separate and free-standing arrangements from this Agreement Notwithstanding any other provision in this Agreement, nothing in the separate arrangements for the supply of House Power shall alter or modify Seller's or NSP's rights, duties and obligations under this Agreement This Agreement shall not be construed to create any rights between Seller and the supplier of House Power.

(C) Seller expressly recognizes that, for purposes of this Agreement, the supplier of Separate House Power shall be deemed to be distinct from NSP, even if the supplier of Separate House Power is NSP or an Affiliate of NSP.

1.4 Definitions The following terms shall have the indicated meanings for purposes of this Agreement:

"Abandonment" means (i) the relinquishment of all or substantially all possession and control of the Mankato Facility by Seller and Seller's contractors, other than via a transfer permitted under this Agreement, or (ii) complete cessation of construction of the Mankato Facility for ~~TRADE SECRET~~ by Seller and Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of NSP, a request by NSP, or an event of Force Majeure.

"Acceptable Natural Gas Fuel" means any of the following :

(A) natural gas fuel delivered to a Fuel Point of Delivery by the Designated Fuel Pipeline (i) under the Designated Fuel Pipeline's tariff in effect as of the date of this Agreement (the specifications for which are set forth on Exhibit D-1), or (ii) under any successor tariff;

(B) natural gas fuel delivered to a Fuel Point of Delivery by any pipeline that sources its gas from Northern Border Pipeline Company under its tariff in effect as of the date of this Agreement (the specifications for which are set forth on Exhibit D-2);

(C) natural gas fuel delivered to a Fuel Point of Delivery by any upstream pipeline interconnected to a Fuel Point of Delivery, a tariff for which contains natural gas quality specifications that meet or exceed the specification as defined in (A) or (B) above;

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(D) natural gas fuel delivered to a Fuel Point of Delivery that complies with each of the manufacturer's natural gas fuel quality specifications for the Mankato Facility's combustion turbine; or

(E) natural gas fuel delivered to a Fuel Point of Delivery, the burning of which in the Mankato Facility's generating units, including its duct burners, (i) would not void the manufacturer's warranty for such units (if the warranty therefor then remains in effect), and (ii) would not be contrary to Good Utility Practice.

"Accreditable Capacity" of a Facility means the amount of net generating capability of the Facility for which capacity credit may be obtained by NSP under applicable MAPP rules (as such rules may change from time to time, unless otherwise specified herein), as determined at the applicable Point of Delivery

"Actual Capacity" of a Facility means the actual (vs tested) maximum net generating capability of the Facility from time to time, including capacity available from duct firing, unadjusted to Reference Conditions. Actual Capacity may be greater or less than the Net Capability of the Facility.

"Actual Net Heat Rate" as of any date means the net heat rate for the Mankato Facility, stated in Btu/kWh, Higher Heating Value ("HHV"), as adjusted to Reference Conditions, resulting from the most recent heat rate test of the Mankato Facility conducted in accordance with Section 8.5

"Affiliate" of any named Person means any other Person that controls, is under the control of, or is under common control with, the named Person. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a Person, whether through ownership interest, by contract or otherwise.

"Aggrieved Party" is defined in Section 20 3(B)

"Alternate Generation Source," "Alternate Delivery Period," "Alternate Delivery Point" and "Alternate Energy" are defined in Section 6 5.

"Automatic Generation Control" or "AGC" means the automatic regulation within predetermined limits of the power output of electric generators within a Control Area in response to changes in system load, system frequency, tie-line load, or the relation of these to each other, so as to maintain the scheduled system frequency and/or the established interchange with other Control Areas. This regulation is accomplished via communication links between the SCC energy management system computer and the generator(s) equipped for such control. For a generator to be considered capable of AGC by NSP, the generator must meet the Requirements for Dispatchability.

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"Available" and "Availability" are defined in Section 8.1(C).

"Availability Adjustment Quotient" or "AAQ" is defined in Section 8.1(C)

"Availability Verification Test" is defined in Section 5 2(A).

"Back-up Fuel Metering" is defined in Section 5 5(H)

"Base Capacity" means the portion of the Mankato Facility's Actual Capacity, without duct firing.

"Business Day" means any calendar day that is not a Saturday, a Sunday, or a NERC-recognized holiday.

"Capacity Availability Factor" or "CAF" is defined in Section 8.1(C)

"Cash Collateral" is defined in Section 11 1(C).

"Change of Control" is defined in Section 19 1(E).

"Changed MAPP Requirements" are defined in Section 18(C).

"Commercial Operation" for the Mankato Facility means the period beginning on the Facility Acceptance Date and continuing through the balance of the Term

"Commercial Operation Date" or "COD" means January 1, 2006.

"Commercial Operation Year" means (i) initially, the period beginning as of COD and ending at midnight on the last day of the calendar month during which the first anniversary of the Facility Acceptance Date occurs, (ii) thereafter, each consecutive twelve (12) month period during the Term of this Agreement, or (iii) in the event that the Term ends other than on an anniversary of the last day of the calendar month during which the Facility Acceptance Date occurred, the period between the last such anniversary and the end of the Term

"Conditions" is defined in Section 4 6.

"Confidential Information" means

- (i) the contents of this Agreement;

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(ii) all billing parameters, factors and data used by the Parties to generate invoices under this Agreement;

(iii) the contents of the reports provided by Seller to NSP pursuant to Section 4.4, Section 10.3, Section 10.7 and Section 13.5;

(iv) Seller's design of the Mankato Facility; and

(v) any and all technical or business information, including third party information, furnished in writing by a Party to the other Party hereto from time to time prior to the end of the Term, related to this Agreement and/or the Mankato Facility, which information is specifically labeled by the disclosing Party as "confidential," "trade secret" or "restricted;"

provided, however, that "Confidential Information" shall not include information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient, without reference to or use of the disclosing Party's Confidential Information; (f) is aggregated with information from other facilities or otherwise disguised so that it cannot be directly associated with or tied to the Mankato Facility; or (g) is approved for release or disclosure by the disclosing Party in writing

"Construction Milestone(s)" means the date(s) set forth in Exhibit B by which Seller agrees to achieve the corresponding result(s) specified for such date(s) (including the Facility Acceptance Milestone), subject to potential extension as provided below.

"Contract Energy" means the metered, net energy output generated by the Actual Capacity of a Facility following COD, as delivered and adjusted for losses to the applicable Point of Delivery; less any such energy which has not been dispatched/scheduled by NSP; and less any Test Energy separately purchased by NSP pursuant to Section 4.8(C)(ii)

"Control Area" of any utility means the system of electrical generation, distribution, and transmission facilities within which generation is regulated by that utility in order to maintain interchange schedules with other such systems

"Credit Agencies" are defined in Section 11.1(C).

"Credit Rating" is defined in Section 11.1(C)

"DFCC1" is defined in Section 8.4(A).

"DFCC2" is defined in Section 8.4(B).

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"Daily Gas Cost" for any Day, expressed in \$/MMBtu, means the sum of (i) the midpoint of the daily gas price survey for Northern, Ventura, as published for that Day by *Platts Gas Daily* (the "Gas Survey"), multiplied by the percentage fuel rate for the relevant delivering pipeline in effect for that Day, plus (ii) the applicable commodity transportation rate for the relevant delivering pipeline in effect for that Day, plus (iii) the midpoint of the daily gas price survey for Northern, Ventura, as published for that Day by *Platts Gas Daily*. If *Platts Gas Daily* ceases to publish the Gas Survey, or if the Gas Survey is changed so that it is intended to measure something materially different from the level of wholesale gas prices in the vicinity of the Site, the Parties shall substitute a new index that reasonably measures a comparable level of wholesale gas prices in the region. If the Parties do not agree that an alternate index is appropriate or are unable to agree upon an alternate index, within thirty (30) Days after a written request by a Party therefor, then a Party may refer the matter to arbitration in accordance with Section 13.7. The arbitrator(s) shall be required to select a replacement alternate index that most reasonably measures the level of wholesale gas prices in vicinity of the Site.

"Day" means a calendar day.

"Deficiency" is defined in Section 5.2(A)

"Delay Conditions" are defined in Section 12.4(C).

"Delay Damages" are defined in Section 12.4(A)(i).

"Designated Fuel Pipeline" means Northern Natural Gas Company, subject to the provisions of Section 3.2(B).

"Designated Fuel Pipeline Interconnection Facilities" means the tap into the Designated Fuel Pipeline's transportation pipeline, and the Designated Fuel Pipeline fuel meter, and such associated piping and related equipment as the Designated Fuel Pipeline would normally install in connection with an interconnection request by Seller.

"Direct Assignment Facilities" means the facilities required to be built in order to connect the Mankato Interconnection Provider's existing electric system to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Mankato Interconnection Provider for the direct purpose of interconnecting the Mankato Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. For the avoidance of doubt, Direct Assignment Facilities do not include any system upgrades or network facilities. Arrangements for the installation and operation of the Direct Assignment Facilities shall be governed by the Mankato Interconnection Agreement.

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"Dispute" is defined in Section 13.7(A)

"Dispute Notice" is defined in Section 13.7(A)

"Downed Generation" is defined in Section 6.5(B).

"Electric Interconnection Point" means the physical point at which electrical interconnection is made between the Mankato Facility and the Mankato Interconnection Provider's System

"Electric Metering Device(s)" means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the electric energy delivered from a Facility. Electric Metering Devices include related metering current transformers and the metering voltage transformers.

"Emergency" means an emergency condition as defined under the Interconnection Agreement for any Facility and/or any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of NSP's load or generation supply, that is likely to adversely affect the reliability of the NSP system or generation supply, that is likely to adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety

"Energy Taxes" are defined in Section 20.2(A).

"Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, and/or of such form or character, as to (i) constitute a violation of federal, state or local laws or regulations, and (ii) present a material risk under federal, state, or local laws and regulations that the will not be available or usable for the purposes contemplated by this Agreement.

"Environmental Taxes" are defined in Section 20.2(A).

"EPC" is defined in Section 4.3.

"Event of Default" of either Party is defined in Article 12

"Excused Outage" at any Facility means a partial or complete outage of the Facility, to the extent caused or extended by

(i) a breach of this Agreement by NSP (including Seller's exercise of its remedies as a result of such breach, including its remedies under Section 12.10);

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(ii) TRADE SECRET

(iii) TRADE SECRET

(iv) TRADE SECRET

(v) with respect to the Mankato Facility:

(a) TRADE SECRET

(b) TRADE SECRET

(C) TRADE SECRET

“Excused Outage” does not include

(X) TRADE SECRET

(V) TRADE SECRET

(Z) TRADE SECRET

"Expanded Capacity" means the additional electric generating capacity that may be available from time to time from the Site, by virtue of the Expansion Equipment (if any).

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"Expansion Equipment" means any electric generators, steam generators, interconnection facilities, fuel delivery facilities, and associated equipment, buildings, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements, and other interests or rights in real estate not shown on Exhibit C, that may be added by Seller on or near the Site from time to time, for the purpose of augmenting the capacity of the Mankato Facility and/or otherwise building additional electric generating capacity on the Site.

"Expansion Fuel Metering" is defined in Section 5 5(E)

"Facility" means and includes either or both (i) the Mankato Facility, and (ii) any Alternate Generation Source(s) designated by Seller for the purpose of performing this Agreement from time to time pursuant to Section 6 5

"Facility Acceptance Date" means the later of (i) the date on which Seller delivers notice to NSP, pursuant to Section 4.6, that all of the Conditions specified in Section 4 6 for Commercial Operation of the Mankato Facility have occurred or otherwise been satisfied, and (ii) the date on which all such Conditions in fact have occurred or otherwise been satisfied

"Facility Acceptance Milestone" means the Construction Milestone for the Facility Acceptance Date. Subject to potential extension for Permit Delays, Force Majeure and/or Delay Conditions, the Facility Acceptance Milestone is one hundred fifty-one (151) Days following the Commercial Operation Date

"Facility Debt" means the obligations of Seller to any Facility Lender pursuant to the Financing Documents, secured by one or more liens on the Mankato Facility, including without limitation, principal of, premium and interest (including all interest accruing after commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Seller) on indebtedness, fees, expenses or penalties, amounts to fund reserves, amounts due upon acceleration, prepayment or restructuring, swap, or interest rate hedging breakage costs, and any claims or interest due with respect to any of the foregoing, including, without limitation, reasonable attorneys fees. Facility Debt shall continue to constitute Facility Debt, notwithstanding the fact that such Facility Debt or any claim for such Facility Debt is subordinated, avoided or disallowed under the federal Bankruptcy Code or other applicable law Facility Debt shall also include indebtedness of Seller secured by the Mankato Facility and/or the Site incurred in connection with a conversion of a construction loan or bridge loan, or refinancing of the Facility Debt

"Facility Lender" means, collectively, any lender(s) providing any Facility Debt and any successor(s) or assigns thereof.

"Failed Capacity Test" means a capacity test of the Mankato Facility that (i) must be cancelled because of a Forced Outage, failure of testing equipment, inclement weather, or

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any other reason, or (ii) if conducted, substantially fails to measure accurately the Actual Capacity of the Mankato Facility.

"Failed HR Test" means a heat rate test of the Mankato Facility that (i) must be cancelled because of a Forced Outage, failure of testing equipment, inclement weather, or any other reason, or (ii) if conducted, substantially fails to measure accurately the net heat rate of the Mankato Facility

"FERC" means the Federal Energy Regulatory Commission or any successor agency

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, pledge agreements, swap agreements, letters of credit and other documents evidencing, securing or otherwise relating to the development, bridge, construction and/or permanent debt financing or other extension(s) of credit for the Mankato Facility, including any credit enhancement, credit support, swaps, caps, floors, collars, hedging agreements, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, operation or maintenance of the Mankato Facility

"Force Majeure" is defined in Section 14.1

"Forced Outage" means any condition at or affecting a Facility, other than an Excused Outage, that requires and causes removal from service of any portion of the generating capacity of the Facility. Forced Outages typically result from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Facility conditions and/or alarms.

"Fuel Interconnections" are defined in Section 5.5(C)

"Fuel Taxes" are defined in Section 20 2(B).

"Fuel Point(s) of Delivery" means (i) the outlet flange of the meter installed at the applicable point of interconnection for the Mankato Facility, which will serve as the point of custody transfer between the Designated Fuel Pipeline's pipeline and Seller's Gas Interconnection Facilities, and (ii) any other Fuel Point(s) of Delivery added pursuant to Section 5 6(B). The initial Fuel Point(s) of Delivery are specified in Exhibit C

"GADS" is defined in Section 10 3(B).

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The "Gas Interconnection Facilities" for the Mankato Facility means the pipeline and related facilities required to accept Acceptable Natural Gas Fuel from the Designated Fuel Pipeline at the Fuel Point(s) of Delivery, and transport such Acceptable Natural Gas Fuel from the Fuel Point(s) of Delivery to the Mankato Facility, for the generation of Contract Energy. The Gas Interconnection Facilities include those facilities necessary to regulate, heat, filter/separate and otherwise condition such fuel as may be necessary or as Seller deems appropriate for operation of the Mankato Facility, but do not include the Designated Fuel Pipeline's Interconnection Facilities. The Gas Interconnection Facilities typically start at the outlet flange of the fuel meter of the Designated Fuel Supplier and extend to the inlet valves of the combustion generating units.

"Good Utility Practice(s)" means the practices, methods, and acts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, MAPP, and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Mankato Facility, Good Utility Practice(s) include, but are not limited to, taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including fuel and spare parts inventories, are available to meet the Mankato Facility's needs;

(B) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Mankato Facility properly, efficiently, and in coordination with NSP and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as steam pressure, temperature, and moisture content, chemical content of make-up water, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and

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(F) equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region using the same or similar technology and will function properly under both normal and Emergency conditions

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal having jurisdiction over either Party, a Facility, or NSP's distribution system

"GDPIPD" means the implicit price deflator for the gross domestic product as computed and published quarterly by the U.S. Department of Commerce (2000=100), as presented and revised from time to time in the "Gross Domestic Product: ____ Quarter 'Final' Press Release" released periodically by the Bureau of Economic Analysis. For reference purposes, the GDPIPD for the first (1st) quarter of 2001 was 101.443. The quarter to be used for purposes of calculating GDPIPD shall be the quarter for which the GDPIPD was most recently published as of the Facility Acceptance Date. If the GDPIPD ceases to exist, becomes unavailable, or is changed so that it is intended to measure something materially different from the general escalation of prices in the United States, the Parties shall substitute a new index that reasonably measures the general escalation in prices in the United States. If the Parties do not agree that an alternate index is appropriate or are unable to agree upon an alternate index, within thirty (30) Days after a written request by a Party therefor, then a Party may refer the matter to arbitration in accordance with Section 13.7. The arbitrator(s) shall be required to select a replacement alternate index that most reasonably measures the general escalation in prices in the United States.

"Hazardous Materials" means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority, as an environmental pollutant or potentially dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including, but not limited to, any material or substance that is (i) defined as "toxic," "pollutant," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control

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Act, 15 U.S.C. §2601 *et seq.*; or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*

"Heat Rate Adjustment" or "HRA" is defined in Section 8.4(A)

"High Grade Collateral" or "HGC" is defined in Section 11.1(C)

"House Power" means electric services for the Mankato Facility, including the supply of start-up and shut-down power

"Indemnified Party" and "Indemnifying Party" are defined in Section 17(A)

"Initial Capacity Test" is defined in Section 8.1(A)

"Initial HR Test" is defined in Section 8.5(B)

"Intervention Expenses" are defined in Section 12.7(B).

"Intervention Period" is defined in Section 12.7(A).

"Invested Equity" as of any designated date means the cumulative amount of equity which Seller has invested in the Site (including both the Mankato Facility and any Expansion Equipment), in the form of cash, property (valued at Seller's or its relevant Affiliate's cost), or any combination thereof, net of any distributions of capital (not profits) in connection with any refinancing or otherwise, from the date of this Agreement through the designated date, rounded to the nearest five hundred thousand dollars (US\$500,000)

"Investment Grade" is defined in Section 11.1(C)

"Investment Grade Guaranty" is defined in Section 11.1(C)

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~~SECRET~~ Permitted Termination is defined in Section 7(B).

"Letter of Credit" is defined in Section 11.1(C)

"Maintenance Deferral Costs" are defined in Section 10.1(D).

"Maintenance Schedule" is defined in Section 10.1(A).

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"Mankato Facility" means Seller's electric generating facility, Seller's Interconnection Facilities, and Seller's associated fuel delivery facilities, as identified and described in Article 3 and Exhibit C, including, but not limited to, all of the following, the purpose of which is to produce and deliver or to support the production and delivery of electricity to the Electric Interconnection Point: Seller's equipment, buildings, turbines, generators, step-up transformers, output breakers, protective and associated equipment, heating and filter separation equipment and associated above-ground and underground piping, conditioning, heating, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements, and other interests or rights in real estate reasonably necessary for the construction, ownership, operation, repair and maintenance of the electric generating facility that produces the electric capacity and energy principally subject to this Agreement. The "Mankato Facility" does not include any Expansion Equipment.

"Mankato Interconnection Agreement" means the separate agreement among Seller, MISO and the Mankato Interconnection Provider for electrical interconnection of the Mankato Facility to the Mankato Interconnection Provider's System, in the form of Attachment R4 to MISO's FERC Electric Tariff, Second Revised Volume No. 1, issued March 29, 2002 (or such other form as may be agreeable among MISO, the Mankato Interconnection Provider and Seller), as such agreement may be amended from time to time.

"Mankato Interconnection Provider" means the Person that owns the transmission lines, interconnection facilities and other equipment and facilities with which the Mankato Facility interconnects at the Electric Interconnection Point and any successor(s) thereto.

"Mankato Interconnection Provider's System" means the contiguously interconnected electric transmission and subtransmission facilities, including the Direct Assignment Facilities, over which the Mankato Interconnection Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"MAPP" means the Mid-Continent Area Power Pool, a NERC regional electric reliability council, or any successor organization.

"MAPP Capital Expenditures" are defined in Section 18(C).

"Material Permits" means the governmental permits, consents, approvals, licenses and authorizations listed on Exhibit J.

"MISO" means the Midwest Independent System Operator.

"Mobile-Sierra doctrine" is defined in Section 20.14.

"Monthly Availability Factor" or "MAF" is defined in Section 8.1(C).

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"Monthly Invoice" is defined in Section 9 1(C).

"Monthly Turbine Start Payment" is defined in Section 8 6

"MPUC" means the Minnesota Public Utilities Commission or any successor agency.

"MW" means megawatt

"MWh" means megawatt-hour

"NERC" means the North American Electric Reliability Council or any successor organization

"Net Capability" or "NC" of a Facility is defined in Section 8.1(B)

~~TRADE SECRET~~ "Permitted Termination" is defined in Section 7(C).

"NSP Metering" is defined in Section 5 3(A).

"Offending Party" is defined in Section 20 3(B)

"Offer" is defined in Section 6.5(B).

"Off-Peak Months" means all calendar months other than On-Peak Months

"On-Peak Months" means the calendar months of January, February, June, July, August, September and December.

"Operating Log" is defined in Section 13 5.

"Operating Committee" means one representative each from NSP and Seller pursuant to Section 10 5.

"Operating Procedures" are defined in Section 10 4(B)

"Operating Reserve" of the Mankato Facility means the undispached portion of the Actual Capacity of the Mankato Facility that (i) is maintained by NSP to provide for regulation, load forecasting error, forced and scheduled outages, and system reliability, and (ii) qualifies as operating reserve available to NSP for MAPP reporting purposes

"Other Off-Taker," "Other Off-Taker Contract" and "Other Off-Taker Notice" are defined in Section 11 2(B).

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"Outside MPUC Approval Date" is defined in Article 7

"Parent Guaranty" is defined in Section 11 1(C)

"Party Representative" and "Parties' Representatives" are defined in Section 13 7(A)

"Permit Delays" means any delays in the Permit Milestone Date and the Facility Acceptance Milestone, pursuant to Section 12 4(B)

"Permit Milestone Date" means August 1, 2004, subject to potential extension as provided below.

"Person" means any natural person, corporation, partnership, limited liability company, trust, governmental agency, or other juridical entity.

"Point of Delivery" for a Facility means the electric system point at which Seller must make available and deliver to NSP the Contract Energy to be provided by Seller to NSP under this Agreement. The Point of Delivery for the Mankato Facility shall be the dead end structure on the high side of Seller's step-up transformer at the Mankato Facility. The Point of Delivery for any Alternate Generation Source shall be the Alternate Delivery Point therefor designated by Seller and approved by NSP in accordance with Section 6 5.

"Power Factor" = $\frac{\text{watt output}}{\text{volt amps output}}$, expressed as a percentage, where $(\text{Volt amps})^2 = (\text{watts})^2 + (\text{VAR})^2$

"Predicted Net Heat Rate" means the predicted net heat rate for the Mankato Facility, stated in Btu/kWh, Higher Heating Value ("HHV"), at Reference Conditions and adjusted to reflect projected degradation in equipment performance over the period of Commercial Operation, as specified in Exhibit I

"Prime Rate" is defined in Section 9 2(B).

"Rated" is defined in Section 11 1(C)

"Reference Conditions" means the operating and ambient conditions used to provide a reference for adjustment in determining the Net Capability and Actual Net Heat Rate from testing of the Mankato Facility pursuant to Article 8. The ambient Reference Conditions for the Mankato Facility shall be an ambient temperature of six degrees Fahrenheit (6° F), sixty eight percent (68%) ambient relative humidity, and standard ambient pressure (14.696 psia at mean sea level) adjusted to the Site elevation of eight hundred (800) feet above mean sea level. All adjustments to Reference Conditions shall be effected using the final design correction curves provided by the manufacturer(s) of the Mankato Facility's generating units reflecting expected Mankato Facility equipment performance after completion of all equipment tuning and adjustments. The operating

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Reference Conditions for the Mankato Facility shall be the design parameters for the Mankato Facility generating equipment as follows:

Fuel Composition:	as delivered by the delivering fuel pipeline
Firing/Exhaust Temperature:	On - Baseload Firing Curve
Use of Bleed Air:	Off
Water and/or Steam Injections Rate:	Off
Generator Power Factor:	1.0
Type of Inlet Cooler:	Off

"Replacement Power Costs" means the positive difference (if any) between (A) the costs incurred by NSP for the energy and capacity to replace that which Seller, in accordance with this Agreement, was required to have made Available to NSP, but failed to make Available, less (B) the sum of (i) any payments from NSP to Seller, under this Agreement, that were eliminated as a result of such failure and (ii) all Daily Gas Costs that NSP would have incurred for Seller to produce and deliver the amount of replaced energy from the Facility as Contract Energy hereunder, but which were saved as a result of Seller's failure. Replacement Power Costs may include, but are not limited to, the amounts paid or incurred by NSP for replacement capacity, replacement energy, fuel to produce replacement energy, transmission of replacement capacity and energy, and directly associated transaction costs.

"Reported Availability" is defined in Section 5.2(A)

"Requirements for Dispatchability" means NSP's Requirements and Compliance Standards for Dispatchability, as such may be updated or revised from time to time by NSP. NSP's current Requirements for Dispatchability are attached hereto as Exhibit A.

"Rolling Availability Factor" or "RAF" is defined in Section 8.1(C)

"Schedule Acceleration" is defined in Section 12.4(E)

"Security Fund" means the letter of credit, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Section 11.1, as security for Seller's performance under this Agreement.

"Seller's Back-Up Metering" is defined in Section 5.3(C)

"Seller's Interconnection Facilities" means the equipment between the high side disconnect of the step-up transformer of the Mankato Facility and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Mankato Interconnection Provider's System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of such facilities. On the low side of the

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step-up transformer, Seller's Interconnection Facilities include Seller's metering, relays, and load control equipment as provided for in the Mankato Interconnection Agreement. Seller's Interconnection Facilities will be located within the Mankato Facility and are conceptually depicted in Exhibit C.

"Shared Facilities" means such portions of the Mankato Facility, including intangible rights and tangible property, whether real, personal or mixed, as are necessary or convenient for Seller's ownership, use, exploitation, maintenance and/or repair of any Expansion Equipment, Seller's sale of any Expanded Capacity, and/or Seller's sale and transmission of the electric power generated therefrom.

"Site" means the parcel of real property on which the Mankato Facility and any Expansion Equipment will be constructed and located, including any ancillary easements, rights of way, surface use agreements, and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Mankato Facility. The Site is more specifically described in Section 3.2 and Exhibit C.

"Subordinated Mortgage" is defined in Section 11.2.

"Subsequent Developer" is defined in Section 7(E).

"Successor" is defined in Section 12.3(A).

"System Control Center" or "SCC" means NSP's representative(s) responsible for centralized dispatch of generating units within the NSP Control Area.

"Term" means the period of time beginning upon the Commercial Operation Date and, absent early termination of this Agreement pursuant to Article 12 or otherwise, ending at midnight on the earlier to occur of (i) twenty (20) years following the end of the calendar month during which the Facility Acceptance Date occurred, or (ii) September 30, 2026.

"Test Energy" means energy that is produced by the Mankato Facility, and delivered to the applicable Point of Delivery, in order to perform testing of the Mankato Facility (including periodic operation on fuel oil) required by this Agreement, by manufacturer's recommendations, or by Good Utility Practices.

"Test Fuel Costs" are defined in Section 4.8(C).

"TSP" is defined in Section 8.6.

"Unrecovered Costs" are defined in Section 7(D).

Article 2 - Term and Termination

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This Agreement shall become effective as of the date of its execution, and thereafter shall remain in full force and effect prior to and through the Term, subject to the early termination provisions set forth herein. Applicable provisions of this Agreement shall continue in effect after termination (including early termination) of the Term to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for final billings and adjustments related to the period prior to termination, payment of any money due and owing to either Party pursuant to this Agreement, repayment of principal and any interest associated with the Security Fund, and the indemnifications specified in this Agreement.

Article 3 - Description of Mankato Facility

3.1 Summary

(A) Seller shall construct, own, operate, and maintain the Mankato Facility, which shall be a combined cycle combustion turbine electric generation facility, producing energy primarily by natural gas or, as back-up for the Base Capacity, by fuel oil combustion. The Mankato Facility (i) will not have "black start" capability, and (ii) shall have a designed net power output capability of approximately 365 MW under Reference Conditions and consist principally of one GE 7FA or 7FB or Westinghouse 501F combustion turbine and one HRSG/steam turbine train with duct firing capability. Exhibit C provides a description of the Mankato Facility, including identification of the major equipment and components that make up the Mankato Facility.

(B) Seller and/or its Affiliates shall have the right at any time and from time to time to design, engineer, build, own and operate Expansion Equipment, and to sell the related Expanded Capacity and associated energy therefrom, consistent with applicable federal, state, and local regulatory requirements; *provided, however*, that no such Expansion Equipment or Expanded Capacity (i) shall affect NSP's dispatch rights with respect to the Mankato Facility or any other rights, obligations or ability to perform of the Parties under this Agreement, or (ii) shall restrict or otherwise adversely affect the Contract Energy that can be generated by the Mankato Facility for NSP under the Facility's emissions and other governmental permits. NSP shall have no right or obligation to purchase or receive any such Expanded Capacity, the associated energy, or any ancillary services associated with such Expansion Equipment, unless Seller and NSP shall have agreed to mutually acceptable terms of sale therefor. Seller shall notify NSP if and when Seller has broken ground or otherwise commenced installation of any Expansion Equipment, which notice shall include a general description of the Expansion Equipment and the amount of the expected Expanded Capacity to be available therefrom.

3.2 Location

(A) The Mankato Facility shall be located on the Site and shall be identified as the "Mankato Energy Center." A scaled map that identifies the Site, the

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location of the Mankato Facility on the Site, the location of the Electric Interconnection Point, the location of the Fuel Point of Delivery of the Designated Fuel Pipeline, and the location of the important ancillary and interconnection facilities, is included in Exhibit C

(B) Prior to MPUC approval of this Agreement, Seller shall provide to NSP a copy of a "Phase I" environmental report with respect to the Site, together with (i) any data or information underlying such report, and (ii) confirmation from the inspector that the Site complies with all applicable governmental laws, regulations, and requirements relating to environmental or occupational health and safety matters and Hazardous Materials, and based upon such investigation and to the best of the inspector's knowledge, no conditions involving Environmental Contamination exist at or under the Site. In the event that the Phase I report specifies that the Site does not meet all applicable governmental laws for environmental or occupational health and safety material to the construction, ownership and operation of the Mankato Facility, prior to MPUC approval Seller shall either

(x) select an alternate site for the Mankato Facility, subject to NSP's approval, *provided* that if so approved by NSP, (I) NSP shall have the right to select a different interstate gas pipeline to which Seller shall initially interconnect the Mankato Facility, subject to Seller's approval, which (if so approved by Seller) shall become the Designated Fuel Pipeline under this Agreement, and (II) Seller shall pay or reimburse NSP for any incremental capital, fuel, transmission, interconnection and operating costs arising out of the differing electric interconnection and transmission arrangements for the new site, with no increase in the payments to Seller hereunder;

(y) terminate this Agreement by written notice to NSP, in which case each Party shall be released from all financial and other obligations hereunder *except* as otherwise provided in Section 20.7; or

(z) acknowledge in writing that Seller will proceed with the construction of the Mankato Facility at the Site notwithstanding such issues

The term "all applicable governmental laws" in this Section 3.2(B) shall include all statutes identified in Article 1 under the definition of "Hazardous Materials," and all federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders, and decrees regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials

(C) Upon request by Seller from time to time, NSP shall provide such assistance as may be required to allow Seller to obtain leases, easements, or rights-of-way that are reasonably necessary for the construction, ownership, operation, or maintenance of the offsite laterals associated with the Mankato Facility, including gas, water, and transmission interconnections. Seller shall pay or reimburse NSP's out-of-pocket costs incurred in providing any such assistance

(D) To the extent that NSP owns, or otherwise has the right to grant or share easements on, any land over which the offsite laterals associated with the Mankato Facility will cross, subject to the requirements of any contractual restrictions in existence on

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the date of this Agreement and to NSP's Trust Indenture, upon request by Seller from time to time, NSP shall execute, deliver and record such easements or other instruments in form and substance reasonably acceptable to the Parties, on a quitclaim, "as-is" basis, as are necessary to grant use of such land to Seller, at no cost to Seller, provided that such easements / instruments do not materially interfere with NSP's use of such land as of the date of this Agreement. NSP shall make such land available to Seller for any environmental testing and other due diligence deemed necessary by Seller from time to time, to the extent NSP is legally and contractually permitted to do so. Seller shall pay or reimburse NSP for any attorneys' fees and other out-of-pocket costs incurred by NSP in connection with any request(s) under this Section 3 2(D) by Seller

3.3 General Design Seller shall construct and, following the Facility Acceptance Date, shall operate and maintain the Mankato Facility according to Good Utility Practice(s) and the Mankato Interconnection Agreement. In addition to the requirements of the Mankato Interconnection Agreement, the Mankato Facility shall at all times:

(A) have the required panel space and 125Vdc battery-supplied voltage to accommodate NSP's metering, generator telemetering equipment and communications equipment;

(B) use communication circuits to NSP's SCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications, as required for AGC and fuel management by NSP;

(C) be capable of operating on AGC in combined cycle mode; and

(D) be operable on fuel oil (excluding the duct burners), with sufficient on-site fuel oil storage capacity and other attributes to allow the Base Capacity to meet MAPP requirements for Accreditable Capacity as in effect as of the date hereof

Article 4 - Construction and Completion of Mankato Facility

4.1 Facility Operation. The Mankato Facility shall achieve the Facility Acceptance Date, and shall be fully capable of reliably producing the capacity and energy to be provided under this Agreement and delivering such capacity and energy to NSP at the applicable Point of Delivery, no later than the Facility Acceptance Milestone

4.2 Construction Milestones In order to help assure completion of the Mankato Facility by the Facility Acceptance Milestone, Seller agrees to meet the Construction Milestones

4.3 Facility Contracts. Seller shall provide to NSP, upon request, to the extent available, copies of Seller's contracts with respect to the Mankato Facility for the

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purchase, delivery and installation of the generating and step-up transformer equipment; engineering, procurement and construction ("EPC"), or other general contractor, agreements (if any), together with major engineering drawings; applicable electric transmission and/or interconnection agreements; and applicable natural gas transportation and/or interconnection agreements. Information that is commercially sensitive, confidential or proprietary may be redacted from the documents provided to NSP pursuant to this Section 4.3. All such contracts shall be deemed Confidential Information of Seller. All contracts for the development, construction and operation of the Mankato Facility shall be with competent, financially responsible vendors.

4.4 Progress Reports. Seller shall submit to NSP, on the first Day of each calendar month until the Facility Acceptance Date is achieved, reports with respect to Seller's progress towards completion of the Mankato Facility in a form reasonably satisfactory to NSP. These progress reports shall notify NSP of the current status of progress towards each Construction Milestone.

4.5 NSP's Rights During Construction. NSP shall have the right to monitor the construction and start-up of the Mankato Facility, and Seller shall comply with all reasonable requests of NSP with respect to these events. Seller shall cooperate in such physical inspections of the Mankato Facility as may be reasonably requested by NSP during and after completion of construction. While at the Site, NSP's personnel shall observe such safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the construction, start-up, or testing of the Mankato Facility. All persons visiting the Mankato Facility on behalf of NSP shall comply with all of Seller's applicable safety and health rules and requirements. NSP's technical review and inspection of the Mankato Facility shall not be construed as endorsing the design thereof nor as any warranty of safety, durability, or reliability of the Mankato Facility. All information derived by NSP from such monitoring shall be deemed Confidential Information of Seller.

4.6 Conditions to Facility Acceptance. Seller shall notify NSP when in Seller's judgment the Mankato Facility has achieved the Facility Acceptance Date, which notice shall include evidence reasonably acceptable to NSP of the satisfaction or occurrence of all of the conditions set forth in this Section 4.6 ("Conditions") and shall include a declaration by Seller to that effect. NSP shall respond in writing within ten (10) Days of Seller's notification, either confirming to Seller that all of the Conditions have been satisfied or have occurred, or stating with specificity those Conditions which NSP believes have not been satisfied or have not occurred. NSP's confirmation shall not be unreasonably withheld or delayed, and NSP's failure to respond within ten (10) Days of Seller's notification shall be deemed to constitute NSP's confirmation to Seller of the satisfaction or occurrence of all Conditions. Unless one or more of the Conditions has not been satisfied, the Facility Acceptance Date shall be deemed to have occurred on the date of Seller's notice.

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Review and approval of the Conditions may occur on an on-going and incremental basis, pending resolution of any dispute, as Conditions are satisfied. The Conditions are:

A. Seller has successfully completed such testing of the Mankato Facility, if any, as is required to be conducted prior to the Facility Acceptance Date (i) by the Material Permits and/or the Mankato Interconnection Agreement, and (ii) for MAPP Accreditation;

B. ~~TRADE SECRET~~ _____;

C. ~~TRADE SECRET~~ _____;

D. ~~TRADE SECRET~~ _____;

E. ~~TRADE SECRET~~ _____;

F. Seller is both obligated under, and in compliance with, the Mankato Interconnection Agreement;

G. the Subordinated Mortgage contemplated by Section 11.2 is of record;

H. ~~TRADE SECRET~~ _____;

_____;

I. all natural gas interconnection and metering arrangements, as described in Section 5.5, have been completed, are in effect, and are available for the delivery and

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- receipt of natural gas fuel at the Fuel Point of Delivery for the Designated Fuel Pipeline;
- J. a Security Fund meeting the requirements of Section 11.1 is in place;
- K. certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to NSP by Seller;
- L. Seller has submitted to NSP a certification from an officer of Seller as to Seller's Invested Equity, evidencing Invested Equity as of the Facility Acceptance Date of ~~TRADE SECRET~~;
- M. if the Facility Acceptance Date did not occur by the Facility Acceptance Milestone, Seller has paid to NSP all undisputed Delay Damages that have been invoiced by NSP, payment of which by Seller is overdue; and
- N. Seller has submitted to NSP a certificate of an officer of Seller familiar with the Mankato Facility stating that (i) after due inquiry, all permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and/or operate the Mankato Facility in compliance with applicable law and this Agreement have been obtained and are in full force and effect, and (ii) Seller is in compliance with the terms and conditions of this Agreement in all material respects

4.7 Partial Completion Declaration In the event that only a portion of the Mankato Facility has satisfied all Conditions, if Seller so requests, NSP may, in its sole discretion, declare a "Partial Completion Declaration" that Commercial Operation has been achieved with respect to that portion of the Mankato Facility. From and after the date of a Partial Completion Declaration, all of the rights and duties of the Parties shall continue, including (i) payments for capacity and energy under Article 8, which shall be prorated for the portion of the Mankato Facility included in the Partial Completion Declaration, and (ii) the Delay Damages, if any, due under Section 12.4(A), prorated for the portion of the Mankato Facility not included in the Partial Completion Declaration.

4.8 Test Energy.

(A) At least twenty four (24) hours prior to each transmission of Test Energy from the Mankato Facility, regardless of whether Test Energy is to be purchased by NSP pursuant to this Section 4.8, Seller shall notify NSP by phone of the purchaser and the expected timing, magnitude and duration of such transmission. Thereafter Seller shall keep NSP informed by phone, in real time, of any material changes to such information, until the test of the Mankato Facility is completed.

(B) Prior to the Facility Acceptance Date, at Seller's option from time to time, Seller may sell and deliver to NSP, and NSP shall purchase and accept delivery, at

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the applicable Point of Delivery, any or all Test Energy generated by the Mankato Facility, at a payment rate of fifteen dollars (\$15) per MWh. If and to the extent that Seller does not elect to sell Test Energy to NSP prior to the Facility Acceptance Date, Seller may sell such Test Energy to any third party purchaser. Seller shall be responsible for the procurement and costs of all fuel required to produce energy from the Mankato Facility prior to the Facility Acceptance Date.

(C) After the Facility Acceptance Date, Seller may and shall conduct such testing of the Mankato Facility as is required by this Agreement or otherwise by Good Utility Practices. The Parties shall use commercially reasonable efforts to schedule any testing during such periods when NSP otherwise is dispatching the Mankato Facility.

(i) To the extent that Seller tests the Mankato Facility during such period(s) when NSP otherwise is dispatching the Mankato Facility, (a) NSP shall purchase the resulting Test Energy as Contract Energy, in accordance with the provisions of Section 8.3, (b) such dispatch shall include operation on fuel oil if, as and when required by manufacturer's recommendations and/or Good Utility Practices, not to exceed thirty (30) minutes per dispatch period, (c) NSP shall pay Turbine Start Payment(s) in connection therewith, and (d) NSP shall pay all related fuel costs, per Section 5.6 and Section 5.7.

(ii) To the extent that Seller tests the Mankato Facility during such period(s) when NSP otherwise is not dispatching the Mankato Facility, Seller may elect whether to sell the resulting Test Energy to NSP.

(a) If Seller elects to sell Test Energy to NSP pursuant to this Section 4.8(C)(ii), (I) NSP shall purchase such Test Energy at a payment rate of fifteen dollars (\$15) per MWh, in lieu of payment pursuant to Section 8.3, (II) no Turbine Start Payment(s) shall be payable in connection with any such testing, and (III) Seller shall reimburse NSP for all Test Fuel Costs to produce such Test Energy.

(b) If Seller elects not to sell Test Energy to NSP pursuant to this Section 4.8(C)(ii), (I) Seller may sell such Test Energy to any third party purchaser on an interruptible basis, subject to NSP's dispatch rights hereunder, and (II) Seller shall reimburse NSP for all Test Fuel Costs to produce such Test Energy.

(iii) For purposes of this Section 4.8, "Test Fuel Costs" means (a) the quantity of fuel consumed by the test (measured in MMBtu's) multiplied by the applicable Daily Gas Cost, when the Mankato Facility is operated on natural gas fuel, or (b) the quantity of fuel oil consumed by the test, multiplied by the sum of the applicable prompt month settlement price for heating oil as traded on NYMEX plus \$0.05, when the Mankato Facility is operated on fuel oil.

Article 5 – Delivery, Availability Reporting, Metering and Fuel Supply

5.1 Delivery Arrangements. Seller shall be responsible for (i) all interconnection, electric losses, transmission, ancillary service arrangements and costs required to deliver,

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on a firm transmission service basis, the Actual Capacity and Contract Energy (including Test Energy, in the case of the Mankato Facility) from each Facility to the applicable Point(s) of Delivery, (ii) entering into a Mankato Interconnection Agreement for the Mankato Facility, and (iii) arranging and (as between the Parties) paying for construction of the Direct Assignment Facilities. Except for the foregoing, NSP shall be responsible for all electric losses, transmission, ancillary service arrangements and costs required to receive the Actual Capacity, the Contract Energy and any Test Energy purchased by NSP at the applicable Point(s) of Delivery, and to transmit and deliver such capacity and energy to points beyond the Point(s) of Delivery.

5.2 Availability Reporting.

(A) Beginning as of the Facility Acceptance Date, Seller shall provide to NSP's SCC accurate and timely updates on the current Availability of the Actual Capacity of the Mankato Facility ("Reported Availability"). NSP shall have the right to verify at any time, without prior notice to Seller, Seller's current Reported Availability. To verify Seller's Reported Availability, NSP shall dispatch/schedule the Mankato Facility at the level of Reported Availability ("Availability Verification Test"). Deficiencies greater than 3% (rounded upward to the next whole MW) between the tested Availability and the Reported Availability ("Deficiency") will result in derating the Actual Capacity of the Mankato Facility to the level of the tested Availability for the then current hour and all subsequent hours until Seller reports a revised level of available Actual Capacity. Upon receiving notice from Seller of a revised Reported Availability, NSP shall have the option of conducting a second Availability Verification Test. If NSP chooses not to conduct a second Availability Verification Test at that time, the Actual Capacity will be considered Available to the full level of Seller's Reported Availability until NSP conducts a subsequent Availability Verification Test. The resulting amount of Actual Capacity Available for any individual hour shall be integrated over the hour, on a prorated basis, to reflect any updates in Seller's Reported Availability made effective during such hour.

(B) NSP will notify Seller as soon as possible by telephone and thereafter in writing whenever an Availability Verification Test has identified a Deficiency in the Seller's Reported Availability for the Mankato Facility. A second and any subsequent Deficiencies in any billing month shall result in a retroactive derating of the Actual Capacity of the Mankato Facility to the capacity level achieved in the most recent Availability Verification Test. The period for retroactive adjustment will be all prior hours in which Seller's most recent Reported Availability was continuously in effect and unverified by NSP. In no event will the period for retroactive Availability adjustments exceed ten (10) Days or extend beyond the first Day of the billing month. Three (3) Deficiencies in any two (2) consecutive billing months shall result in a five percent (5%) reduction in the Capacity Price, as set forth in Section 8.1, applicable to the subsequent two billing months, for the Mankato Facility.

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5.3 Electric Metering

(A) NSP shall specify and install revenue-grade Electric Metering Devices ("NSP Metering"), on the high side of Seller's step-up transformer on the Site, directly on the NSP side of the Point of Delivery. If NSP Metering cannot be installed directly at the Point of Delivery, meter readings will be adjusted to reflect any parasitic loads and/or other losses from the NSP Metering to or from the Point of Delivery, as applicable. All NSP Metering shall be sealed, and only NSP shall break the seal when the NSP Metering is to be inspected, tested and/or adjusted. NSP shall supply metering current transformers ("CRTs") and potential transformers ("PTs"), and Seller shall install such CRTs and PTs on a Seller-supplied metering structure. Additionally, Seller shall install two (2), two-inch conduits from the metering CRTs and PTs to a junction point near the metering structure and two (2) four-inch conduits from that junction point to the NSP panel. Seller shall run shielded cables meeting NSP's specifications, between the metering structure and the NSP panels. NSP shall provide data pulses to Seller from the NSP Metering.

(B) NSP, at its own expense, shall inspect and test all NSP Metering prior to the Facility Acceptance Date and at least annually thereafter. Upon request by Seller, NSP shall perform additional inspections or tests of the NSP Metering and shall permit a qualified representative of Seller to witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Seller, unless upon such inspection or testing the NSP Metering is found to register inaccurately by more than the allowable limits established in Section 5.4 (in which event the expense of the requested additional inspection or testing shall be borne by NSP). NSP shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify, all inspections and tests of the NSP Metering, *provided that* Seller shall not unreasonably interfere with or disrupt the activities of NSP, and shall comply with all of NSP's safety standards, in connection with its witnessing of testing of NSP Metering; and *provided further* that the failure of Seller to send a representative to witness the testing of NSP Metering shall not affect the validity of such test. If requested by Seller in writing, NSP shall provide copies of any inspection or testing reports to Seller.

(C) Seller may elect to install and maintain, at its own expense, backup revenue-grade metering devices and, if Seller installs Expanded Capacity, Seller shall (if so requested by NSP) install and maintain, at its own expense, appropriate revenue-grade submetering devices for the Mankato Facility (either, "Seller's Back-Up Metering") in addition to the NSP Metering. Seller, at its own expense, shall inspect and test Seller's Back-Up Metering (if any) upon installation and at least annually thereafter. Upon request by NSP, Seller shall perform additional inspections or tests of Seller's Back-Up Metering and shall permit a qualified representative of NSP to inspect or witness the testing of Seller's Back-Up Metering. The actual expense of any such requested additional inspection or testing shall be borne by NSP unless, upon such inspection or testing, Seller's Back-Up Metering is found to register inaccurately by more than the allowable

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limits established in Section 5.4 (in which event the expense of the requested additional inspection or testing shall be borne by Seller) Seller shall provide NSP with reasonable advance notice of, and permit a representative of NSP to witness and verify, all inspections and tests of Seller's Back-Up Metering (if any), *provided* that NSP shall not unreasonably interfere with or disrupt the activities of Seller, and shall comply with all of Seller's safety standards, in connection with its witnessing of testing of Seller's Back-Up Metering; and *provided further* that the failure of NSP to send a representative to witness the testing of Seller's Back-Up Metering shall not affect the validity of such test. If requested by NSP in writing, Seller shall provide copies of any inspection or testing reports to NSP.

(D) Subject to Section 5.4, the NSP Metering and, if Expanded Capacity is installed, Seller's Back-Up Metering shall be the primary Electric Metering Device(s) for purposes of measuring the Contract Energy generated by the Mankato Facility during the Term

(E) In the event of any irreconcilable conflict between this Section 5.3 and the Mankato Interconnection Agreement, the Mankato Interconnection Agreement shall control

5.4 Inaccurate Meters

(A) If the NSP Metering fails to register or is found upon testing to be inaccurate by more than one percent (1.0%), an adjustment to the payments due from NSP to Seller with respect to Contract Energy generated by the Mankato Facility shall be made correcting all measurements by the inaccurate or defective NSP Metering for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(i) If Seller's Back-Up Metering has been installed and has been tested and maintained in accordance with Section 5.3, the Parties shall use Seller's Back-up Metering to determine the amount of the payment adjustment required due to such inaccuracy. Data from Seller's Back-up Metering shall be adjusted for losses to the Point of Delivery. In the event that no Seller's Back-Up Metering is installed, or if Seller's Back-up Metering is also found to be inaccurate by more than one percent (1%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Contract Energy from the Mankato Facility during periods of similar operating conditions when the NSP Metering was registering accurately.

(ii) The payment adjustment shall be made for the period during which inaccurate measurements were made. In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half ($\frac{1}{2}$) of the period from the most recent preceding test of the NSP Metering to the test that found the NSP Metering to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the NSP Metering to be defective or inaccurate

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(iii) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by NSP, NSP shall use the corrected measurements as determined in accordance with this Section to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by NSP for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by NSP to Seller; if the difference is a negative number, the difference shall be paid by Seller to NSP, or at the discretion of NSP, may take the form of an offset to payments due to Seller from NSP. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless NSP is entitled to and elects payment via an offset.

(B) If and when the NSP Metering, or Seller's Back-Up Metering, is found to be defective or inaccurate, regardless of the magnitude of the error, the affected metering shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate metering, at that Party's expense.

5.5 Natural Gas Fuel Supply Interconnection and Metering.

(A) Seller shall construct and test (or shall cause the Designated Fuel Pipeline to construct and test) and have all of the Designated Fuel Pipeline's Interconnection Facilities ready for commercial operation timely, to allow Seller to meet the Facility Acceptance Milestone and each other affected Construction Milestone

(B) Subject to the provisions of Section 5 5(C) below, (i) Seller shall be responsible for the cost, construction, testing, operation, maintenance and repair of all of the Mankato Facility's Gas Interconnection Facilities, (ii) Seller shall obtain or cause to be obtained all necessary easements, rights-of-way and other real property rights and all permits, licenses or other approvals required for the construction, operation and maintenance of the Gas Interconnection Facilities, and (iii) Seller shall cause the Gas Interconnection Facilities to be completed and ready for delivery of Acceptable Natural Gas Fuel from the Fuel Point(s) of Delivery on or before the applicable Construction Milestone Date set forth in Exhibit B. In addition, at the cost and option of NSP, Seller shall cause to be installed a separate gas tap at the upstream flange of the Fuel Point of Delivery to interconnect to a second pipeline to be designated by NSP.

(C) Seller acknowledges that NSP may seek to cause the Designated Fuel Pipeline or another fuel supplier to build and fund some or all of the Designated Fuel Pipeline's Interconnection Facilities and/or the Mankato Facility's Gas Interconnection Facilities (either, "Fuel Interconnections"), in connection with a long-term commitment by NSP to purchase Acceptable Natural Gas Fuel and/or gas transportation services from the Designated Fuel Pipeline or another fuel supplier. Seller shall cooperate with NSP in connection with any such effort, including providing to NSP from time to time upon request Seller's budgeted costs for its construction of all or any designated portion(s) of the Fuel Interconnections. Notwithstanding Section 5 5(B), NSP shall have the right to cause the Designated Fuel Pipeline or other fuel supplier acceptable to Seller to design, engineer

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and construct all or any substantial portion of the Fuel Interconnections, at the cost (as between the Parties) of NSP. Any such election by NSP shall be effected by notice to Seller at any time prior to the earlier to occur of (I) October 1, 2004, or (II) Seller's execution of the Gas Interconnection Agreement, which notice shall specify the portion of the Fuel Interconnections to be designed, engineered and constructed by the Designated Fuel Pipeline or other fuel supplier. In connection with any election by NSP under this Section 5.5(C), Seller shall provide such cooperation to NSP, at no material out-of-pocket cost to Seller, as NSP may reasonably request from time to time. In the event of any such election by NSP,

(i) the contractor that will build the affected portion of the Fuel Interconnections will be subject to Seller's approval;

(ii) NSP shall provide or shall cause the contractor to provide in favor of Seller such bonds and indemnities as are customary and appropriate to the scope and location of the work;

(iii) the affected portion of the Fuel Interconnections shall meet or exceed all of Seller's original specifications therefor;

(iv) in the event that the affected portion of the Gas Interconnection Facilities are built with a capacity or with other specifications in excess of the capacity and specifications required for the Mankato Facility, Seller shall pay the incremental cost of the affected Gas Interconnection Facilities in excess of the cost required to service the Mankato Facility; and

(v) ~~TRADE SECRET~~

(D) Prior to or following COD, Seller shall accommodate NSP's reasonable request to interconnect the Mankato Facility with one or more additional natural gas delivery pipelines at the most convenient practicable point, and to designate the resulting fuel interconnection point(s) as additional Fuel Point(s) of Delivery under this Agreement; *provided, however,* that (i) as between the Parties, NSP shall be solely responsible for providing and installing (at NSP's risk and cost) all natural gas interconnection, conditioning and metering facilities required to establish such additional interconnection(s); (ii) none of such additional interconnection(s) will interfere with the operation of the Mankato Facility or any Expansion Equipment; (iii) each such additional interconnection will deliver Acceptable Natural Gas Fuel at a pressure of not less than five hundred fifty (550) psig; and (iv) the contractor for the construction of each such additional interconnection shall be acceptable to Seller. Seller shall provide such cooperation as NSP may reasonably request, without material out-of-pocket cost to Seller, for the purpose

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of constructing and maintaining the additional natural gas interconnection and metering facilities required at any such additional Fuel Point(s) of Delivery.

(E) If and when Seller adds any Expanded Capacity, Seller shall take such steps, including (if so requested by NSP) installation of utility-grade fuel sub-metering on the Site ("Expansion Fuel Metering"), at Seller's expense, as may be necessary or appropriate consistent with Good Utility Practices to separately measure the fuel consumed by the Mankato Facility to produce Contract Energy (including any Test Energy economically dispatched by NSP) vs. the fuel consumed by the Expanded Capacity. In the event that Expansion Fuel Metering is installed, Seller shall (i) maintain such equipment in accordance with accepted natural gas industry standards and the delivering pipeline's tariff requirements, and (ii) test such equipment at least once annually (or at such other intervals as may be required by any agreement between Seller and any Other Off-Taker), at the cost (as between the Parties) of Seller. The protocol for testing any Expansion Fuel Metering shall be consistent with the delivering pipeline's tariff. Seller shall provide NSP with at least ten (10) Days' advance notice of such tests and a representative of NSP shall be permitted to witness such tests; *provided, however*, that (I) such NSP representative shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards, and (II) the failure of NSP to send a representative shall not affect the validity of any such test. Seller shall provide to NSP copies of all test data and testing reports with respect to Seller's Expansion Fuel Metering (if any), upon request by NSP.

(F) The fuel meter included in the Designated Fuel Pipeline's Interconnection Facilities (or, if applicable, in the interconnection facilities of any alternate natural gas delivery pipeline added pursuant to Section 5.5(D)) and any Expansion Fuel Metering shall be the primary fuel meter(s) for purposes of this Agreement. As between the Parties, NSP shall be responsible for testing or arranging the testing of the delivering pipeline's fuel meter(s) from time to time, in accordance with the applicable pipeline's tariff and testing protocols. NSP shall deliver to Seller at least thirty (30) Days' prior notice, unless the pipeline provides less notice (in which case NSP shall deliver to Seller as much notice as possible), of each test of the pipeline fuel meter(s). Subject to the pipeline's safety requirements and other procedures, Seller shall have the right and opportunity to witness each test of the pipeline's fuel meter(s); *provided* that any failure by Seller to witness any test shall not affect its validity. If, when and to the extent so permitted by any delivering pipeline, Seller may request additional testing of the pipeline's fuel meter, with any such additional testing to be conducted (as between the Parties) at Seller's expense. NSP shall provide copies of all test data and testing reports to Seller, upon Seller's request. Disputes regarding the allocation of natural gas volumes and associated billings with the delivering pipeline, including meter reading adjustments for prior periods, shall be resolved in accordance with the delivering pipeline's tariff.

(G) Unless and until Seller adds Expanded Capacity, NSP shall be the operator of the Fuel Point(s) of Delivery, commencing as of the Facility Acceptance Date. As the operator of the Fuel Point(s) of Delivery, NSP shall be responsible for all volume confirmations, allocations and balancing functions with the applicable pipeline(s). Seller

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shall be responsible for all natural gas physical flow activities, such as flow controls, valve operation, and contacting the delivering pipeline to initiate gas flow through the Mankato Facility's Gas Interconnection Facilities

(H) Seller may install back-up fuel metering at the Mankato Facility at its expense and, if so requested by NSP prior to or following the Facility Acceptance Date, shall install back-up fuel metering at the Mankato Facility at NSP's expense (either, "Back-Up Fuel Metering"). In the event that Back-Up Fuel Metering is installed, Seller shall (i) maintain such equipment in accordance with accepted natural gas industry standards and the delivering pipeline's tariff requirements, and (ii) test such equipment at least once annually, at the cost of Seller. NSP shall have the right to have testing of any Back-Up Fuel Metering done on a more frequent basis, *provided* that NSP pays for the cost of such additional testing. The protocol for testing any Back-Up Fuel Metering shall be consistent with the delivering pipeline's tariff. Seller shall provide NSP with at least thirty (30) Days' advance notice of such tests and a representative of NSP shall be permitted to witness such tests; *provided, however*, that (I) such NSP representative shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards, and (II) the failure of NSP to send a representative shall not affect the validity of any such test. Seller shall provide to NSP copies of all test data and testing reports with respect to Seller's Back-Up Fuel Metering (if any), upon request by NSP.

5.6 Natural Gas Fuel Delivery.

(A) Beginning as of the Facility Acceptance Date, NSP shall procure, pay for, and cause to be delivered to Seller at one or more Fuel Point(s) of Delivery, sufficient Acceptable Natural Gas Fuel at a pressure of not less than five hundred and fifty (550) psig required for Seller to start-up the Mankato Facility and produce the Contract Energy dispatched by NSP, and as required to produce Test Energy after such date. Seller shall be responsible for all costs incurred in connection with the delivery of Acceptable Natural Gas Fuel from the Fuel Point(s) of Delivery to the Mankato Facility. Seller shall not use any gas purchased by NSP for the purposes of building heat or water heaters. Seller's natural gas (dew point) heaters, if installed, shall not exceed a rating of 10 MMBTu's per hour to be used only during start-up of the Facility.

(B) In the event that NSP is unable to procure and deliver Acceptable Natural Gas Fuel to any Fuel Point(s) of Delivery for any period of time, NSP shall have the right to (i) dispatch the Base Capacity on fuel oil, subject to the terms and/or conditions set forth in the Mankato Facility's permits, (ii) suspend dispatching Contract Energy from the Mankato Facility, (iii) require Seller to modify (at NSP's risk and cost) the Facility turbine units and/or other equipment so as to allow the Mankato Facility to utilize the natural gas fuel supply available from the upstream natural gas pipeline(s) at the Fuel Point(s) of Delivery, *provided* that such modification would not void the manufacturer's warranty for such equipment then in effect and would not materially and adversely impact the operation of such equipment, and/or (iv) require Seller to construct and operate an appropriate natural gas conditioning facility (at NSP's risk and cost), at a mutually agreeable and reasonably convenient location on the Site, so that the natural gas fuel delivered by NSP

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may be conditioned to conform to the specifications for Acceptable Natural Gas Fuel. In the event that NSP requires Seller to take any action pursuant to clause (iii) or clause (iv), NSP shall indemnify Seller for all net costs incurred by Seller as a result of such modification, including the actual cost of any such modification, increased operation and maintenance costs, and any adverse effects on availability of the Mankato Facility.

5.7 Fuel Oil Supply, Interconnection, Metering and Payment As part of the Mankato Facility, Seller shall install one or more fuel oil storage tanks with an aggregate usable capacity of at least three hundred thousand (300,000) gallons to allow NSP to dispatch the Mankato Facility on fuel oil, subject to limitations set forth in the Mankato Facility Air Permit. Seller shall be responsible and shall pay for the construction, testing, loading, operation, maintenance and repair of all fuel oil storage tanks, interconnections and metering equipment required (A) to receive fuel oil by truck on the Site, (B) to deliver and meter such fuel oil from storage to the Mankato Facility's generating units, and (C) to fully operate the Base Capacity on fuel oil. Seller shall maintain and test the fuel oil meter(s) from time to time in accordance with manufacturer's recommendations and Good Utility Practices. All fuel oil shall meet or exceed each of the specifications for fuel oil set forth on Exhibit D-3. Seller shall fill all fuel oil storage tanks on the Site prior to the Facility Acceptance Date, in such amount as may be directed by NSP and at a cost as agreed to by NSP (or, if more, in such amount as Seller may reasonably require for testing of the Mankato Facility). Upon invoice by Seller following the Facility Acceptance Date, NSP shall pay or reimburse Seller for the costs of the initial fill less the Test Fuel Costs of fuel oil consumed by the Mankato Facility for pre-acceptance testing. Thereafter, NSP shall arrange and pay for all subsequent fills of the fuel tank(s), as and when desired by NSP. At the end of the Term of this Agreement, (i) Seller shall pay to NSP the then-current market value of the fuel oil in storage at the Mankato Facility, and (ii) such fuel oil shall be and become the property of Seller.

Article 6 - Obligation to Sell and Purchase Capacity and Energy

6.1 Sale and Purchase. Beginning on the Commercial Operation Date and continuing through the end of the Term, subject to the terms and conditions of this Agreement, (A) Seller shall sell and provide capacity to NSP and NSP shall accept and purchase capacity from Seller, in accordance with this Agreement, and (B) if and to the extent dispatched/scheduled by NSP, Seller shall use such capacity to generate and deliver Contract Energy to NSP at one or more Points of Delivery. Beginning upon the Facility Acceptance Date, Seller shall provide such capacity and associated Contract Energy from the Mankato Facility, subject to Section 6.5(B). In the event that the Facility Acceptance Date does not occur by the Commercial Operation Date, Seller shall provide such capacity and associated Contract Energy from one or more Alternate Generation Sources until the Facility Acceptance Date, per Section 6.5(A). Seller shall not curtail or interrupt deliveries of capacity and/or energy from any Facility for economic reasons.

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6.2 Dispatch of Mankato Facility

(A) NSP shall not dispatch the Mankato Facility at less than sixty percent (60%) of the Base Capacity, or such other minimum load as may be specified in connection with Seller's permits, nor (except in connection with Emergencies) shall NSP start the Mankato Facility in simple cycle mode if the steam generator is then available. Subject to the foregoing, NSP's SCC shall have the right to determine, in accordance with Good Utility Practice, the dispatch control of the Mankato Facility, including the Facility's start-ups, shutdowns, generation loading levels and Power Factor levels associated with the Actual Capacity and Contract Energy. NSP shall make reasonable efforts to provide Seller at least twenty-four (24) hours advance notice of the Mankato Facility's generation levels anticipated by NSP, *provided* that such notice shall be subject to and may be pre-empted by real-time operating conditions on NSP's electric system including Emergency, reliability, stability and economic conditions.

(B) In the event of a trip of any generating unit during any period when the Mankato Facility has been dispatched by NSP, Seller shall restart such unit if (and only if) so directed by the SCC.

(C) Nothing in this Agreement shall be construed to require NSP to dispatch the Mankato Facility during the Term during any particular period, for any particular number of starts, or for any particular length of time.

6.3 Operating Reserve. Beginning as of the Facility Acceptance Date, all Operating Reserve shall be deemed to have been purchased by NSP, shall be made available to NSP as Operating Reserve, and shall be activated by Seller when needed and called upon by NSP. Seller shall use reasonable commercial efforts to maximize the Operating Reserve available to NSP from the Mankato Facility, consistent with and subject to Good Utility Practice, *provided* that Seller shall not be required to make any capital expenditures or incur any material increased operating expenses in connection with such efforts.

6.4 Title and Risk of Loss.

(A) As between the Parties, (i) Seller shall be deemed to be in control of the Actual Capacity, Contract Energy and Test Energy output from each Facility up to the Point of Delivery, (ii) NSP shall be deemed to be in control of the Actual Capacity, the Contract Energy, and the Test Energy purchased by NSP, from and after delivery and receipt at the Point of Delivery, and (iii) title and risk of loss related to the Actual Capacity, the Contract Energy and the Test Energy purchased by NSP (including any damages arising therefrom) shall transfer to NSP at the Point of Delivery.

(B) Title to the natural gas fuel supplied to the Mankato Facility to produce Contract Energy and Test Energy following the Facility Acceptance Date shall transfer to

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Seller at the Fuel Point(s) of Delivery unless (i) sales, use, excise and/or other taxes would be payable as a consequence of such transfer, and (ii) such taxes could be avoided if NSP took / retained title to such natural gas fuel at the Fuel Point(s) of Delivery instead (in which case, at NSP's option, title to the natural gas fuel supplied to the Mankato Facility to produce Contract Energy and Test Energy following the Facility Acceptance Date shall transfer to / be retained by NSP at and from the Fuel Point(s) of Delivery). Regardless, as between the Parties, Seller shall be deemed to be in control of such natural gas fuel (and shall assume the risk of loss and any damages arising therefrom) from and after the Fuel Point(s) of Delivery

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(A) Prior to Facility Acceptance.

(i) ~~TRADE SECRET~~

(ii) ~~TRADE SECRET~~

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(B) Following Facility Acceptance

(i) ~~TRADE SECRET~~

(ii) ~~TRADE SECRET~~

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TRADE SECRET UNL.

(v) TRADE SECRET

(a) TRADE SECRET

; and

(b) TRADE SECRET

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(iv)

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(C) General.

(i)

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~~TRADE SECRET~~ *cont.*

(iii) ~~TRADE SECRET~~

(iv) ~~TRADE SECRET~~

(v) ~~TRADE SECRET~~

6.6 ISO Intervention In the event that an independent system operator, regional transmission organization, or other Governmental Authority with jurisdiction assumes responsibility for the scheduling and dispatch of any Facility, the Parties shall modify the scheduling / dispatch procedures for the Facility as necessary to comply with such organization's dispatch procedure.

Article 7 – MPUC Approval

(A) This Agreement is subject to review and approval by the MPUC. NSP shall use commercially reasonable efforts to obtain MPUC approval of this Agreement pursuant to Minnesota law and MPUC bidding requirements, as soon as reasonably practicable following the date hereof, subject only to ongoing prudency review of NSP's purchase hereunder. The Parties shall cooperate in NSP's efforts to obtain MPUC approval.

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(B) Notwithstanding any provisions of this Agreement to the contrary, NSP shall have the right to terminate this Agreement, without any obligation to Seller as a result of such termination other than as set forth in Section 7(D), subject to Seller's extension rights under Section 7(C), by notice to Seller (i) at any time prior to ~~TRADE SECRET~~ (the "Outside MPUC Approval Date") as a consequence of MPUC disapproval of this Agreement, or MPUC approval of this Agreement with conditions reasonably and materially unacceptable to NSP, or (ii) at any time during ~~TRADE SECRET~~; as a consequence of failure or refusal of the MPUC to approve this Agreement without conditions reasonably and materially unacceptable to NSP, by the Outside MPUC Approval Date (either (i) or (ii), a "~~TRADE SECRET~~ Permitted Termination") Absent such notice of a ~~TRADE SECRET~~ Permitted Termination, this Article 7 shall be of no effect, and this Agreement shall remain in full force and effect thereafter *Trade Secret*

(C) In the event that NSP delivers to Seller a notice of a June 30 Permitted Termination pursuant to Section 7(B), Seller shall have the right to extend the Outside MPUC Approval Date to ~~TRADE SECRET~~, by notice to NSP within ten (10) Business Days following receipt of NSP's notice of the ~~TRADE SECRET~~ Permitted Termination, to allow additional time for MPUC approval (if the MPUC has not disapproved this Agreement by ~~TRADE SECRET~~) or to allow Seller to seek reconsideration and/or appeal (if the MPUC has disapproved or if the MPUC has approved this Agreement with conditions unsatisfactory to NSP) In the event of any such election by Seller to extend the Outside MPUC Approval Date,

(i) NSP shall have the right to terminate this Agreement, without any obligation to Seller as a result of such termination other than as set forth in Section 7(D), by notice to Seller at any time during ~~TRADE SECRET~~, as a consequence of (a) failure or refusal of the MPUC to approve this Agreement without conditions reasonably and materially unacceptable to NSP, by ~~TRADE SECRET~~; or (b) an inability by Seller to successfully appeal or cause the MPUC to reverse any disapproval of this Agreement, by ~~TRADE SECRET~~ (either (a) or (b), a "~~TRADE SECRET~~ Permitted Termination"); and

(ii) absent such notice of a ~~TRADE SECRET~~ Permitted Termination, this Article 7 shall be of no effect, and this Agreement shall remain in full force and effect thereafter.

(D) At any time within six (6) months following any ~~TRADE SECRET~~ Permitted Termination (unless Seller exercises its extension rights pursuant to Section 7(C)) or within six (6) months following any ~~TRADE SECRET~~ Permitted Termination (if Seller exercises its extension rights pursuant to Section 7(C)), Seller may invoice NSP for all of Seller's Unrecovered Costs. Any such invoice shall include a line-item breakdown of such Unrecovered Costs NSP shall pay any such invoice within thirty (30) Days following receipt or, in the event of audit thereof by NSP per Section 7(F), within thirty (30) Days following completion of the audit. For purposes of this Agreement, Seller's "Unrecovered

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Costs" means

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For the avoidance of doubt, if Seller exercises its right under Section 7(C) to extend the Outside MPUC Approval Date to ~~TRADE SECRET~~, Seller's Unrecovered Costs nevertheless shall be calculated as if NSP issued notice of a ~~TRADE SECRET~~ Permitted Termination and Seller declined to exercise its consequent extension rights. ~~TRADE SECRET~~

(E) In the event that, following any payment by NSP of Unrecovered Costs pursuant to this Article 7, Seller, any Affiliate of Seller, or any other Person which acquires rights to the Site through Seller or any Affiliate of Seller (a "Subsequent Developer"), continues or, within five (5) years following any termination of this Agreement pursuant to this Article 7, restarts development of a power generation project on or near the Site, Seller shall repay or shall cause the Subsequent Developer to repay to NSP, upon the commercial operation date of such project, such portion of the Unrecovered Costs (if any) as benefited such Subsequent Developer on a *quantum meruit* basis

(F) NSP shall have the right to audit Seller's calculation of its Unrecovered Costs invoiced to NSP pursuant to Section 7(D), and to audit any Subsequent Developer with respect to costs to be repaid to NSP under Section 7(E), at NSP's cost, during normal business hours, on notice to Seller. Seller shall provide (or if applicable, shall cause the Subsequent Developer to provide) all cooperation reasonably requested by NSP in connection with any such audit. NSP shall complete such audit within four (4) months following delivery of NSP's notice of audit. Any resulting disputes shall be subject to Section 9.4 and Section 13.7.

(G) Effective as of the date of any ~~SECRET~~ ^{TRADE} Permitted Termination (if Seller does not exercise its extension rights under Section 7(C)) or any ~~TRADE SECRET~~

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Permitted Termination (if Seller exercises its extension rights pursuant to Section 7(C)), this Agreement shall be deemed terminated, and each Party shall be released from all financial and other obligations hereunder, *except* as otherwise provided in Sections 7(C)-(F) and in Section 20.7

Article 8 – Payments to Seller

8.1 Capacity Payments.

(A) Capacity Testing of Mankato Facility

(i) Seller shall test or cause to be tested the net generating capability of the Mankato Facility, at Seller's expense (possibly excluding fuel costs, per Section 4.8(C)), (a) immediately prior to the Facility Acceptance Date (the "Initial Capacity Test"), and (b) thereafter annually during the Term. The annual capacity test shall be conducted between January 1 and March 1 of each calendar year, unless the Mankato Facility is scheduled for a major overhaul prior to April 15 (in which case the capacity test for that year shall be conducted promptly following completion of the major overhaul). The Initial Capacity Test may be run concurrently with the acceptance test for the Mankato Facility.

(ii) Seller shall conduct or cause to be conducted an URGE test (or such other capacity testing as may be prescribed by MAPP from time to time during the Term) of the Mankato Facility, as and when required by MAPP, to determine the Accreditable Capacity of the Mankato Facility, at Seller's expense (possibly excluding fuel costs, per Section 4.8(C)). Such MAPP capacity testing is expected to be conducted concurrently with the annual capacity testing required under clause (i).

(iii) Upon request by NSP from time to time following the Facility Acceptance Date, not more frequently than twice per calendar year, Seller shall perform interim capacity testing of the Mankato Facility. The Parties' out-of-pocket costs of any such interim testing requested by NSP shall be borne by NSP unless, upon such testing, the Net Capability of the Mankato Facility is determined to be more than one percent (1%) less than the Net Capability of the Mankato Facility determined by the capacity test next preceding the test requested by NSP (in which event the Parties' out-of-pocket costs, excluding fuel costs, shall be borne by Seller).

(iv) Seller may perform interim capacity testing of the Mankato Facility from time to time, not more frequently than twice per calendar year (not including any re-testing necessitated by any Failed Capacity Test(s)). The Parties' out-of-pocket costs in connection with any such interim capacity testing (possibly excluding fuel costs, per Section 4.8(C)) shall be borne by Seller.

(v) Seller shall set the date for the Initial Capacity Test on not less than five (5) Business Days' prior notice to NSP. The Parties shall set the exact date for

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each subsequent capacity test to be performed under this Article 8 by mutual agreement; *provided* that, in the event that the Parties cannot agree upon a mutually acceptable testing date within ten (10) Business Days following either Party's request for a test, (a) by notice to NSP, Seller shall set the date for the capacity test, which date shall be not less than four (4) weeks and not more than six (6) weeks following expiration of such 10-day period, and (b) the results of the capacity test shall be retroactively effective to the first Day of the billing period immediately preceding the billing period during which the test is conducted

(vi) Notwithstanding clause (v), in the event of a Failed Capacity Test, the capacity test shall be rescheduled unilaterally by Seller as soon as reasonably practicable following the Failed Capacity Test

(vi) One or more representatives of NSP shall be permitted to witness, record and verify all capacity testing process parameters and conditions; *provided* that any failure of NSP to send a representative to witness a capacity test scheduled in accordance with this Section 8.1(A) shall not affect the validity of such test

(viii) All capacity testing of the Mankato Facility will be conducted with both generating units of the Facility operating at their maximum design load, including full duct firing, using Acceptable Natural Gas Fuel. The test will be conducted over such period as NSP may reasonably require, not to exceed four (4) hours, with operation of the units held constant. Appropriate operational stability criteria shall be established and met. The Mankato Facility shall be operated in full compliance with all state and federal environmental regulations throughout the test, with all auxiliary equipment needed for normal operation of the Mankato Facility in service and in typical operating condition. Seller may be required to provide operational records to be used to substantiate the normal mode of operation. Seller shall provide to NSP copies of all capacity testing reports.

(ix) For purposes of calculating the test results of the Mankato Facility, each hour of the test will be averaged and adjusted to Reference Conditions. After all adjustments have been made, the final capacity value will be the average output of the hourly corrected results

(x) All capacity testing of the Mankato Facility shall be conducted in strict accordance with

(a) this Agreement and Good Utility Practices;

(b) MAPP capacity testing and reporting criteria, as they may change from time to time during the Term (*provided, however*, that if subsequent to the date of this Agreement, MAPP testing and/or reporting criteria change from time to time so as to reduce the nominal tested capacity of the

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Mankato Facility, the Net Capability of the Mankato Facility shall be calculated in accordance with MAPP criteria as in effect on the date of this Agreement); and

(c) NSP's reasonable additional capacity testing requirements, as such requirements (if any) may be timely provided by NSP to Seller from time to time during the Term, to the extent not inconsistent with Good Utility Practices *provided, however*, that (x) no such additional capacity testing requirements of NSP may serve to reduce the Net Capability of the Mankato Facility, and (y) NSP shall pay or reimburse Seller for any material incremental out-of-pocket expenditures incurred by Seller as a consequence of such additional capacity testing requirements).

(xi) NSP acknowledges that the duct firing capability of the Mankato Facility will not be operable on dual fuel, and therefore may not qualify as Accreditable Capacity. The Net Capability of the Mankato Facility shall nevertheless include the duct firing capacity of the Mankato Facility, regardless of whether NSP acquires firm gas or otherwise seeks to accredit the Mankato Facility's duct firing capacity.

(B) Net Capability. For purposes of this Agreement, subject to clauses 8 1(A)(x) and Section 8 1(A)(xi),

(i) the "Net Capability" or "NC" of the Mankato Facility from time to time shall mean the lesser of (a) three hundred seventy five (375) MW, or (b) the net generating capability of the Facility, as determined by the most recent capacity test thereof, adjusted to Reference Conditions; and

(ii) the "Net Capability" or "NC" of any Alternate Generation Source(s) from time to time shall mean the lesser of (a) three hundred seventy five (375) MW, in the aggregate, or (b) the Accreditable Capacity thereof, adjusted to Reference Conditions

(C) Monthly Payments. Commencing on the Commercial Operation Date, NSP shall pay to Seller in arrears a monthly Capacity Payment. All Capacity Payments shall be billed on a calendar month basis. Payments for partial calendar months shall be prorated appropriately. Capacity Payments shall be computed based upon the following formula:

Capacity Payment = NC × CP × AAQ, where:

NC = the then-current Net Capability of the applicable Facility

CP = Capacity Price, stated in \$/kW-month, as set forth in the following Table (as such Table may be adjusted pursuant to Section 5.5(C) and/or Section 12.4(E)):

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TRADE SECRET		Commercial Operation Year	Capacity Price	Commercial Operation Year	Capacity Price	TRADE SECRET
		Year 1	\$	Year 11	\$	
		Year 2	\$	Year 12	\$	
		Year 3	\$	Year 13	\$	
		Year 4	\$	Year 14	\$	
		Year 5	\$	Year 15	\$	
		Year 6	\$	Year 16	\$	
		Year 7	\$	Year 17	\$	
		Year 8	\$	Year 18	\$	
		Year 9	\$	Year 19	\$	
		Year 10	\$	Year 20	\$	

AAQ = Availability Adjustment Quotient for that month, as defined in Section 8.1(D) below.

(D) Availability - Definitions

(i) General For purposes of this Agreement, with respect to both On-Peak Months and Off-Peak Months:

Available A Facility is deemed "Available" if and to the extent the Facility is capable of generating and delivering energy to NSP at the applicable Point of Delivery, in response to dispatch/scheduling requests by NSP, irrespective of whether such requests were actually issued.

AE (Available Energy) for any month or other measurement period means the amount of energy, stated in megawatt hours (MWh), Available from the Facility/ies during that period; *provided* that regardless of actual Availability, a Facility shall be deemed to be Available during periods of Excused Outage with respect to that Facility AE shall be adjusted to Reference Conditions

SME (Scheduled Maintenance Energy) for any month or other measurement period means the amount of energy, stated in MWh, that was not available from the Mankato Facility for dispatch and receipt by NSP during the period due to outages / deratings that meet the requirements for credited Scheduled Maintenance Energy specified in Section 10.1(C) below SME shall be

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adjusted to Reference Conditions Seller will be eligible for SME with respect to (and only with respect to) the Mankato Facility, and only after the Facility Acceptance Date

PE (Period Energy) for any month or other measurement period means the product of the then-current NC and the total number of hours in the period, stated in MWh.

CAF (Capacity Availability Factor) for any month or other measurement period = $(AE + SME) \div PE$ CAF can never exceed 1.0.

(ii) *On-Peak Months* For purposes of this Agreement, with respect to On-Peak Months:

MAF (Monthly Availability Factor) = $CAF + \text{TRADE SECRET}$

RAF (Rolling Availability Factor) for any month means the rolling twelve-month average of the MAF for the On-Peak Month in question and the eleven (11) prior full On-Peak Months; *provided, however, that*

- i commencing as of COD and continuing through the end of the twelfth (12th) full On-Peak Month following the Facility Acceptance Date, RAF for On-Peak Months shall be calculated on a monthly basis (i.e. $RAF = MAF$ for that On-Peak Month);
- ii beginning as of the end of the twelfth (12th) full On-Peak Month following the Facility Acceptance Date, RAF shall mean the rolling twelve-month average of MAF for the On-Peak Month in question and the previous eleven (11) On-Peak Months; and
- iii notwithstanding the foregoing, (a) during the period of any default by Seller under this Agreement that affects the Availability of a Facility during an On-Peak Month, regardless of whether the default is subsequently cured or becomes an Event of Default, RAF shall be calculated on a monthly basis (i.e. $RAF = MAF$ for that period), and (b) if the default is subsequently cured, RAF following such cure shall be calculated with the MAF during the period of default assumed to equal 1.0

AAQ (Availability Adjustment Quotient) for any On-Peak Month means either

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i AAQ = _____ } TRADE SECRET
ii AAQ = _____ }

MAF (Monthly Availability Factor) = CAF + MAF - ~~MAF~~ - TRADE SECRET

- i. commencing as of COD and continuing through the end of the twelfth (12th) full Off-Peak Month following the Facility Acceptance Date, RAF for Off-Peak Months shall be calculated on a monthly basis (i.e. RAF = MAF for that Off-Peak Month);
- ii. beginning as of the end of the twelfth (12th) full Off-Peak Month following the Facility Acceptance Date, RAF shall mean the rolling twelve-month average of MAF for the Off-Peak Month in question and the previous eleven (11) Off-Peak Months; and
- iii. notwithstanding the foregoing, (a) during the period of any default by Seller under this Agreement that affects the Availability of a Facility during an Off-Peak Month, regardless of whether the default is subsequently cured or becomes an Event of Default, RAF shall be calculated on a monthly basis (i.e. RAF = MAF for that period), and (b) if the default is subsequently cured, RAF following such cure shall be calculated with the MAF during the period of default assumed to equal 1.0.

AAQ (Availability Adjustment Quotient) for any Off-Peak Month means either

i. AAQ = _____ } TRADE SECRET
ii. AAQ = _____ }

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8.2 Payment for Dispatchability.

(A) *Ramp Rate Testing.* NSP's SCC shall test or cause to be tested the ramp rate of the Mankato Facility, after synchronization with the Mankato Interconnection Provider's System at NSP's expense, (i) before or immediately following the Facility Acceptance Date, and (ii) thereafter in NSP's discretion, without prior notice to Seller, periodically during the Term from time to time. NSP shall provide to Seller copies of all ramp rate testing reports. Ramp rates shall consist of four (4) tests: the unfired increasing ramp rate for the Base Capacity, the unfired decreasing ramp rate for the Base Capacity, the fired increasing ramp rate, and the fired decreasing ramp rate. Increasing ramp rates shall include the entire specified ramp rate range, beginning at or below the applicable minimum load of the ramp rate range, and ending at the maximum output for the selected configuration during the hour of the test, adjusted to Reference Conditions. For the unfired ramp rate test, the maximum output shall be the Facility output when the gas turbine and steam turbine reach baseload. For the fired ramp rate test, the test shall end when the Facility output reaches the Net Capability during the hour of the test, taking into consideration ambient conditions. The timed portion of the test used to determine the increasing ramp rate shall begin when the Mankato Facility is synchronized and its output level reaches the minimum load starting point of the specified ramp range, and shall end one (1) MW prior to achievement of the maximum load point of the ramp range. The timed portion of the test used to determine the decreasing ramp rate shall begin when the Facility output level is at the maximum load point of the ramp range and shall end one (1) MW prior to reaching the minimum load point. The Ramp Rate used to determine RAF shall be calculated by the following formula:

Ramp Rate = $(.38 \times \text{UIR}) + (.38 \times \text{UDR}) + (.12 \times \text{FIR}) + (.12 \times \text{FDR})$, where

UIR = the measured unfired increasing ramp rate
UDR = the measured unfired decreasing ramp rate
FIR = the measured fired increasing ramp rate
FDR = the measured fired decreasing ramp rate

(B) *Monthly Payments.* Commencing on the Facility Acceptance Date, NSP shall pay to Seller in arrears a monthly Dispatchability Payment. All Dispatchability Payments shall be billed on a calendar month basis; in the event that the Facility Acceptance Date does not occur at the start of a calendar month, the first (1st) month's Dispatchability Payment shall be prorated to reflect the actual number of Days of Commercial Operation in such month. Dispatchability Payments shall be computed based upon the following formula:

Dispatchability Payment = NC x DAF x RRAF x \$ /kW-month, where:

NC = the then-current Net Capability of the Mankato Facility

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DAF = Dispatch Availability Factor
= a fraction, the numerator of which is the sum of all hours on-control during the month, and the denominator of which is the sum of all hours on-line during the month, where:

Hours on-control means the total time during the month when both of the Mankato Facility's generating units are receiving and responding (or capable of receiving and responding) to dispatch pulses transmitted from NSP's SCC; *provided, however*, that any period during which NSP requests that the Mankato Facility be dispatched without AGC, and any period of Excused Outage, shall be counted as a period on-control (so that hours on-control/hours on-line = 1.0 for any such period(s)). The Mankato Facility will be deemed not on control for any period during which any portion of the Mankato Facility is not Available to NSP under Section 8.1(D).

Hours on-line means the total time during the month when any portion of the Mankato Facility is synchronized to the Mankato Interconnection Provider's System and Available, or when the Mankato Facility is not so synchronized or not Available due to an Excused Outage.

For the avoidance of doubt, start-up and shut-down periods shall be excluded from hours on-control and hours on-line for purposes of the calculation of DAF.

RRAF = Ramp Rate Availability Factor, determined by the following table:

Most Recently Tested Ramp Rate	RRAF
≥ 10 MW / minute	1.00
< 10 MW / minute; ≥ 5 MW / minute	$(\text{Actual Ramp Rate} \div 5) - 1$
< 5 MW / minute	0

8.3 Payment for Energy. Commencing on the Commercial Operation Date, NSP shall pay to Seller in arrears a monthly Energy Payment for the Contract Energy that is dispatched/scheduled by NSP and delivered by Seller to NSP during the billing month. The monthly Energy Payment shall be determined by the following formula:

Energy Payment = $(E \times \$ \text{ } \text{TRADE SECRET} \times \text{Inflation Factor}) - \text{HRA}$, where:

E = Contract Energy, stated in MWh, that is dispatched or scheduled by NSP and delivered by Seller to NSP at the Point(s) of Delivery during the billing month

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Inflation = for the first Commercial Operation Year, 1.0
Factor = for each subsequent Commercial Operation Year, a fraction, the numerator of which is the GDPIPD most recently announced as of the first (1st) Day of such Commercial Operation Year, and the denominator of which is the GDPIPD most recently announced as of the Facility Acceptance Date

HRA = Heat Rate Adjustment, determined as a dollar amount pursuant to Section 8.4 (applicable to the Mankato Facility only)

8.4 Heat Rate Adjustment to Payments.

(A) If at any time following the Facility Acceptance Date, the Actual Net Heat Rate for the Mankato Facility is ~~TRADE SECRET~~ of the Predicted Net Heat Rate, a Heat Rate Adjustment ("HRA") determined by the following formula shall be used to reduce payments to Seller for Contract Energy delivered from the Mankato Facility, starting effective with the first (1st) full billing month following the most recent heat rate test and continuing effective through the end of the billing month during which the next heat rate test occurs:

$$HRA = S_{DFCC1} \times [1 - (\{Px_{\text{TRADE SECRET}}\} \div A)], \text{ where:}$$

S_{DFCC1} means the sum of all daily fuel consumption costs (DFCC1's) for that billing month.

DFCC1 (daily fuel consumption cost) for any Day means the sum of (i) the volume of Acceptable Natural Gas Fuel delivered to the Fuel Point of Delivery to produce the Contract Energy (including any Test Energy that is economically dispatched by NSP) that is dispatched by NSP and delivered by Seller to NSP on that Day (stated in MMBtu), multiplied by the applicable Daily Gas Cost, plus (ii) the associated demand charges incurred by NSP for that Day.

"P" means the Predicted Net Heat Rate at the time of the most recent heat rate test

"A" means the Actual Net Heat Rate for the Mankato Facility as determined from the most recent heat rate test.

(B) If at any time following the Facility Acceptance Date the Actual Net Heat Rate for the Mankato Facility is ~~TRADE SECRET~~ of the Predicted Net Heat Rate, an HRA determined by the following formula shall be used to increase payments to Seller for Contract Energy delivered from the Mankato Facility, starting

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effective with the first (1st) full billing month following the heat rate test and continuing effective through the end of the billing month during which the next heat rate test occurs:

$$\text{HRA} = \text{S DFCC2} \times (1 - [(P \times \text{TRADE SECRET}) \div A]) \times \text{TRADE SECRET}$$

where "S DFCC2," is defined below and "A" and "P" as defined in Section 8 4(A)

S DFCC2 means the sum of all daily fuel consumption costs (DFCC2's) for that billing month

DFCC2 (daily fuel consumption cost) for any Day means the sum of (i) the volume of Acceptable Natural Gas Fuel delivered to the Fuel Point of Delivery to produce the Contract Energy (including any Test Energy that is economically dispatched by NSP) that is dispatched by NSP and delivered by Seller to NSP on that Day (stated in MMBtu), multiplied by the applicable Daily Gas Cost, plus (ii) any demand charge savings actually realized by NSP

(C) If the Actual Net Heat Rate for the Mankato Facility is TRADE SECRET of the Predicted Net Heat Rate, and is TRADE SECRET of the Predicted Net Heat Rate, the HRA for the billing month following the heat rate test until the billing month following the next heat rate test for Contract Energy delivered from the Mankato Facility, shall be deemed to be zero dollars (US\$0.00) for purposes of the payment calculations specified in Section 8.4.

8.5 Heat Rate Testing

(A) The Actual Net Heat Rate shall be determined by heat rate testing of the Mankato Facility at the maximum design load for its combustion and steam turbine generators, including full duct firing, using Acceptable Natural Gas Fuel. For the purposes of heat rate testing and determination of the Actual Net Heat Rate, (I) fuel input shall be measured at the Fuel Point of Delivery, and (II) electric output shall be measured as provided in Section 5.3. The test will be conducted over a continuous 4-hour period, with operation of the generating units held constant. The Mankato Facility will be operated in full compliance with all state and federal environmental regulations throughout the test, with all auxiliary equipment needed for normal operation of the Mankato Facility in service and in typical operating condition. Seller may be required to provide operational records to be used to substantiate the normal mode of operation. Testing shall be performed in accordance with the then-current ASME test code(s) applicable to the Mankato Facility's generating units (PTC 22 and PTC 46, as of the date of this Agreement). The net heat rate of the Mankato Facility so determined shall then be subject to one or two adjustments:

(i) in the event that the capacity test of the Mankato Facility conducted simultaneously with the heat rate test yields (or, if no capacity test is conducted simultaneously, the capacity test most recently conducted yielded) a Net

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Capability for the Mankato Facility in excess of three hundred seventy five (375) MW, the tested heat rate for each hour of the test shall be adjusted to the heat rate that would have been obtained had the duct firing rate during the test been limited to such rate as would have yielded a Net Capability of three hundred seventy five (375) MW; and

(ii) following any adjustment pursuant to clause (i), the tested net heat rate for each hour of the test shall be adjusted to Reference Conditions

Uncertainty, as defined in the ASME power test codes, shall not be used to adjust heat rate test results.

After all adjustments have been made, the Actual Net Heat Rate shall equal the average tested net heat rate of the Mankato Facility, as adjusted, for each of the four (4) hours of the test

(B) Seller shall perform an initial heat rate test of the Mankato Facility prior to or within thirty (30) Days following the Facility Acceptance Date ("Initial HR Test"). Seller shall provide to NSP at least five (5) Business Days' prior notice of, and shall permit one or more representatives of NSP to witness and verify, the Initial HR Test. If the Initial HR Test is performed after the Facility Acceptance Date, the Actual Net Heat Rate resulting from such Initial HR Test shall apply retroactively from the Facility Acceptance Date for the purposes of determining the Heat Rate Adjustment pursuant to Section 8.4. The heat rate test performed by or on behalf of Seller prior to the Facility Acceptance Date may constitute the Initial HR Test, *provided*, that such test is performed in accordance with all the requirements for heat rate testing set forth in this Section 8.5. Seller shall perform the Initial HR Test at Seller's cost (possibly excluding fuel costs, per Section 4.8(C)).

(C) Following the Facility Acceptance Date, Seller shall perform an annual heat rate test of the Mankato Facility concurrently with the annual capacity testing of the Mankato Facility prescribed in Section 8.1(A). Seller shall perform the annual heat rate test of the Mankato Facility at Seller's cost (possibly excluding fuel costs, per Section 4.8(C)).

(D) Each Party shall have the right to request and schedule an interim heat rate test of the Mankato Facility (not to exceed two interim tests per Party) on a Business Day, between annual heat rate tests, pursuant to the procedures set forth in this Section 8.5. Seller shall perform any and all interim heat rate tests. The Party requesting such test shall pay all costs thereof (possibly excluding fuel costs, in the case of Seller, per Section 4.8(C)). The Parties shall set the exact date for each interim heat rate test by mutual agreement; *provided* that, in the event that the Parties cannot agree upon a mutually acceptable testing date within ten (10) Business Days following either Party's request for an interim heat rate test, by notice to NSP, (i) Seller shall set the date for the test, which date shall be not less than four (4) weeks and not more than six (6) weeks

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following expiration of such 10-day period, and (iii) the results of the heat rate test shall be retroactively effective to the first Day of the billing period immediately preceding the billing period during which the test is conducted.

(E) Seller shall prepare and submit to NSP for review and approval, at least sixty (60) Days prior to each heat rate test of the Mankato Facility, the proposed heat rate test procedures. Such test procedures shall include but not be limited to (i) specification of the governing test code(s), (ii) the extent, if any, to which the test code(s) will not be followed, (iii) provisions for testing, including collection of test data, (iv) operational stability criteria, and (v) methodology for calculating test results, including the planned method of adjusting the tested net heat rate to the NC and Reference Conditions. Seller shall be responsible for the full scope of heat rate testing, including but not limited to, furnishing the test instrumentation, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report. NSP shall have the right to install, during the heat rate test and at NSP's expense, any temporary, redundant test equipment complying with the governing test code(s), that NSP deems necessary for the purpose of verifying test measurements obtained by, or on behalf of, Seller.

(F) Notwithstanding Section 8 5(E), in the event of a Failed HR Test, the heat rate test shall be rescheduled unilaterally by Seller as soon as reasonably practicable following the Failed HR Test.

(G) One or more representatives of NSP shall be permitted to witness, record and verify all heat testing process parameters and conditions; *provided* that any failure of NSP to send a representative to witness and verify a heat rate test scheduled in accordance with this Section 8 5 shall not affect the validity of such test.

(H) In connection with and during any heat rate test, for the sole purpose of developing a unit dispatch heat rate curve, NSP may also require Seller to perform heat rate testing of the Mankato Facility, for up to thirty (30) minutes per load point after stabilization, at the Facility's Base Capacity and up to nine (9) other specified partial load points.

(I) Seller shall notify NSP of any generation equipment tuning and adjustment that may impact the heat rate performance of the Mankato Facility or the accuracy of the correction curves utilized to adjust the results of the most recent heat rate test. Upon such notification, NSP may require Seller to perform additional heat rate testing of the Mankato Facility and provide new correction curves that reflect the actual post-tuning condition of the Mankato Facility's equipment.

(J) Within sixty (60) Days following performance of each heat rate test of the Mankato Facility, Seller shall provide to NSP for review and approval (i) all raw test data, calculations, fuel analyses and a final test report, in written and, to the extent possible, electronic format, (ii) equipment calibration specifications, and (iii) correction curves, equations, and other information necessary for review of the heat rate test results which

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have not been previously submitted to NSP. The final test report shall include clear and complete explanations of the calculations resulting in the Actual Net Heat Rate, including the adjustment of the tested net heat rate to the NC and Reference Conditions.

8.6 Payment for Turbine Starts. Commencing on the Facility Acceptance Date, NSP shall pay to Seller in arrears monthly a payment ("Monthly Turbine Start Payment") based upon the number of combustion turbine starts at the Mankato Facility requested by NSP and successfully performed by Seller during the month, and the duration of combustion turbine operation following each such start. Each individual Turbine Start Payment ("TSP") shall be determined by the following formula:

$$\text{TSP} = (\$ \text{ } \times \text{Inflation Factor}) + ((\text{FH} - \text{ }) \times \$ \text{ } \times \text{Inflation Factor}), \text{ where:}$$

Inflation Factor is defined in Section 8.3

FH (Fired Hours) = Greater of (i) , or (ii) number of continuous fired hours for the combustion turbine, following its start

By way of example, assuming that (i) the Facility Acceptance Date is May 1, 2006, (ii) inflation between May 1, 2006 and May 1, 2008 is five and two-tenths percent (5.2%), (iii) NSP requests Seller to start the entire Mankato Facility or only such Facility's combustion turbine in July 2008, and (iv) following such start, the combustion turbine runs for thirty (30) continuous hours; then the TSP payable with respect to such one start would be:

For the avoidance of doubt, a combustion turbine restart at the Mankato Facility following a turbine trip not caused by an Excused Outage, all during a single continuous dispatch period scheduled by NSP, shall not constitute a compensable start for purposes of this Section 8.6.

The Monthly Turbine Start Payment payable to Seller shall equal the sum of all individual TSP's during the billing period ($\sum \text{TSP}_1 : \text{TSP}_n$).

Article 9 - Billings and Payments

9.1 Billing Invoices.

(A) The billing period under this Agreement shall be the calendar month (or, in the event that the Term begins or ends other than at midnight on the last day of a calendar month, the applicable portion of the relevant calendar month)

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(B) Not later than thirty-eight (38) Days following the end of each billing period, NSP shall (i) calculate the heat rate adjustment (HRA) for such billing month, and (ii) deliver to Seller, both electronically and by first-class mail, NSP's calculation of the HRA together with such supporting data as will allow Seller to verify NSP's calculation of the HRA for such billing period.

(C) As soon as practicable following the end of each billing period, Seller shall prepare an invoice for such billing period (a Monthly Invoice) showing metered energy from each Facility (adjusted for losses to the applicable Point(s) of Delivery), all relevant billing parameters (including starts and fired hours per turbine), rates and factors, and any other data reasonably pertinent to the calculation of the monthly payments and other amounts due to Seller for such billing month, and (ii) deliver the Monthly Invoice to NSP both electronically and by first-class mail. All billing data based upon metered deliveries to NSP shall be collected in accordance with Article 5. The Monthly Invoice for each billing period shall include the HRA for the next preceding billing period delivered to Seller by NSP pursuant to Section 9.1(B), i.e. the HRA shall lag the current Monthly Invoice by one (1) month.

(D) In the event that Seller owes NSP any amounts hereunder, including without limitation any indemnification payments, NSP shall provide to Seller by electronic transmission (with hard copy provided by first-class mail) an invoice showing the payment amount due to NSP from Seller. The invoice will include any data reasonably pertinent to the calculation of the payment due to NSP.

9.2 Payments

(A) All regular monthly payments payable to Seller from NSP for capacity, energy, tolling and other services post-COD under Article 8 shall be due and paid by NSP by check or by electronic funds transfer, as designated by Seller from time to time, on or before the last to occur of (i) the twenty-fourth (24th) Day of the month following the end of the relevant billing period, or (ii) fifteen (15) Days following receipt by NSP of the electronic copy of the Monthly Invoice under Section 9.1(C) and the electronic copy of the Operating Log under Section 13.5. Unless otherwise specified herein, all other payments under this Agreement shall be due and payable by check or by electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Day following receipt of the billing invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Day following receipt of the billing invoice.

(B) If any amount due under this Agreement is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance commencing on such due date and continuing until the amount due is paid. The late payment charge shall be added to the next billing statement and to subsequent billing statements until the amount due is paid. Such late payment charge shall be calculated based upon a floating annual

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interest rate equal to the Prime Rate, as the Prime Rate may change from time to time. For purposes of this Agreement, the "Prime Rate" as of any Day means the base rate on corporate loans posted by at least seventy-five percent (75%) of the nation's thirty (30) largest banks for such Day, as published in *The Wall Street Journal* from time to time. In the event *The Wall Street Journal* ceases to publish the "Prime Rate," then NSP and Seller shall agree as to an appropriate substitute reference that represents the base rate on corporate loans posted by major banks having one or more lending offices in New York, New York.

9.3 Billing Disputes.

(A) Either Party may dispute invoiced amounts, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed on or before the invoice due date. In the event that any amount in dispute under this Agreement exceeds one hundred thousand dollars (US\$100,000), within ten (10) Days following the request of the Party allegedly owed the money, pending resolution of the dispute, if the Credit Rating of the Party alleged to owe the money is below Investment Grade, then the Party alleged to owe the money shall deposit the disputed amount into an interest-bearing escrow account at a national bank with an Investment Grade Credit Rating; *provided, however*, if Seller has posted HGC and such HGC is greater than the disputed amount, Seller shall not be obligated to deposit such funds into an escrow account. In particular, notwithstanding anything herein to the contrary, if (i) Seller alleges that NSP owes Seller more than one hundred thousand dollars (US\$100,000), (ii) NSP's Credit Rating is below Investment Grade, and (iii) NSP fails to pay Seller or deposit the amount allegedly owed into escrow in accordance with this Section 9.3(A) within ten (10) Days following written demand therefor by Seller delivered in accordance with Section 13.1 (which demand specifically references Seller's intent to suspend performance pursuant to this Section), Seller may suspend its performance of this Agreement until NSP complies with this Section 9.3(A). During any such suspension period, Seller may sell the Actual Capacity and Contract Energy to any third party purchaser, the net proceeds to Seller of which shall offset the payment(s) otherwise payable by NSP to Seller under Article 8 for the period of such suspension, up to the amount(s) of such payment(s).

(B) To resolve any billing dispute, the Parties shall use the procedures set forth in Section 13.7. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 9.2.

Article 10 - Operations and Maintenance

10.1 Scheduled Maintenance

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(A) Seller shall provide a schedule of expected maintenance outages for the Mankato Facility ("Maintenance Schedule") at least ninety (90) Days prior to the beginning of each calendar year during the Term. In connection with its delivery of each annual Maintenance Schedule, Seller shall also supply a non-binding long-term Maintenance Schedule that will encompass the following four (4) calendar years. Seller shall furnish NSP with reasonable advance notice of any change in the annual Maintenance Schedule. Reasonable advance notice of any change in the Maintenance Schedule is as follows:

<u>Scheduled Outage - Expected Duration</u>	<u>Advance Notice to NSP</u>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days
(3) Major Overhauls (over 5 Days)	at least 90 Days

(B) Seller shall not schedule any maintenance outages for the Mankato Facility, excluding outages associated with Emergencies and Forced Outages, during any Business Day of an On-Peak Month without the prior written approval of NSP

(C) Seller shall be allowed ~~TRADE SECRET~~ MWh of Scheduled Maintenance Energy (SME) per MW of Net Capability during each Commercial Operation Year as a credit towards Seller's CAF under Section 8 1(C), *provided*, that such SME is scheduled in advance with NSP pursuant to this Article and approved in writing by NSP prior to Seller's use of such SME. In the event Seller uses fewer than ~~TRADE SECRET~~ MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over for use in the next Commercial Operation Year such unused SME as additional credit towards Seller's CAF during the next Commercial Operation Year, *provided*, that such SME carried over shall also be scheduled in advance with NSP pursuant to this Article and approved in writing by NSP prior to Seller's use of such SME, and, *provided further*, that the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, beginning with the second (2nd) Commercial Operation Year and including carry-over SME, shall not exceed ~~TRADE SECRET~~ MWh of SME per MW of Net Capability for that Commercial Operation Year. SME may not be advanced from future Commercial Operation Years.

(D) At least yearly, and more frequently if and when reasonably so requested by NSP, Seller shall provide to NSP Seller's best estimate of the actual incremental direct costs that would be incurred by Seller (reasonably broken out by type of outage, and amount of advance notice) that would be incurred by Seller if Seller defers any planned maintenance outage of the type scheduled for the Mankato Facility during the coming year ("Maintenance Deferral Costs"). Not less than seventy-two (72) hours (with respect to Major Overhauls) or twelve (12) hours (with respect to other scheduled outages) prior to commencement of any planned maintenance outage for the Mankato Facility scheduled by Seller, NSP may request, by phone, that Seller defer such scheduled maintenance. Subject to Good Utility Practice, Seller shall use commercially reasonable efforts to comply with any such request and reschedule such deferred maintenance to a

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subsequent date mutually agreed upon between the Parties NSP shall pay to Seller upon demand all of Seller's actual (not estimated) Maintenance Deferral Costs in connection with each such deferral and rescheduling of maintenance

10.2 Mankato Facility Operation. Seller shall staff, control, and operate the Mankato Facility consistent at all times with Good Utility Practice(s) and the Operating Procedures developed pursuant to Section 10.5 below. Personnel capable of starting, running, and stopping the Mankato Facility shall be continuously available, either at the Facility or capable of being at the Facility on no more than thirty (30) minutes notice, and shall be continuously reachable by phone or pager. NSP will use its reasonable best efforts to notify Seller at least twenty-four (24) hours in advance of potentially critical turbine starts, and upon such notification and during such identified critical periods, Seller shall make available on site personnel capable of starting, running, and stopping the Mankato Facility

10.3 Outage and Performance Reporting Seller shall comply with all current NSP, NERC, and MAPP generating unit availability and outage reporting requirements, as they may be revised from time to time, to the extent applicable to the Mankato Facility, including the following:

(A) When Forced Outages occur at the Mankato Facility, Seller shall notify NSP's SCC of (i) the existence of the Forced Outage immediately, and (ii) the nature, cause (if known) and expected duration of the Forced Outage as soon as reasonably practical, but in no event later than one (1) hour after the Forced Outage occurs Seller shall immediately inform NSP's SCC of changes in the expected duration of the Forced Outage for the duration of each Forced Outage

(B) Seller shall report to NSP information on performance of the Mankato Facility during each billing period within five (5) Business Days after the end of the billing period, both electronically and by first-class mail Using definitions provided by, and/or consistent with, the NERC Generation Availability Data System ("GADS") Manual, or any successor document, the data reported shall include, but may not be limited to, planned and unplanned derated hours, average derated kW from Net Capability during the derated hours, fired hours for each generating unit, the number of compensable Facility starts, the number of fired hours for each such start, scheduled maintenance hours, average derated kW during scheduled maintenance hours, hours on-control and hours on-line.

10.4 Operating Committee and Operating Procedures

(A) NSP and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' obligations under this Agreement and to develop operating arrangements for the generation, delivery and receipt of capacity and energy hereunder Such representatives shall constitute the Operating Committee The Parties' initial representatives on the Operating Committee are designated on Exhibit E The Parties shall notify each other in writing of any changes to such appointments The Operating Committee shall have no authority to modify the terms or conditions of this Agreement

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(B) The Operating Committee shall develop mutually agreeable written procedures for day-to-day coordination of operation of the Mankato Facility ("Operating Procedures") not later than one (1) year following receipt by Seller of all Material Permits. The Operating Procedures shall include, but not be limited to, method of Day-to-Day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable NSP and Seller operating centers, operations and maintenance scheduling and reporting; daily capacity and energy reports; unit operations log; reactive power support; and such other matters as may be mutually agreed upon by the Parties

(C) Within six (6) months following ground-breaking for any Expansion Equipment at the Site, the Parties shall amend and/or supplement the Operating Procedures appropriately to address their shared use of the Site and the Shared Facilities, including (i) issues arising from joint use and operation of the Fuel Point of Delivery (e.g. balancing procedures; measurement and reporting of fuel usage; and allocation of fuel costs and point operator responsibilities), and (ii) energy output measurement and other issues arising from any Expansion Equipment

10.5 Access to Mankato Facility Appropriate representatives of NSP shall at all reasonable times, including weekends and nights, and with reasonable prior notice to Seller, have access to the Site to read meters and to perform all inspections, maintenance, testing, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement. While at the Site, such representatives shall observe such reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Mankato Facility or any Expansion Equipment

10.6 Reliability Standards. Seller shall manage and operate the Mankato Facility in a manner that complies with all national and regional reliability standards, including standards set by MAPP, NERC, FERC, and the MPUC, or any successor agencies setting reliability standards for the operation of generation facilities. If and to the extent that Seller or a Facility contributes in whole or in part to actions that result in monetary penalties being assessed to NSP by MAPP, NERC, or any successor agency, for lack of compliance with reliability standards, Seller shall reimburse NSP for an appropriate share of such monetary penalties

10.7 Reports on Invested Equity. Not later than ninety (90) Days following the end of each fiscal year of Seller during the Term, within thirty (30) Days following the commercial operation date for each phase of any Expanded Capacity, and within thirty (30) Days following each refinancing of the Site, Seller shall submit to NSP a certification from an officer of Seller as to Seller's Invested Equity as of such date. Upon request by NSP, Seller shall provide to NSP such data and other information as may be reasonably necessary to allow NSP to confirm Seller's calculation of its then-current Invested Equity.

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Article 11 - Security for Performance

11.1 Security Fund

(A) No later than two (2) months following the earlier to occur of (i) approval of this Agreement by the MPUC, or (ii) the Outside MPUC Approval Date, Seller shall post in favor of NSP collateral (the "Security Fund") at a level of ~~TRADE SECRET~~ in compliance with the provisions of this Article 11.

(B) In addition to any other remedies available to NSP, the Security Fund shall be available to pay any amount due to NSP pursuant to this Agreement, including (i) Delay Damages for failure to achieve any Construction Milestone, (ii) Replacement Power Costs, should the Mankato Facility fail to achieve the Facility Acceptance Milestone or otherwise not operate in accordance with this Agreement, and (iii) amounts for which NSP is entitled to indemnification under this Agreement. In the event that any undisputed and overdue amounts are owed to NSP by Seller pursuant to this Agreement, whether before or after COD, and whether before or after the end of the Term, and Seller does not pay such amounts within five (5) Business Days following written demand by NSP therefor, NSP may draw from the Security Fund such amounts as are necessary to recover amounts owing to it pursuant to this Agreement, from any form and in any sequence NSP may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to NSP shall not prejudice NSP's rights to recover such damages or amounts in any other manner.

(C) For purposes of this Agreement,

(i) A Person is "Rated" if such Person holds a current long-term unsecured bond rating issued by two or more of Standard & Poor's, Moody's and Fitch Investor Services (the "Credit Agencies")

(ii) The "Credit Rating" of a Rated Person means the lowest long-term unsecured issuer rating assigned to such Person by any of the Credit Agencies, comparing equivalent ratings (for example, a rating of AAA from S&P is equivalent to a rating of Aaa from Moody's). Plus and minus refinements shall be ignored for purposes of this Agreement (for example, a long-term issuer rating of BBB- equates to a Credit Rating of BBB)

(iii) "Investment Grade" means a Credit Rating of BBB or better

(iv) A "Letter of Credit" means an irrevocable stand-by letter of credit or performance bond issued by a Rated Person with a Credit Rating of not less than A-, in the form of Exhibit F or other form reasonably satisfactory to the beneficiary

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(v) "Cash Collateral" means United States currency deposited with a bank or other financial institution with a Credit Rating of not less than A-, invested at the direction of the depositor in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less

(vi) An "Investment Grade Guaranty" means an irrevocable guarantee, in the form of Exhibit G or other form reasonably satisfactory to the beneficiary, issued by a Rated Person with an Investment Grade Credit Rating.

(vii) A "Parent Guaranty" means an irrevocable guaranty issued by the direct or any indirect parent of Seller that is a Rated Person, in the form of Exhibit G or other form reasonably satisfactory to the beneficiary. For the avoidance of doubt, a Parent Guaranty may but need not necessarily qualify as an Investment Grade Guaranty

(viii) "High-Grade Collateral" or "HGC" means any of a Letter of Credit, Cash Collateral and/or an Investment Grade Guaranty

(D) The required mix of collateral constituting the Security Fund from time to time shall depend upon (x) the Credit Rating of the Person offering any Parent Guaranty, (y) Seller's then-current Invested Equity, and (z) whether the Facility Acceptance Date has occurred, as follows:

(i) If and for so long as Seller's Invested Equity is TRADE SECRET, prior to the Facility Acceptance Date:

	(millions of US\$)				
Parent Credit Rating:	CC or below	CCC	B	BB	BBB or better
Parent Guaranty (not more than)	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
HGC (not less than)	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>
Total:	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>	\$ <u> </u>

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(ii) If and for so long as Seller's Invested Equity is TRADE SECRET, prior to the Facility Acceptance Date:

	(millions of US\$)				
Parent Credit Rating:	CC or below	CCC	B	BB	BBB or better

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Parent Guaranty (not more than)	\$	\$	\$	\$	\$] TRADE SECRET
HGC (not less than)	\$	\$	\$	\$	\$	
Total:	\$	\$	\$	\$	\$	

(iii) If and for so long as Seller's Invested Equity is ~~TRADE SECRET~~, following the Facility Acceptance Date:

	(millions of US\$)] TRADE SECRET
Parent Credit Rating:	CC or below	CCC	B	BB	BBB or better	
Parent Guaranty (not more than)	\$	\$	\$	\$	\$	
HGC (not less than)	\$	\$	\$	\$	\$] TRADE SECRET
Total:	\$	\$	\$	\$	\$	

(iv) If and for so long as Seller's Invested Equity is ~~TRADE SECRET~~, following the Facility Acceptance Date:

	(millions of US\$)] TRADE SECRET
Parent Credit Rating:	CC or below	CCC	B	BB	BBB or better	
Parent Guaranty (not more than)	\$	\$	\$	\$	\$	
HGC (not less than)	\$	\$	\$	\$	\$] TRADE SECRET
Total:	\$	\$	\$	\$	\$	

* not applicable - Parent Guaranty is High-Grade Collateral in this situation

(E) In the event of any draw by NSP on the Security Fund, regardless of the nature of the collateral upon which such draw is actually made, for purposes of determining the required mix of the Security Fund to be posted by Seller following such draw, such draw shall be deemed to have been made against non-HGC and against the HGC posted by Seller, *pro rata* to the applicable amounts thereof set forth in the tables above, rounded to the nearest whole thousand dollars. For example, assuming that (w) the Facility Acceptance Date has been achieved, (x) Seller's Invested Equity is

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~~TRADE SECRET~~, (y) the Credit Rating of a Person offering a Parent Guaranty is B, and (z) NSP makes a valid ~~TRADE SECRET~~ draw against a Letter of Credit posted by Seller as part of the Security Fund, then the required mix of the Security Fund immediately thereafter shall be not less than ~~TRADE SECRET~~ HGC and not more than ~~TRADE SECRET~~ in the form of a Parent Guaranty. Subject to the foregoing, Seller shall not be required to replenish the Security Fund following any draw thereon by NSP

(F) Security provided in the form of a Letter of Credit, if any, must allow NSP unilaterally to draw down any amount thereunder, regardless of any protest to the issuer by Seller or any other party liable thereon, *provided* that nothing in this Section 11.1 shall be deemed to preclude any protest against NSP by Seller, following any draw, that such draw did not comply with this Agreement. Any Letter of Credit must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the Term of this Agreement) no later than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended as required herein, NSP shall have the right to draw immediately upon the Letter of Credit and to convert the amounts so drawn into Cash Collateral in compliance with Section 11.1(G) until and unless Seller provides a substitute form of security meeting the requirements of this Article. Letters of Credit shall be governed by the then-current Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Brochure No. 500

(G) Security provided in the form of Cash Collateral, if any, shall be held by a financial institution with an Investment Grade Credit Rating, in a deposit or securities account from which NSP holds sole authority to draft, and in which NSP holds a first perfected security interest. At Seller's option and direction, Cash Collateral may be invested in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. After COD, quarterly account sweeps for recovery of interest earned by Cash Collateral shall be allowed and paid to Seller. At such times as the balance in the account exceeds the amount of Seller's obligation to provide HGC, the excess shall be remitted to Seller upon demand

(H) Seller may change the mix of the Security Fund at any time and from time to time upon reasonable prior notice to NSP, *provided* that the Security Fund must comply at all times with this Section 11.1. In the event that the Security Fund ever fails to meet the criteria set forth in this Section 11.1 (for example, because (i) the Credit Rating of the issuer of a Letter of Credit falls below A-, (ii) the Credit Rating of the issuer of an Investment Grade Guaranty falls below Investment Grade, or (iii) the Credit Rating of the issuer of a Parent Guaranty falls), then Seller shall replace such collateral and take such

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other actions as are necessary to cause the Security Fund to comply with this Section 11 1 within thirty (30) Days following such failure

(l) Seller shall reimburse NSP for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by NSP in connection with the preparation, negotiation, execution and/or release of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund.

11 2 Subordinated Mortgage

(A) Prior to breaking ground for the Mankato Facility, Seller shall execute and deliver to NSP a mortgage on the Site, a security agreement with respect to Seller's equipment, fixtures and other personal property located or to be located on the Site and/or principally related to Seller's operations on the Site, associated financing statements, and other agreements, documents and instruments, in form and substance reasonably satisfactory to NSP, Seller and the Facility Lender, under which NSP shall enjoy a fully perfected security interest(s) and mortgage lien (collectively the "Subordinated Mortgage") in the Mankato Facility, the Site (including any Expansion Equipment, subject to the provisions of Section 11 2(B)), and, to the extent perfectible, in any and all real and personal property rights, contractual rights, licenses, permits, and other rights that Seller acquires in connection with the construction, ownership, and operation of the Mankato Facility and the Site. NSP agrees to cooperate with Seller and diligently negotiate, at Seller's request, the form of these agreements and to execute and deliver such agreements as reasonably necessary. The Subordinated Mortgage shall secure Seller's continuing performance and any amounts that may be owed by Seller to NSP pursuant to this Agreement, including, without limitation, any damages excluded from the limitation on Seller's liability for the limited purposes set forth in Section 12 6(A). Seller agrees, and shall cause the Facility Lender to agree and the Financing Documents to provide, that (i) the Subordinated Mortgage shall be subordinate in right of payment, priority, and remedies to the interests (and only to the interests) of the Facility Lender, and (ii) as long as no NSP Event of Default has occurred, any successor owner or operator acquiring control of the Mankato Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of this Agreement and shall assume all of Seller's obligations hereunder, both prospective and accrued, including the obligation to cure any then-existing defaults (including performance defaults that are susceptible to cure by performance or the payment of money damages), but excluding any obligation to cure any then-existing performance defaults which by their nature are incapable of being cured. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to NSP by reason of any breach by Seller of this Agreement or the early termination of this Agreement as provided for herein.

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(B) ~~TRADE SECRET~~

[REDACTED]

(C) The Subordinated Mortgage shall be discharged and released, and NSP shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration or earlier termination of the Term of this Agreement and satisfaction by Seller of all obligations hereunder.

(D) Seller shall reimburse NSP for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by NSP in connection with the preparation, negotiation, execution and/or the discharge and release of the Subordinated Mortgage and any related documents.

Article 12 - Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

- (i) Seller's dissolution or liquidation;

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(ii) Seller's assignment of this Agreement or any of its rights hereunder for the benefit of creditors (*except* for an assignment to the Facility Lender as security under the Financing Documents); and/or

(iii) Seller's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise

(B) Any of the following shall constitute a default of Seller under this Agreement and, if not cured by Seller to NSP's reasonable satisfaction (by performance, the payment of money damages, or otherwise) within thirty (30) Days (or, if only curable by performance, not the payment of money damages, such longer period as may be reasonably be required to effect such a cure, *provided* that Seller commences the cure within such thirty (30) Day period and diligently pursues such cure to conclusion thereafter) after the date of written notice from NSP to Seller and the Facility Lender as provided for in Section 13 1, shall thereupon become a Seller Event of Default:

(i) subject to the provisions of Section 9 3 regarding disputed payments, Seller's failure to make any payment required under this Agreement;

(ii) Seller's failure to establish and maintain a Security Fund in accordance with Section 11.1;

(iii) Seller's Abandonment of the Mankato Facility;

(iv) The termination of any agreement(s) required to deliver the Actual Capacity and Contract Energy from the Mankato Facility to the applicable Point of Delivery (including the applicable Interconnection Agreement), due to a default or any voluntary action by Seller;

(v) Seller's failure to establish the Subordinated Mortgage when required, per Section 11 2;

(vi) Seller's failure to maintain Invested Equity of at least TRADE SECRET, following the Facility Acceptance Date;

(vii) The sale by Seller to a third party, or diversion by Seller for any use, of the Actual Capacity or Contract Energy from the Mankato Facility (other than (i) capacity or energy used to serve the parasitic load of a Facility, (ii) inadvertent flows through the relevant Interconnection Facilities, or (iii) energy sold pursuant to any of Sections 4 8, 6 5, 9 3(A) or 12 10); and/or

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(viii) Seller's failure to comply with any other material obligation under this Agreement, which would result in a material adverse impact on NSP

(C) ~~TRADE SECRET~~

[REDACTED]

(D) Any of the following shall constitute a default of Seller under this Agreement and, if not cured by Seller to NSP's reasonable satisfaction (by performance, the payment of money damages or otherwise) within sixty (60) Days (or, if only curable by performance, not the payment of money damages, such longer period as may be reasonably be required to effect such a cure, *provided* that Seller commences the cure within such sixty (60) day period and diligently pursues such cure to conclusion thereafter) after the date of written notice from NSP to Seller and the Facility Lender as provided for in Section 13.1, shall thereupon become a Seller Event of Default:

(i) Seller's assignment of this Agreement (other than for the benefit of creditors), or any direct change of control or ownership of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Mankato Facility, *except* in accordance with Article 19;

(ii) Any representation or warranty made by Seller in this Agreement shall prove to have been false or misleading in any material respect when made; and/or

(iii) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or any Affiliate of Seller that could materially impact Seller's ability to perform its obligations hereunder; *provided*,

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however, that Seller does not obtain a stay or dismissal of the filing within the cure period

12.2 Facility Lender's Right to Cure Default of Seller Seller shall provide NSP with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender, and may subsequently provide changes to such contact information from time to time. Following receipt of such notice, NSP shall provide notice to the Facility Lender of (i) any Seller Event of Default, and (ii) any default by Seller as a consequence of which NSP intends to exercise any available rights and remedies. NSP will accept a cure of any default by Seller performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period(s) set forth in Section 12.1, or such other period as may be specified in a consent to assignment or other agreement between NSP and the Facility Lender.

12.3 Events of Default of NSP

(A) Any of the following shall constitute an Event of Default of NSP upon its occurrence and no cure period shall be applicable:

(i) NSP's dissolution or liquidation, *provided* that division of NSP into multiple entities, whether or not including or followed by dissolution or liquidation of NSP, shall not constitute a default if all of NSP's obligations under this Agreement, both prospective and accrued, are assumed by the same entity that assumes all or substantially all of NSP's wholesale power purchase obligations (the "Successor"), and either (a) the Successor holds an Investment Grade Credit Rating, or (b) to secure its obligations under this Agreement, the Successor posts in favor of Seller such HGC as Seller reasonably may require;

(ii) NSP's assignment of this Agreement or any of its rights hereunder for the benefit of creditors; and/or

(iii) NSP's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or NSP voluntarily taking advantage of any such law or act by answer or otherwise.

(B) NSP's failure to make any payment as and when required under this Agreement shall constitute a default of NSP under this Agreement (subject to the provisions of Section 9.3 regarding disputed payments), and, if not paid by NSP within thirty (30) Days after the date of written notice from Seller to NSP as provided for in Section 13.1, shall thereupon become an NSP Event of Default.

(C) NSP's failure to comply with any other material obligation under this Agreement, which failure would result in a material adverse impact on Seller, shall constitute a default of NSP under this Agreement and, if not cured by NSP to Seller's

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reasonable satisfaction (by performance, the payment of money damages or otherwise) within thirty (30) Days (or, if only curable by performance, not the payment of money damages, such longer period as may be reasonably be required to effect such a cure, *provided* that NSP commences the cure within such thirty (30) Day period and diligently pursues such cure to conclusion thereafter) after the date of written notice from Seller to NSP as provided for in Section 13.1, shall thereupon become an NSP Event of Default

(D) Any of the following shall constitute a default of NSP under this Agreement and, if not cured by NSP to Seller's reasonable satisfaction (by performance, the payment of money damages, or otherwise) within sixty (60) Days (or, if only curable by performance, not the payment of money damages, such longer period as may be reasonably be required to effect such a cure, *provided* that NSP commences the cure within such sixty (60) Day period and diligently pursues such cure to conclusion thereafter) after the date of written notice from Seller to NSP as provided for in Section 13 1, shall thereupon become an NSP Event of Default:

(i) The filing of a case in bankruptcy or any proceeding under any other insolvency law against NSP that could materially impact NSP's ability to perform its obligations hereunder; *provided, however*, that NSP does not obtain a stay or dismissal of the filing within the cure period;

(ii) NSP's assignment of this Agreement, *except* as permitted in accordance with Article 19; and/or

(iii) Any representation or warranty made by NSP in this Agreement shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.4 Damages Prior to Termination Upon the occurrence of a default, and subject (in the case of a default by Seller) to the limitations on damages set forth in Section 12.6(A), the non-defaulting Party shall have the right to collect damages accruing prior to the termination of this Agreement from the defaulting Party as set forth below, and the payment of any such damages accruing prior to the cure of a default may constitute a part or the entirety of the cure.

(A) Delay Damages

(i) If Seller fails to meet any Construction Milestone set forth in Exhibit B (subject to extension for Force Majeure, to Permit Delays, and to Delay Conditions), Seller shall pay damages to NSP on account of such delay ("Delay Damages") in the amounts specified below:

Nature of the Delay

Delay Damages

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Failure to meet any Construction
Milestone, *except* for the Facility
Acceptance Milestone

Failure to meet the Facility
Acceptance Milestone

\$ _____
\$ _____; and
\$ _____
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(ii) All Delay Damages shall begin to accrue on the Day after the applicable missed Construction Milestone and shall continue to accrue until the result specified for such Construction Milestone is achieved. Delay Damages shall be payable in lieu of actual damages accrued for the period during which Delay Damages are assessed, prior to any resulting related Event of Default. All Delay Damages shall be cumulative; *provided* that (a) if Seller fails to meet any Construction Milestone for which Delay Damages are payable and paid, and (b) such failure adversely affects Seller's ability to achieve one or more subsequent Construction Milestones (other than the Facility Acceptance Milestone), *then* each of such affected subsequent Construction Milestones shall be extended Day-for-Day for each Day of the delay so caused

(iii) Notwithstanding the foregoing, if Seller achieves the Facility Acceptance Milestone, all Delay Damages paid or payable by Seller to NSP based upon a failure to meet one or more earlier Construction Milestones, less any Intervention Expenses incurred by NSP pursuant to Section 12.7, shall be refunded to Seller, without interest, with payments due to Seller for the first (1st) billing period following the Facility Acceptance Date

(B) Permit Delays. Seller warrants to NSP that, to the best of Seller's belief, (I) Seller applied for each Material Permit on or before such date as will allow for issuance thereof by August 1, 2004, assuming the normal timeline for approval of the applicable issuing Governmental Authority, and (II) there exists no reason specific to the Site or the Mankato Facility (as opposed to unanticipated administrative delays, public intervention, environmental concerns, and other possible reasons for delay common to any greenfield power plant) why all Material Permits cannot be obtained prior to August 1, 2004. Seller shall use its best efforts to obtain all Material Permits as soon as practicable, regardless of any delays. If despite such efforts Seller is unable to obtain all Material Permits by August 1, 2004, then, notwithstanding anything to the contrary set forth in Section 12.4(A) or otherwise herein:

(i) If Seller has not obtained all Material Permits by August 1, 2004 but obtains all Material Permits on or before March 1, 2005, (a) the Permit Milestone Date and each Construction Milestone (including but not limited to the Facility Acceptance Milestone) scheduled to follow the Permit Milestone Date also shall be extended Day-for-Day, for each Day of Permit Delays beyond August 1, 2004, (b)

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neither Delay Damages nor any other damages or penalties shall be payable to NSP by Seller on account of missing the Permit Milestone Date or on account of the extensions of such other Construction Milestone Dates, but (c) Seller shall remain subject to Delay Damages and the other rights and remedies of NSP with respect all Construction Milestones, as adjusted

(ii) If Seller has not obtained all Material Permits by March 1, 2005 but obtains all Material Permits by August 1, 2005, (a) the Permit Milestone Date shall be extended Day-for-Day for each Day of Permit Delays beyond August 1, 2004, (b) the Facility Acceptance Milestone shall be reset to June 1, 2007, (c) each other Construction Milestone scheduled to follow the Permit Milestone Date shall be extended Day-for-Day, for each Day of delay of the Facility Acceptance Milestone, (d) the Facility Acceptance Date may not occur prior to May 1, 2007, (e) neither Delay Damages nor any other damages or penalties shall be payable to NSP by Seller on account of missing the Permit Milestone Date or on account of the extensions of such other Construction Milestone Dates, but (f) Seller shall remain subject to Delay Damages and the other rights and remedies of NSP with respect all Construction Milestones, as adjusted

(iii) If Seller has not obtained all Material Permits by August 1, 2005 but obtains all Material Permits by February 1, 2006, (a) the Permit Milestone Date shall be extended Day-for-Day for each Day of Permit Delays beyond August 1, 2004, (b) the Facility Acceptance Milestone shall be reset to December 15, 2007, (c) each other Construction Milestone scheduled to follow the Permit Milestone Date shall be extended Day-for-Day, for each Day of delay of the Facility Acceptance Milestone, (d) the Facility Acceptance Date may not occur prior to November 15, 2007, (e) neither Delay Damages nor any other damages or penalties shall be payable to NSP by Seller on account of missing the Permit Milestone Date or on account of the extensions of such other Construction Milestone Dates, but (f) Seller shall remain subject to Delay Damages and the other rights and remedies of NSP with respect all Construction Milestones, as adjusted

(iv) If Seller has not obtained all Material Permits by February 1, 2006, this Agreement shall terminate automatically on such date. Effective as of the date of any such termination, each Party shall be released from all financial and other obligations hereunder, *except* as otherwise provided in Section 20.7.

For the avoidance of doubt, the end of the Term shall not be extended as a result of any Permit Delays. Seller shall keep NSP apprised of the status of Seller's efforts to obtain the Material Permits, and any resulting Permit Delays.

(C) Delay Conditions Attributable to NSP. Seller shall be excused from an inability to meet Construction Milestones (including the Facility Acceptance Milestone) if and to the extent that the inability is attributable to some or all of the following (altogether, "Delay Conditions");

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(i) any delay or failure by NSP to obtain any permits, consents or approvals from Governmental Authorities or other third parties required for NSP to perform its obligations under this Agreement (whether or not caused by any conditions or events of Force Majeure);

(ii) any breach of this Agreement by NSP; or

(iii) any failure by the Designated Fuel Pipeline to construct and have operational its portion of the Fuel Interconnections not later than December 1, 2005 (extended Day-for-Day, for each Day of Permit Delays), if and to the extent that NSP has elected to have the Designated Fuel Pipeline assume responsibility for some Fuel Interconnections pursuant to Section 5 5(C).

In the event of such an inability, the Construction Milestone(s) that is/are not met due to the Delay Condition(s), and any affected Construction Milestones that follow, shall be extended for a period equal to the longest period of time between (i) any Construction Milestone that is not met due to the Delay Condition(s), and (ii) the Day that the Delay Condition(s) are corrected

(D) Delay Conditions Attributable to Interconnection Provider. Seller shall be excused from an inability to meet any Construction Milestone (including the Facility Acceptance Milestone) if and to the extent that (i) the inability is solely attributable to any failure by the Mankato Interconnection Provider in permitting, constructing, testing and otherwise readying the Direct Assignment Facilities timely for testing and Commercial Operation of the Mankato Facility, and (ii) Seller did not contribute to the failure (including any failure by Seller to expedite the related required interconnection study and/or to request out-of-queue order consideration). In the event of such an inability, each affected Construction Milestone shall be extended for a period equal to the longest period of time between (i) any Construction Milestone that is not met, and (ii) the Day that the Direct Assignment Facilities are ready for testing of the Mankato Facility

(E) Schedule Acceleration. If Seller has not obtained all Material Permits by August 1, 2004, *then*, at any time prior to or within thirty (30) Days following the date on which Seller does obtain all Material Permits, subject to the approval of Seller, NSP shall have the right and option to require Seller to accelerate the Facility Acceptance Milestone (as the Facility Acceptance Milestone may theretofore or thereafter otherwise be adjusted pursuant to this Agreement) by up to ninety (90) Days, in accordance with the terms and conditions set forth in this Section 12 4(E) (a "Schedule Acceleration").

(i) NSP shall notify Seller if and when NSP is considering a Schedule Acceleration, including the proposed number of Days thereof. Within ten (10) Business Days following receipt of any such notice, Seller shall notify NSP (a) whether the contemplated Schedule Acceleration is feasible, (b) if so, the estimated total direct incremental costs that would be incurred by Seller to effect the Schedule Acceleration, and (c) the amount by which the Capacity Price for the first

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Commercial Operation Year set forth in the Table in Section 8.1 would have to be increased to compensate Seller for such incremental costs

(ii) Within ten (10) Business Days following receipt of Seller's notice under clause (i), NSP shall notify Seller whether NSP elects to implement the proposed Schedule Acceleration. If NSP elects to implement the proposed Schedule Acceleration, the Schedule Acceleration shall be adopted and deemed to amend this Agreement.

(F) Actual Damages. For all defaults, regardless of whether such default subsequently is cured or matures into an Event of Default, the non-defaulting Party shall be entitled to receive from the defaulting Party all of the damages incurred by the non-defaulting Party in connection with such default; *provided, however*, that notwithstanding anything in Article 6 or elsewhere in this Agreement to the contrary:

(i) nothing in this Article 12 should be construed to affect, in the case of a default by Seller, the limitation on damages contained in Section 12.6(A);

(ii) prior to an Event of Default, NSP's sole remedy for Seller's failure to achieve the Facility Acceptance Milestone and any other Construction Milestones, shall be Delay Damages pursuant to Section 12.4(A);

(iii) any inability or failure by Seller to designate one or more Alternate Generation Sources adequate to perform this Agreement, or any inability of Seller to deliver Contract Energy from such Alternate Generation Sources to Alternate Points of Delivery, or any rejection by NSP of an offered Alternate Generation Source or Alternate Delivery Point, shall neither constitute a default nor, if uncured, lead to an Event of Default by Seller under this Agreement; rather, NSP's sole remedy for absence of an Alternate Generation Source, or any lack of Availability thereof, shall be the adjustment to AAQ pursuant to Section 8.1(C);

(iv) following the Facility Acceptance Date, prior to an Event of Default, NSP's sole remedy for lack of Availability of the Mankato Facility shall be the adjustment to AAQ pursuant to Section 8.1(C); and

(v) if a default has occurred and has continued uncured for a period of three hundred sixty-five (365) Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such default or elect to terminate this Agreement as provided for in Section 12.5.

If Seller is the defaulting Party, the damages recoverable by NSP hereunder on account of the default may include Replacement Power Costs.

12.5 Termination In addition to any other right or remedy available at law or in equity, either Party may, upon written notice to the other Party, terminate this Agreement if any one or more of the Events of Default of the other Party described in this Article occur.

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Neither Party shall have the right to terminate this Agreement, *except* upon the occurrence of an Event of Default or as otherwise may be explicitly provided in this Agreement. Upon the termination of this Agreement under this Section 12.5, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject (in the case of a default by Seller) to the limitation on damages set forth in Section 12.6(A), all of the damages incurred by the non-defaulting Party as a consequence of such termination including, if Seller is the defaulting Party, the value of all future Replacement Power Costs for the balance of the previously remaining scheduled Term.

12.6 Limitation on Damages

(A) Except as otherwise provided in this Section 12.6(A) below, (a) Seller's aggregate financial liability to NSP for Delay Damages shall not exceed ~~TRADE SECRET~~, and (b) Seller's aggregate financial liability to NSP for Replacement Power Costs and other damages, including Delay Damages, shall not exceed ~~TRADE SECRET~~. NSP shall have no right to collect (by draw upon the Security Fund, by foreclosure upon the Subordinated Mortgage, or otherwise) damages in excess of such caps. Notwithstanding the foregoing, however, the limitations on damages and collection thereof set forth in this Section 12.6(A) shall not apply to damages arising out of any of the following events:

- (i) actual (as opposed to constructive) fraud, or any criminal activity by Seller,
- (ii) any intentional (vs negligent) tortious behavior by Seller that (I) materially adversely affects the Availability of a Facility, and (II) is sanctioned by, or undertaken at the direction of, Seller's management;
- (iii) the sale by Seller to a third party, or diversion by Seller for any use, of the Actual Capacity and/or Contract Energy from the Mankato Facility (other than (x) capacity or energy used to serve the parasitic load of the Facility, (y) inadvertent flows through the relevant Interconnection Facilities, or (z) energy sold pursuant to any of Sections 4.8, 6.5, 9.3(A) or 12.10);
- (iv) any claim for indemnification under Article 17; and/or
- (v) rejection or other termination of this Agreement in connection with any bankruptcy proceeding involving Seller

(B) If at any time following the date of this Agreement, NSP incurs and invoices Seller for damages subject to and in excess of the limitations set forth in Section 12.6(A), which excess Seller elects not to pay, NSP shall have the right (without waiver of other remedies) to terminate this Agreement under Section 12.5.

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- (C) _____
- (D) _____
- (i) _____
- (ii) _____
- (iii) _____
- (iv) _____
- (v) _____
- (vi) _____
- (E) _____
- (F) _____

12.8 Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any default of Seller is not cured within the applicable cure period set forth herein, NSP may elect to treat this Agreement as being in full force and effect, and NSP shall have the right to specific performance without the need for bond or other security. Likewise, in the event that any default of NSP is not cured within the applicable cure period set forth herein, Seller may elect to treat this Agreement as being in full force and effect and Seller shall have the right to specific performance without the need for bond or other security

12.9 Remedies Cumulative. Subject to Section 12.4(F) and, in the case of Seller, the limitations on damages set forth in Section 12.6(A), each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement or available at law, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein or available at law.

12.10 NSP Failure to Pay. In the event NSP fails to pay Seller any amount due to Seller, and Seller notifies NSP in writing of same, NSP shall make payment of undisputed amounts owing to Seller within five (5) Business Days following such notice. If (i) NSP fails to pay Seller undisputed amounts within the allowed five (5) Business Days, and (ii) Seller's notice specifically references Seller's intent to suspend performance pursuant to

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this Section, *then* Seller may elect to suspend supplying Actual Capacity and Contract Energy to NSP until such time as the undisputed amounts are paid. During any such suspension period, Seller may sell the Actual Capacity and Contract Energy to any third party purchaser, the net proceeds to Seller of which shall offset the payment(s) otherwise payable by NSP to Seller for the period of such suspension, up to the amount(s) of such payment(s).

12.11 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein, the obligor's liability shall be limited to direct, actual damages only. **Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein);** *provided*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification therefor from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.12 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement.

Article 13 - Contract Administration and Notices

13.1 Notices in Writing. Notices required by this Agreement shall be addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in Exhibit E, as either Party may update such names and/or addresses from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party (i) shall be in writing, and (ii) shall either be hand delivered or mailed, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section.

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13.2 Representative for Notices Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Operating Committee, or a different person. Either Party may, by written notice to the other Party, change the representative and/or the address to which notices and other communications are to be sent.

13.3 Authority of Representatives The Parties' representatives on the Operating Committee shall have authority to act for their respective principals with respect to all technical matters relating to performance of this Agreement, and to attempt to resolve disputes or potential disputes. The Parties' representatives on the Operating Committee also shall have authority to amend the Operating Procedures. However, the Operating Committee as such shall not have the authority to amend or waive any provision of this Agreement.

13.4 Records Seller and NSP shall each generate and preserve, during the Term and for a period of at least three (3) years thereafter, complete and accurate records, data and other information required by each of them for the purposes of proper administration of this Agreement, including (i) such records as may be required by state or federal regulatory authorities and MAPP, in the prescribed format, (ii) all data required to compute the payments due to Seller under Article 8, and (iii) all records and information necessary to confirm billings and payments under Article 9. Each Party shall be entitled to examine and audit the records, data and other information maintained by the other Party, relevant to performance or confirming performance of this Agreement, at any time and from time to time during the period such records, data and information are required to be maintained, upon request, on reasonable prior notice, during normal business hours.

13.5 Operating Log Seller shall maintain an accurate and up-to-date operating log for the Mankato Facility (the "Operating Log"), in electronic format, with respect to (i) real and reactive power production for each clock hour; (ii) changes in operating status; (iii) outages (including scheduled outages); (iv) number of generating unit starts; (v) any unusual conditions found during inspections; (vi) dispatched and scheduled energy, including Test Energy, with clear separation of the hours the Mankato Facility is operated for the generation of Contract Energy; (vii) hourly metering information from the natural gas meter station, including MCF, Dth and Gross Heating Value of the natural gas fuel delivered by each supplier; (viii) fuel oil measurements, including fuel oil usage, storage levels and deliveries, and (ix) accurate hourly information regarding energy generated for sales to others from any Expansion Capacity. By the fifth (5th) Day of each calendar month, Seller shall submit to NSP, in electronic format, a copy of the Operating Log for the previous calendar month.

13.6 Changes to Exhibits

(A) Exhibit A may be changed from time to time unilaterally by NSP at NSP's reasonable discretion. NSP shall provide reasonable prior notice to Seller of any

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such change in order to permit Seller to effect or address any such change in a timely and economical manner. NSP shall pay or reimburse Seller for any and all incremental capital costs, increased operating expenses and reduced revenue reasonably incurred by Seller during the Term of this Agreement in complying with any such unilateral change by NSP, unless (i) NSP makes the same change(s) to all or substantially all other power purchase agreements with third parties for natural gas-fired, unit-contingent facilities on AGC, and (ii) such change is required by law, or is required or recommended by NERC, MAPP or another public or quasi-public authority with contractual or regulatory control over NSP.

(B) Either Party may change the information for their notice addresses in Exhibit E at any time without the approval of the other Party. Exhibit B, Exhibit C, Exhibits D-1 - D-3, Exhibit F, Exhibit G, Exhibit I and/or Exhibit J may be changed at any time with the mutual written consent of both Parties. Exhibit H [Insurance] may be changed in accordance with Section 16 2(B)

13.7 Dispute Resolution.

(A) In the event of any dispute arising under this Agreement (a "Dispute"), within ten (10) Days following written request by either Party (a "Dispute Notice"), (I) each Party shall appoint a representative (individually, a "Party Representative;" together, the "Parties' Representatives"), and (II) the Parties' Representatives shall meet, negotiate and attempt to resolve the Dispute quickly, informally and inexpensively. In the event that the Parties' Representatives cannot resolve the Dispute within thirty (30) Days after the commencement of negotiations, within ten Days following any request by either Party at any time thereafter, each Party Representative (i) shall independently prepare a written summary of the Dispute describing the issues and claims, (ii) shall simultaneously exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (iii) shall submit a copy of both summaries to a senior officer of its Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the summaries, the senior officers for both Parties shall attempt to resolve the Dispute. If the Parties are unable to resolve the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal remedies.

(B) Other than actions for specific performance, all disputes between the Parties that cannot be settled using the procedures set forth in Section 13.7(A) above shall be resolved by binding arbitration before a panel of three (3) arbitrators under then then-current commercial arbitration rules of the American Arbitration Association, in Minneapolis, Minnesota

(C) Notwithstanding anything in this Agreement to the contrary, if no Dispute Notice has been issued within twenty-four (24) months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances),

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the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon

(D) Seller and NSP each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and NSP related hereto.

Article 14 - Force Majeure

14.1 Definition

(A) The term "Force Majeure", as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including, without limitation, acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming Force Majeure; terrorism; war; riots; fire; explosion; environmental hazards which could not have reasonably been detected by the environmental investigations of the Party claiming Force Majeure, severe cold or hot weather or snow or other extreme or severe weather conditions; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance;

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14.2 Applicability of Force Majeure.

(A) Neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement (except as otherwise provided in Section 8.1(D)), nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

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(i) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect

(B) Except as otherwise expressly provided for in this Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Agreement (including, but not limited to, payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

14.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance attributable to Force Majeure extend this Agreement beyond the scheduled expiration date of its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, as noticed pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period and prior to elimination of the condition or event of Force Majeure, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party, except as otherwise provided in Section 20.7.

Article 15 – Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in Minnesota and each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller. Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary corporate action, and do not and will not:

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(i) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to NSP upon its request);

(ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(iii) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

(D) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Mankato Facility.

(E) All permits, consents, approvals, licenses, authorizations, or other action required by any Governmental Authority to authorize Seller's execution and delivery of this Agreement have been duly obtained and are in full force and effect.

(F) Seller shall comply with all applicable local, state, and federal laws, regulations, and ordinances, including but not limited to equal opportunity and affirmative action requirements and all applicable federal, state, and local environmental laws and regulations presently in effect or which may be enacted prior to the end of the Term of this Agreement.

(G) Seller shall disclose to NSP, to the extent that, and as soon as it is known to Seller, any violation of any environmental laws or regulations arising out of the

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construction or operation of the Mankato Facility, or the presence of Environmental Contamination at the Mankato Facility or on the Site, alleged to exist by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination

15.2 NSP's Representations, Warranties and Covenants NSP hereby represents and warrants as follows:

(A) NSP is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of NSP. NSP has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement

(B) The execution, delivery, and performance of its obligations under this Agreement by NSP have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval of NSP's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);

(ii) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to NSP or violate any provision in any corporate documents of NSP, the violation of which could have a material adverse effect on the ability of NSP to perform its obligations under this Agreement;

(iii) result in a breach or constitute a default under NSP's corporate charter or bylaws, or under any agreement relating to the management or affairs of NSP, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which NSP is a party or by which NSP or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of NSP to perform its obligations under this Agreement; or

(iv) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of NSP now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of NSP to perform its obligations under this Agreement

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(C) This Agreement is a valid and binding obligation of NSP, enforceable against NSP in accordance with its terms.

(D) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which NSP is a party or any judgment, order, statute, or regulation that is applicable to NSP

(E) To the best knowledge of NSP, *except* for MPUC approval, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize NSP's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

Article 16 - Insurance

16.1 Evidence of Insurance. Prior to breaking ground for the Mankato Facility and on or before the policy renewal date each year thereafter, Seller shall provide NSP with two (2) copies of insurance certificate(s) evidencing that insurance coverages for the Mankato Facility, in compliance with the specifications for insurance coverage set forth in Exhibit H, are in force. Such certificates shall (A) name NSP as an additional insured to the extent of the indemnity obligations assumed by Seller hereunder (*except* worker's compensation); (B) provide that NSP shall receive at least thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the insurance policies (*except* that such notice may be not less than ten (10) Days for non-payment of premiums); (C) provide a waiver of any rights of subrogation against NSP, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (D) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers that NSP deems acceptable. All policies shall be written on an occurrence basis, *except* as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by NSP. Seller's liability under this Agreement is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All insurance required under this Agreement shall cover occurrences following the date of this Agreement and for a period of at least two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this Agreement and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) years after the Term.

(B) The Parties shall modify the insurance types and minimum limits specified in Exhibit H from time to time during the Term, in order to maintain reasonable

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coverage amounts, in the event that Good Utility Practices so require and Seller can obtain the modified insurance on commercially reasonable terms.

(C) If any insurance required to be maintained by Seller hereunder ceases to be available in the commercial insurance market on reasonable terms for electric generating plants of a type, geographic location and capacity comparable to the Mankato Facility, Seller shall provide written notice to NSP, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is no longer so available. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured, and NSP shall not unreasonably withhold its consent to modify or waive such requirement.

Article 17 - Indemnity

(A) Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Party") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and reasonable settlement expenses) for personal injury or death to persons, damage to the Indemnified Party's real property and tangible personal property, and damage to the property of any other Person, to the extent arising out of, resulting from, or caused by (i) a default under this Agreement by the Indemnifying Party, (ii) violation of any applicable environmental laws, or (iii) the negligent or tortious acts, errors, or omissions of the Indemnifying Party, its Affiliates, its directors, officers, employees, contractors and agents. The indemnification of third party claims provided under this Article 17 is not subject to the limitation on damages set forth in Section 12.6(A).

(B) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

(C) If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such

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consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

(D) Except as otherwise provided in this Article, in the event that a Party is obligated to indemnify and hold the other Party harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds

Article 18 - Legal and Regulatory Compliance

(A) Each Party shall at all times comply with all applicable laws, ordinances, rules, and regulations applicable to it, *except* for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith

(B) Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the Mankato Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including, but not limited to, administrative proceedings before the MPUC

(C) NSP hereby assumes the risk that, subsequent to the date of this Agreement and prior to the end of the Term, MAPP revises its requirements for Accreditable Capacity in a manner that precludes some or all of the Actual Capacity of any Facility from qualifying as Accreditable Capacity ("Changed MAPP Requirements")

(D) In the event of Changed MAPP Requirements affecting the Mankato Facility, NSP may elect either (i) to accept the Changed MAPP Requirements, without change to this Agreement or to the Mankato Facility, with no effect upon NSP's payment and other obligations hereunder, or (ii) to require Seller to make such changes to the Mankato Facility and/or operate the Mankato Facility in a manner that complies with such Changed MAPP Requirements. In the event that NSP elects the latter, (x) the cost of each capital asset required to comply with such Changed MAPP Requirements ("MAPP Capital Expenditures") shall be paid by NSP, and (y) NSP also shall pay or reimburse Seller for all other incremental expenses incurred by Seller in connection therewith, including any increased operation and maintenance costs, and any effects of decreased Availability attributable to such modification. Upon request by NSP, Seller shall provide to NSP such

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data and other information as may be reasonably necessary to allow NSP to confirm Seller's calculation of the MAPP Capital Expenditures and other expenses to be paid by NSP pursuant to the foregoing sentence. In the event and to the extent that any MAPP Capital Expenditures that are made during the last ten (10) years of the Term benefit Seller (or any successor owner of the Mankato Facility) following the Term, Seller shall repay or shall cause such successor to repay such benefits to NSP as and when realized, valued on a *quantum meruit* basis

Article 19 - Assignment and Other Transfer Restrictions

19.1 Prohibition Against Assignment

(A) Except as permitted in this Section 19.1, neither Party may assign any of its rights under this Agreement nor delegate any of its duties hereunder. Any assignment of any interest in this Agreement, and/or any sale, exchange or other transfer of the Mankato Facility, in violation of this Section 19.1, shall be null and void.

(B) In the event of any assignment of rights and/or delegation of duties under this Agreement, (i) at least ten (10) Days prior notice of the assignment/delegation shall be given to the other Party; (ii) any assignee must assume all of the assignor's obligations hereunder, either by express instrument reasonably satisfactory to the other Party or by operation of law; (iii) except as otherwise expressly set forth in Section 19.2, no assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform; (iv) no such assignment shall impair any security given by or on behalf of Seller hereunder; and (v) before the Agreement is assigned by either Party, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

(C) NSP may assign this Agreement at any time to an Affiliate of NSP.

(D) Seller may assign this Agreement at any time for collateral purposes to the Facility Lender, and the Facility Lender may assign this Agreement to any successor in connection with any exercise of the rights and remedies of the Facility Lender under the Financing Documents, subject to the obligations of the Facility Lender to cause any successor owner or operator acquiring possession or ownership of the Mankato Facility and/or the Site through the exercise of the Facility Lender's rights and remedies under the Financing Documents, as long as no Event of Default by NSP has occurred, (i) to remain subject to the terms of this Agreement, and (ii) to assume all of Seller's obligations hereunder, both prospective and accrued, including the obligation to cure any then-existing defaults (including performance defaults that are susceptible to cure by performance or the payment of money damages), but excluding any obligation to cure any then-existing performance defaults which by their nature are incapable of being cured. Seller shall notify

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NSP, pursuant to Section 13.1, of any such collateral assignment to the Facility Lender no later than thirty (30) Days after the assignment.

(E) Any Change of Control of Seller shall require the prior written consent of NSP. Without limiting NSP's obligation to consider reasonably any other circumstances, NSP shall be required to give its consent to any Change of Control of Seller if the ultimate parent entity of Seller following the Change of Control, together with its Affiliates, enjoys creditworthiness (as measured by its Credit Rating or as otherwise reasonably determined by NSP) not worse than Seller and/or its ultimate parent entity prior to the Change of Control. A "Change of Control" shall be deemed to occur if any one of the following events occurs with respect to Seller, or with respect to any Person which is a direct or indirect owner of a majority of the ownership interests in Seller if the direct or indirect interest in Seller represents substantially all of the value of such Person's assets: (i) a transfer of a majority of the ownership interests in Seller or such Person; or (ii) any consolidation or merger of Seller or any such Person in which Seller or such Person, as the case may be, is not the continuing or surviving entity, other than a consolidation or merger of a Person in which the holders of such Person's membership interests immediately before the consolidation or merger shall, upon consummation of the consolidation or merger, own at least fifty percent (50%) of the equity of the surviving entity.

19.2 Relief from Liability.

(A) Seller shall relieve NSP from all of its obligations under this Agreement, prospective and accrued, upon request by NSP, in the event of any permitted assignment of this Agreement by NSP to any Rated Person that then holds or later obtains an Investment Grade Credit Rating.

(B) NSP shall relieve Seller from all of its obligations under this Agreement, prospective and accrued, upon request by Seller, in the event of any permitted assignment of this Agreement by Seller to any Rated Person that (i) then holds or later obtains a Credit Rating of "B" or better, and (ii) provides a substitute Security Fund meeting the requirements of Section 11.2.

19.3 Accommodation of Facility Lender. To facilitate Seller's obtaining of financing to construct and operate the Mankato Facility, NSP shall make reasonable efforts to accommodate the Facility Lender's requests to vary the terms and conditions of this Agreement to protect the Facility Lender's interests and to provide such consents to assignments, certifications, representations, information, opinions, and/or other documents as may be reasonably requested by Seller or the Facility Lender in connection with the financing of the Mankato Facility; *provided*, that in responding to any such request, NSP shall have no obligation to provide any consent, or enter into any agreement, that materially adversely affects any of NSP's rights, benefits, risks and/or obligations under this Agreement. Seller shall reimburse, or shall cause the Facility Lender to reimburse, NSP for the incremental direct expenses (including, without limitation, the reasonable fees and

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expenses of counsel) incurred by NSP in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender, and provided by NSP, pursuant to this Section 19.2. Seller shall notify NSP promptly if and when any Financing Documents are recorded in the County in which the Site is located, and shall provide to NSP a copy of each such recorded document.

19.4 Notice of Facility Lender Action Within ten (10) Days following Seller's receipt of each written notice from the Facility Lender of default, or the Facility Lender's intent to exercise any remedies, under the Financing Documents, Seller shall deliver a copy of such notice to NSP.

19.5 Subcontracting Seller may subcontract its duties or obligations under this Agreement without the prior written consent of NSP, *provided* that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

Article 20 - Miscellaneous

20.1 Waiver. Subject to the provisions of Section 13.7(C), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Taxes

(A) For purposes of this Section,

(i) "Environmental Taxes" means all taxes imposed by Governmental Authorities upon NSP, Seller and/or the Mankato Facility that are assessed based upon the quantity of waste water discharged and/or the quantity of air pollutants emitted by the Mankato Facility as a consequence of the generation of Contract Energy therefrom.

(ii) "Energy Taxes" means all taxes imposed by Governmental Authorities upon NSP, Seller and/or the Mankato Facility that are assessed based upon the amount of Contract Energy generated by the Mankato Facility, including sales and/or use taxes imposed with respect to the purchase of Contract Energy by NSP.

(iii) "Fuel Taxes" means all taxes imposed by Governmental Authorities upon NSP, Seller or the Mankato Facility that are assessed based upon the amount and/or purchase price of gas consumed by the Mankato Facility to generate Contract Energy, including (a) any sales and/or use taxes imposed upon any transfer of title to the natural gas fuel at the Fuel Point of Delivery to Seller under Section 6.4(B), and (b)

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any sales and/or use taxes imposed upon NSP by virtue of its purchase of Acceptable Natural Gas Fuel for consumption by the Mankato Facility.

(B) During the Term, NSP shall pay or reimburse Seller for (i) all Environmental Taxes enacted into law following the Effective Date, (ii) all Energy Taxes, and (iii) all Fuel Taxes Except for the foregoing, as between the Parties, Seller shall pay and be solely responsible for all taxes imposed by Governmental Authorities upon Seller, the Site and/or the Mankato Facility arising in connection with the construction, ownership, financing, operation and disposition of the Mankato Facility, any Expanded Capacity, and any Alternate Generation Source(s), including (I) any and all *ad valorem* taxes assessed against the Mankato Facility, whether not in existence or enacted following the Effective Date, and (II) any Environmental Taxes in existence as of the Effective Date

(C) The Parties shall cooperate to minimize their exposure to taxes; *provided, however*, neither Party shall be obligated to incur any financial burden or material incremental risk to reduce taxes for which the other Party is responsible hereunder.

(D) All electric energy delivered by Seller to NSP hereunder shall be sales for resale, with NSP reselling such electric energy. NSP shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.

20.3 Fines and Penalties.

(A) Each Party shall pay when due all fees, fines, penalties or costs incurred by itself or its agents, employees or contractors for noncompliance with any provision of this Agreement, contractual obligation, permit, or requirement of law, *except* for such fines, penalties and costs that are being actively contested in good faith and with due diligence by the applicable Party and for which adequate financial reserves have been set aside to pay such fines, penalties, or costs in the event of an adverse determination

(B) If any fees, fines, penalties, or costs are claimed or assessed against a Party (the "Aggrieved Party") by any Governmental Authority due to noncompliance by the other Party (the "Offending Party") with this Agreement, any requirements of law, any permit or any contractual obligation, the Offending Party shall indemnify and hold the Aggrieved Party harmless against any and all losses, liabilities, damages, and claims suffered or incurred by the Aggrieved Party, including claims for indemnity or contribution made by third parties, *except* to the extent the Aggrieved Party recovers any such losses, liabilities, or damages through other provisions of this Agreement.

20.4 Disclaimer of Third Party Beneficiary Rights. In executing this Agreement, NSP does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller.

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Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this Agreement

20.5 Relationship of the Parties

(A) This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Except as otherwise specifically provided in Section 12.7, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to construct, operate and maintain the Mankato Facility, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of NSP for any purpose; nor shall Seller represent to any person that he or she is or may become a NSP employee.

20.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor NSP is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to NSP. All applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including but not limited to 41 C.F.R. § 60-1.4(a)(1-7).

20.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable Statute of Limitations, including without limitation warranties, remedies, indemnities and confidentiality, which obligations shall survive for the period of the applicable statute(s) of limitation. Promptly following expiration or any earlier termination of the Term of this Agreement, and the completion of all of Seller's obligations hereunder, NSP shall release the Security Fund (including any accumulated interest, if applicable) to Seller.

20.8 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect; *provided, however,* that NSP and Seller shall implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision, the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable

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20.9 Complete Agreement; Amendments The terms and provisions contained in this Agreement constitute the entire agreement between NSP and Seller with respect to its subject matter, and supersede all previous communications, representations, or agreements, either verbal or written, between NSP and Seller with respect thereto. This Agreement may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided further*, that the Exhibits attached hereto may be changed according to the provisions of Section 13.6.

20.10 Binding Effect This Agreement, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

20.11 Headings Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

20.12 Counterparts This Agreement may be executed in multiple counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.13 Confidentiality

(A) Except as permitted herein, neither Party shall disclose any Confidential Information of the other Party to any third parties (other than to the disclosing Party's employees, attorneys, accountants, lenders and other representatives who have a need-to-know in connection with this transaction, and who are under a corresponding duty of confidence), without the other Party's prior written approval. The obligation to maintain Confidential Information in confidence shall continue through the end of the Term of this Agreement and for a period of two (2) years after the expiration or earlier termination hereof.

(B) Prior to releasing publicly any information regarding the other Party, this Agreement, the Mankato Facility, or any other aspect of the relationship between the Parties (other than a general description of the Mankato Facility or the fact that the Agreement exists), each Party shall consult and coordinate the release of such information with the other Party.

(C) Notwithstanding anything to the contrary in this Section 20.13, either Party may disclose Confidential Information of the other Party (i) as the disclosing Party is legally required to furnish by subpoena, by other legal process or by applicable law, including disclosure required by a Governmental Authority or the rules of any securities exchange, and/or (ii) to the MPUC and/or the Minnesota Department of Commerce, upon request. In connection with any disclosure subject to this Section 20.13(C), the disclosing Party shall notify the other Party of the nature and recipient of the disclosure, prior to or promptly following the disclosure.

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(D) Notwithstanding anything to the contrary in this Section 20 13, either Party may disclose Confidential Information of the other Party to ratings agencies, securities analysts, lenders and potential lenders. In connection with any disclosure subject to this Section 20 13(D), the disclosing Party shall use reasonable efforts (i) to notify and give the non-disclosing Party a reasonable opportunity to review and comment upon such disclosure, and (ii) to seek confidential treatment of such Confidential Information from the recipient.

20 14 Standard of Review Absent agreement of both Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-party or the Federal Energy Regulatory Commission acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (aka the "Mobile-Sierra doctrine") This Agreement shall not be subject to change by application of either Party pursuant to §205 or §206 of the Federal Power Act

20.15 Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Minnesota. The Parties hereby submit to the exclusive jurisdiction of the courts of the State of Minnesota, and venue is hereby stipulated as Minneapolis, Minnesota, for all disputes arising out of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Seller:

Mankato Energy Center, LLC

By: 

James J. Shield, Vice President

NSP:

Northern States Power Company

By: 

Paul J. Bonavia, Vice President

Approved as to form



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- EXHIBIT A -

NSP REQUIREMENTS AND COMPLIANCE STANDARDS FOR DISPATCHABILITY

Page 1 of 2

1 Dispatchability Requirements In order for Seller to qualify for the Dispatchability Payment set forth under Section 8 2, the Facility generating units must be dispatchable generating units. Both the CT and the steam turbine (including the duct firing capacity) shall be capable of providing:

- A Automatic Generation Control (AGC) from the System Control Center (SCC);
- B A minimum regulating range of fifteen megawatts (15 MW) per generating unit, in automatic load regulation capacity;
- C Continuous response to SCC pulsing at the minimum rates set forth in Section 8 2; and
- D A direct ring-down phone circuit to the SCC.

2 Operations Log Seller shall maintain an hourly operation log that identifies real-time unit operating information including, but not limited to the following: current level of unit capacity availability, planned and unplanned maintenance outages or deratings, circuit breaker operation and any other significant events related to the operation of the generating unit. Any changes in the generating status or availability of the generating unit shall be reported immediately to the SCC operator by telephone.

3 Telemetry/Generation Load Control Requirements

A NSP shall design, purchase, own, install and test, in accordance with the procedures set forth in this Exhibit, the telemetry equipment, generation load control equipment and the circuits from the Facility to the SCC. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a signal to the governor of Seller's equipment. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by NSP.

B. The telemetry and generation load equipment is to provide the following: instantaneous net MW and MVAR levels, control status (available for automatic generation control), load regulation range limits, remote pulsing circuit, and any other parameters deemed necessary by NSP. Seller shall install at the Facility MW and MVAR indicating equipment which reflects the identical MW and MVAR values as those telemetered to the SCC.

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- EXHIBIT A -
(continued)

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4. Initial Verification of Compliance. Initial verification of Automatic Generation Control compliance (requirements 1 A through 1 D above) will be conducted at the Facility by NSP. Request for initial verification shall be made by Seller to NSP, in writing, on at least ten (10) Days advance notice. Testing will be a coordinated effort between NSP and Seller, with Seller providing technical support for Seller's equipment and with NSP supplying the test regulation signal and determination of Seller's compliance of these requirements. All dispatchability requirements, including initial verification of compliance, must be met to achieve the Facility Acceptance Date.

5. Periodic Verification of Compliance. Subsequent to the initial verification of AGC compliance as provided for above, NSP shall have the right, at any time and without prior notice to Seller, to verify the continued compliance of such requirements. Seller will be notified of test results in the event of any noncompliance.

6. Automatic Generation Control Availability. NSP will monitor Seller's ability to be automatically dispatched. It is the expectation of the Parties that the Facility will be available for automatic generation dispatch during one hundred percent (100%) of the Facility's on-line hours (excluding periods of failure of NSP's telemetry, during which Seller will manually be dispatched by NSP, and excluding start-up and shut-down periods of combustion turbines and duct burners).

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- EXHIBIT B -

CONSTRUCTION MILESTONES

Page 1 of 2

Construction Milestone

Results Seller Must Achieve

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SECRET

Seller shall establish the Security Fund in accordance with Section 11.1.

Seller shall certify to NSP that Seller holds executed purchase orders/contracts for the delivery and installation of Mankato Facility turbine(s)/generator(s)

Seller shall provide NSP with copies of all Material Permits (Permit Milestone Date).

Seller shall provide NSP with evidence of the insurance coverage required by Exhibit H

Seller shall certify to NSP that Seller holds an executed site preparation/site clearing construction agreement

Seller shall certify to NSP that Seller holds an executed EPC agreement (or, if Seller or one of its Affiliates has elected to act as the general contractor, Seller shall certify to NSP that Seller holds an executed civil contractor agreement)

Seller shall certify to NSP that Seller holds an executed purchase orders/contracts for the delivery of the Mankato Facility's step-up transformers

Seller shall have achieved closing on financing for the Mankato Facility, or provided NSP with proof of Seller's financial capability to construct the Mankato Facility

Seller shall have started pouring the foundations for the combustion turbine(s), HRSG(s), steam turbine, and step-up transformers

Seller shall certify to NSP that Seller holds an executed Mankato Facility electric interconnection agreement and a fuel supply interconnection agreement

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- EXHIBIT B -
(continued)

Page 2 of 2

Construction Milestone

Results Seller Must Achieve

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If Seller or one of its Affiliates has elected to act as the general contractor, Seller shall certify to NSP that Seller holds an executed mechanical contractor agreement

If Seller or one of its Affiliates has elected to act as the general contractor, Seller shall certify to NSP that Seller holds an executed electrical contractor agreement.

A combustion turbine and the steam turbine shall have been delivered to, and set on its foundation at, the Site

The step-up transformer shall have been delivered to, and set on its foundation at, the Site.

Seller shall have constructed Seller's Interconnection Facilities and such facilities shall be capable of being energized.

Seller shall have all necessary fuel supply interconnection facilities (including fuel oil interconnections) in place

Start-up testing of the Mankato Facility commences.

Facility Acceptance Date is achieved. (Facility Acceptance Milestone)

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- EXHIBIT C -

MANKATO FACILITY DESCRIPTION AND SITE MAPS

Site Location

In Mankato, Minnesota, Northwest of the County Highway 5 and Summit Avenue intersection. A USGS map showing the general location of the Site is included with this Exhibit C

General

The generation units at the Site will include one or two combustion turbines and one steam turbine in a combined cycle configuration. The Facility (i) will primarily combust natural gas, with fuel oil operation provided as a backup for the Base Capacity, and (ii) will consist of a single combustion turbine and its associated steam turbine output, dedicated to NSP. A preliminary site plan showing both the Facility and the anticipated Expansion Equipment is included with this Exhibit C.

Major Equipment

Siemens-Westinghouse 501FD, General Electric FA, or General Electric FB combustion turbine(s) are planned for the Facility. Additional major equipment will include a steam turbine generator, step-up transformers, heat recovery steam generator(s), output breakers, switchgear, motor control centers, protective and associated equipment, water treatment, above and below ground piping, electrical wiring and conduit, and an evaporative cooling tower.

Support Buildings

A permanent administration/maintenance/warehouse/control building will be erected. Additionally a water treatment building will likely be erected to house the demineralization equipment and water lab.

Water

Cooling water will likely be provided by the City of Mankato Municipal Wastewater Treatment Plant. A pipeline will be constructed to transport the water from the Mankato Treatment Plant to the Facility. Potable water will likely be provided by the City of Mankato water distribution system. Water will be discharged into the Minnesota River approximately ¼-mile downstream of the existing Wilmarth RDF Plant discharge structure. Alternate provisions for water discharge may be made via return of the discharge to the Mankato Treatment Plant.

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Gas Interconnection

A new natural gas pipeline lateral will be constructed to provide fuel to the Facility. The lateral will connect to the existing Northern Natural Gas Company pipeline located approximately 5 miles to the east of the Facility. The lateral pipeline will parallel the existing NSP 115 kV transmission line and enter the Site in the northeast corner. Other facilities and equipment associated with the Fuel Interconnections include: a custody transfer delivery meter and flow control station; separation equipment upstream of the meter and control station; natural gas heating; station lighting; foundations; cathodic protection and grounding equipment; and other ancillary and protective mechanical and electrical equipment. In the event Seller's gas pressure requirements exceed five hundred fifty (550) psig at the Fuel Point(s) of Delivery, Seller shall install gas compression equipment.

Fuel Oil

A fuel oil tank will be constructed with no less than 300,000 gallons storage capacity, which is sufficient oil storage to qualify the Facility for MAPP accreditation under current regulations. Fuel oil unloading capability will be provided for a single fuel oil truck. Transfer and measuring equipment will also be provided.

Electrical Interconnection

The electrical output of the Facility will be interconnected to the existing Wilmarth Substation located approximately 2,500 feet west of the Facility. Interconnection voltages are expected to be 345 kV and 161 kV. Radial feed lines from the Facility switchyard to the Wilmarth Substation will be installed on the Site and extend into existing NSP property pursuant to the terms of the Mankato Interconnection Agreement.

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- EXHIBIT D-1 -

**NORTHERN NATURAL GAS COMPANY
TARIFF NATURAL GAS QUALITY SPECIFICATIONS**

The following was taken from the Northern Natural Gas Company Third Revised Sheet No. 281 FERC Gas Tariff Superseding Fifth Revised Volume No. 1 Second Revised Sheet No. 281 General Terms and Conditions 44. QUALITY. The specifications are subject to change by Northern Natural Gas Company in accordance with the modification requirements of the tariff and other applicable regulations.

NORTHERN NATURAL GAS COMPANY Third Revised Sheet No 281
FERC Gas Tariff
Superseding Fifth Revised Volume No 1, Second Revised Sheet No 281

GENERAL TERMS AND CONDITIONS

44 QUALITY

All gas to be received from Shipper into the Northern pipeline system shall conform to the following specifications:

- a) The gas shall be commercially free from objectionable odors, solid matter, dust, gums and gum-forming constituents, or any other substance which might interfere with the merchantability of the gas, or cause injury to or interference with proper operation of the lines, meters, regulators, or other appliances through which it flows.
- b) Oxygen - less than or equal to 0.2% by volume.
- c) Hydrogen sulfide - less than or equal to 1/4 grain/Ccf
- d) Total Sulphur - less than or equal to 20 grains/Ccf.
- e) Carbon Dioxide - less than or equal to 2 0% by volume
- f) Water - less than or equal to 6 pounds/MMcf.
- g) Heating Value - greater than or equal to 950 Btu/Cubic Foot
- h) The temperature shall be less than or equal to 120 degrees Fahrenheit.

If any gas received by Northern shall fail at any time to conform to the specifications set forth above, Northern may refuse to accept delivery pending correction by the other party. Northern may, on a basis that is not unduly discriminatory, elect to accept gas which fails to meet specifications.

Issued by: *Mary Kay Miller, V P. Rates and Certificates*

Issued on: May 1, 1998

Effective: November 1, 1998

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- EXHIBIT D-2 -

**NORTHERN BORDER PIPELINE COMPANY
TARIFF NATURAL GAS QUALITY SPECIFICATIONS**

5 1 Quality Standards of Gas Received by Company

Company may refuse to accept gas which does not conform to the following specifications:

- 5 11 The gas shall not contain sand, dust, gums, crude oil, impurities or other objectionable substances which may be injurious to pipelines or may interfere with the transmission of the gas
- 5 12 The gas shall have a hydrocarbon dew-point less than -5 degrees F at 800 psia, -10 degrees F at 1000 psia, or -18 degrees F at 1100 psia, or such higher dew point approved by Company as, without treatment by Company, may be compatible with the treatment by Company, may be compatible with the operating conditions of Company's pipeline
- 5.13 The gas shall not contain more than 0.3 grains of hydrogen sulphide per Ccf
- 5 14 The gas shall not contain more than 2 grains of total sulphur per Ccf
- 5.15 The gas shall contain not more than 0.03 grains of mercaptan sulphur per Ccf, or such higher content as, in Company's judgment, will not result in deliveries by Company to Shippers of gas containing more than 0.03 grains of mercaptan sulphur per Ccf.
- 5 16 The gas shall not contain more than 2 percent by volume of carbon dioxide
- 5 17 The gas shall not have a water vapor content in excess of 4 pounds per MMcf
- 5 18 The gas shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than 0.4 percent by volume of oxygen
- 5.19 The gas shall have a gross heating value of not less than 967 Btu per cf.

Issued by: Raymond D. Neppi, Vice President
Issued on: February 28, 1997

Effective on: April 1, 1997

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- EXHIBIT D-3 -

FUEL OIL QUALITY SPECIFICATIONS

The fuel oil supplied shall be No. 2, shall comply with ASTM D396 (Grade 1 or 2) or ASTM D965 (Grade 1-D or 2-D) and shall additionally meet the following requirements:

Kinematic Viscosity, cSt, 100°F	Min	0.5
	Max	5.8
Distillation Temperature, 90% Point	Max	650° F
Pour point, °F	Max	40
Sulfur, Weight %	Max	0.05
Carbon Residue, Weight %	Max	1.0
Ash	Max	50 ppm
Sodium plus Potassium	Max	1 ppm
Lead	Max	1 ppm
Vanadium	Max	0.5 ppm
Calcium	Max	2 ppm
Filterable Dirt	Max	4 mg/100 ml
Water and Sediment, volume %	Max	0.1

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- EXHIBIT E -

NOTICE ADDRESSES

NSP	Seller
<p>Notices: Paul J. Bonavia Vice President Xcel Energy, Inc 1099 18th Street, 22nd Floor Denver, CO 80202 Fax: (303) 308-7681</p> <p>Karen T. Hyde Manager, Purchased Power Contracts Xcel Energy, Inc 1099 18th Street, 30th Floor Denver, CO 80202 Phone: (303) 308-6113 Fax: (303) 308-6141</p>	<p>Notices: Calpine Corporation 250 Parkway Drive, Suite 380 Lincolnshire, IL 60069 Attn: Mankato Asset Manager Phone: (847) 484-7700 Fax: (847) 484-7799</p> <p>Calpine Corporation 250 Parkway Drive Suite 380 Lincolnshire, IL 60069 Attn: Senior Counsel Phone: (847) 484-7700 Fax: (847) 484-7799</p>
<p>Operating Committee Representative: Karen T. Hyde Manager, Purchased Power Contracts Xcel Energy, Inc 1099 18th Street, 30th Floor Denver, CO 80202 Phone: (303) 308-6113 Fax: (303) 308-6141</p> <p>Alternate: Donald E. Smith Purchased Power Analyst Xcel Energy, Inc 1099 18th Street, 30th Floor Denver, CO 80202 Phone: (303) 308-6128 Fax: (303) 308-6141</p>	<p>Operating Committee Representative: Kent J. Morton Calpine Corporation 250 Parkway Drive, Suite 380 Lincolnshire, IL 60069 Phone: (847) 484-7700 Fax: (847) 484-7799</p> <p>Alternate: James J. Shield Calpine Corporation 250 Parkway Drive Suite 380 Lincolnshire, IL 60069 Phone: (847) 484-7700 Fax: (847) 484-7799</p>

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- EXHIBIT F -

FORM OF ACCEPTABLE LETTER OF CREDIT

[Bank Letterhead]

Bank's Name

Bank's Address

Date

To: Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

We hereby establish, in your favor, our irrevocable Letter of Credit Number _____ for the account of Mankato Energy Center, LLC, a Delaware limited liability company ("Account Party"), in the amount of _____ dollars (US\$ _____ - the "Stated Amount") and authorize you, Northern States Power Company ("Beneficiary"), to draw at sight on **Bank's Name**.

Subject to the terms and conditions hereof, this Letter of Credit secures Account Party's obligations to Beneficiary under the Purchased Power Agreement dated as of March 11, 2004, between Account Party and Beneficiary (the "Agreement").

One or more partial draws on this Letter of Credit are permitted.

This Letter of Credit shall expire at our close of business on **date**. Notwithstanding the foregoing, however, this Letter of Credit shall be automatically extended (without amendment of any other term and without the need for any action on the part of the undersigned or Beneficiary) for one year from the initial expiration date and each future expiration date unless we notify you in writing at least thirty (30) days prior to any such expiration date that this Letter of Credit will not be so extended. Any such notice shall be delivered by registered or certified mail, or by FedEx, to **name and address of NSP contact(s)**. The date on which this Letter of Credit expires (as such date may be extended pursuant to this paragraph) is referred to below as the "Expiry Date".

Drafts on us at sight must be accompanied by

(1) A copy of this Letter of Credit and subsequent amendments, if any (provided that the original of this Letter of Credit shall be presented in the event the entire remaining balance of the Stated Amount is drawn in its entirety); and

Execution copy

(2) A statement signed by a representative of Beneficiary substantially as follows:

"The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Northern States Power Company, (ii) the amount of the draft accompanying this certification is due and owing to Northern States Power Company by virtue of a breach by Mankato Energy Center, LLC under the terms of the Purchased Power Agreement dated as of March 11, 2004, and (iii) all applicable notice-and-cure periods have expired "

or as follows:

"The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Northern States Power Company, and (ii) Northern States Power Company has received notice that this Letter of Credit will not be extended beyond its Expiry Date, and Mankato Energy Center, LLC has failed to provide alternate security to Northern States Power Company as required under the Purchased Power Agreement dated as of March 11, 2004 within ten (10) days prior to the Expiry Date of the Letter of Credit "

The amounts of any drafts drawn under this Letter of Credit are to be endorsed on the reverse side hereof. Such drafts must bear the clause "Drawn under **Bank's Name's** Letter of Credit Number _____ dated _____."

We hereby agree with drawers that drafts and documents as specified above will be duly honored upon presentation to **Bank's Name and Address** if presented on or before the Expiry Date

Payment of any amount under this Letter of Credit by **Bank** shall be made as the Beneficiary shall instruct on the next Business Day after the date the **Bank** receives the certification required hereunder, in immediately available funds on such date

Unless otherwise expressly stated herein, this irrevocable standby Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 1993 revision, International Chamber of Commerce publication no 500 (the "UCP").

This Letter of Credit sets forth in full the terms of our undertaking. Absent the express written consent of the undersigned, this Letter of Credit shall not in any way be modified, amended, amplified or revoked, either directly or by reference to any document, instrument or agreement referred to herein (other than the UCP) or in which this Letter of Credit may be referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement other than the UCP

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This Letter of Credit is not transferable or assignable by Beneficiary, except that this Letter of Credit may be transferred in its entirety to, and only to, any transferee who has succeeded to Beneficiary's rights under the Agreement, and notwithstanding any contrary provision in the UCP, such transferred Letter of Credit may be successively so transferred; provided, however, that any such transfer shall only become effective upon delivery to us of a written notice of such transfer signed by Account Party and Beneficiary prior to such transfer

Bank's Name:

By: _____
Authorized Signature

Execution copy

- EXHIBIT G -

FORM OF ACCEPTABLE GUARANTY

GUARANTY

This Guaranty is executed and delivered as of this _____ day of _____, [2004] by [Calpine Corporation, a Delaware corporation] ("Guarantor"), in favor of Northern States Power Company, a Minnesota corporation ("NSP"), in connection with the performance by Mankato Energy Center, LLC, a Delaware limited liability company ("MEC"), of a Purchased Power Agreement dated March 11, 2004 between MEC and NSP (the "Agreement").

- RECITALS -

A. MEC is planning to construct, own and operate a combined cycle natural gas fired electric generating plant with a total net generating capability of approximately 365 MW to be located in Mankato, Minnesota (the "Facility")

B. MEC and NSP are entering into the Agreement for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.

C. MEC is controlled by Guarantor. To induce NSP to enter into the Agreement and consummate the purchase and sale of electrical energy contemplated by the Agreement, Guarantor has agreed to guarantee the obligations of MEC as provided in this Guaranty.

- AGREEMENT -

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally and fully guarantees to NSP the due, prompt and complete observance, performance and discharge of each and every payment obligation of MEC under the Agreement, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, NSP shall not be required to institute, pursue or exhaust any remedies against MEC before instituting suit, obtaining judgment and executing thereon against Guarantor under this Guaranty.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ million _____ hundred thousand dollars (US\$_____,000)

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3 Rights of NSP Guarantor hereby grants to NSP, in NSP's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate or otherwise change, substitute, supersede or terminate the terms of performance of any of the Obligations, in each case in accordance with the Agreement;

(b) to grant any indulgences, forbearances and waivers, on one or more occasions, for any length of time, with respect to MEC's performance of any of the Obligations; and

(c) to accept collateral, further guaranties and/or other security for the Obligations and, if so accepted, then to impair, exhaust, exchange, enforce, waive or release any such security

4 Performance If any of the Obligations is not performed according to the tenor thereof, and any applicable notice and cure period provided by the Agreement has expired ("Default"), Guarantor shall immediately upon receipt of written demand by NSP (a) perform or cause MEC to perform the Obligation in Default, and (b) pay, reimburse and indemnify NSP against any liabilities, damages and related costs (including attorneys' fees) incurred by NSP as a result thereof, all in such manner and at such times as NSP may reasonably direct.

5. Satisfaction Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor, *except* with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by MEC or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless or whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance Guarantor waives and acknowledges notice of acceptance of this Guaranty by NSP

7 Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

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(a) all set-offs, counterclaims and, subject to Section 5 above, all presentments, demands for performance, notices of non-performance, protests and notices of every kind that may be required by any statutes or rules of law;

(b) any right to require NSP to proceed against MEC or any other person, or to require NSP first to exhaust any remedies against MEC or any other person, before proceeding against Guarantor hereunder;

(c) any duty of NSP to protect or not impair any security for the Obligations;

(d) the benefit of any laws limiting the liability of a surety;

(e) any duty of NSP to disclose to Guarantor any facts concerning MEC, the Agreement or the Project, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by NSP, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(f) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification or other rights of payment or recovery for any payment or performance by it hereunder

8 Cumulative Remedies The rights and remedies of NSP hereunder shall be cumulative and not alternative to any other rights, powers and remedies which NSP may have at law, in equity, or under the Agreement. The obligations of Guarantor hereunder are independent of those of MEC and shall survive unaffected by the bankruptcy of MEC. NSP need not join MEC in any action against Guarantor hereunder

9 Representations and Warranties Guarantor represents and warrants to NSP as follows:

(a) Guarantor is a corporation, duly organized, validly existing and in good standing under the laws of the state of its incorporation MEC is a direct or indirect wholly-owned subsidiary of Guarantor Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder

(b) The execution and delivery of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10 Collection Costs Guarantor hereby agrees to pay to NSP, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable

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attorneys' fees and other expenses which NSP may expend or incur in any effort to collect or enforce any of Guarantor's obligations under this Guaranty, whether or not suit is filed, including, without limitation, all attorneys' fees and other expenses incurred by NSP

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective

12. Waiver; Amendment. No provision of this Guaranty or right of NSP hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, *except* by a writing duly executed by NSP. This Guaranty may not be modified, amended, revised, revoked, terminated, changed or varied in any way whatsoever, *except* by the express terms of a writing duly executed by NSP

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of NSP and Guarantor

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of New York, without regard to the principles of conflicts of law thereof

15. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the Agreement, addressed as follows:

(a) if to NSP: Paul J. Bonavia
Vice President
Xcel Energy, Inc
1099 18th Street, Suite 2200
Denver, CO 80202
Facsimile: (303) 308-7681

with copies to: Karen T. Hyde
Manager, Purchased Power Contracts
Xcel Energy, Inc
1099 18th Street, Suite 3000
Denver, CO 80202
Telephone: (303) 308-6113
Facsimile: (303) 308-6141

Paula J. Connelly, Esq
Associate General Counsel
Xcel Energy, Inc.
1225 17th Street, Suite 900
Denver, CO 80202

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Telephone: (303) 294-2222
Facsimile: (303) 294-____

(b) if to Guarantor: [Calpine Corporation]
250 Parkway Drive, Suite 380
Lincolnshire, IL 60069
Attn: Asset Manager
Phone: (847) 484-7700
Fax: (847) 484-7799

with a copy to: [Calpine Corporation]
250 Parkway Drive, Suite 380
Lincolnshire, IL 60069
Attn: Senior Counsel
Phone: (847) 484-7700
Fax: (847) 484-7799

or to such other address(es) as the person to whom notice is given may have
previously furnished to the others in writing in the manner set forth above

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed
and delivered as of the day and year first above written

[CALPINE CORPORATION]

By: _____
Name:
Title:

STATE OF _____)
COUNTY OF _____) ss

The foregoing instrument was acknowledged before me this _____ day of _____,
[2004], by _____, as _____ of [Calpine
Corporation]

Witness my hand and official seal

My commission expires: _____

Notary Public

(SEAL)

Execution copy

- EXHIBIT H -

INSURANCE COVERAGE

<u>Type of Insurance</u>	<u>Minimum Limits of Coverage</u>
1 Commercial General Liability	Eleven million dollars (US\$11,000,000) combined single limit each occurrence (CGL) and commercial umbrella and the aggregate, where applicable
<p>CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad CGL insurance shall include named perils pollution coverage for sudden and accidental discharges There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage</p> <p>NSP shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance</p> <p>The CGL and commercial umbrella insurance to be obtained by Seller shall be endorsed substantially as follows:</p> <p>Such insurance as afforded by this policy for the benefit of NSP shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by NSP shall be excess of and noncontributing with insurance afforded by this policy</p>	
2 Business Automobile Liability	One million dollars (US\$1,000,000) combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos
<p>Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01</p>	
3 Workers Compensation	Statutory Requirements Seller may comply with these requirements through the use of a qualified self-insurance plan
4 Employers Liability	\$1,000,000 each accident for bodily injury by accident, or \$1,000,000 each employee for bodily injury by disease

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- EXHIBIT H -
(continued)

Page 2 of 2

Type of Insurance

Minimum Limits of Coverage

5 Builder's Risk

Replacement value of the Mankato Facility

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy, with sublimits as appropriate

- 6 All-Risk Property insurance covering full replacement value of the Mankato Facility A reasonable deductible may be carried for physical loss or damage to the Mankato Facility Such deductible shall be the absolute responsibility of Seller

All-Risk Property insurance shall include (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Mankato Facility, with sublimits of no less than ten million dollars (US\$10,000,000) each for flood and earthquake and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value

7 Business Interruption insurance

Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of twelve (12) calendar months

Business Interruption insurance shall cover loss of revenues and/or the increased expense to resume operations attributable to the Mankato Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Mankato Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms, subject to a reasonable deductible which shall be the responsibility of Seller Notwithstanding any other provision of this Agreement, Seller shall not be required to have Business Interruption insurance until the Facility Acceptance Date

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TRADE SECRET DATA EXCISED

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- EXHIBIT I -

PREDICTED NET HEAT RATE DEGRADATION

The predicted heat rate is calculated as follows:

$$P = \text{TRADE SECRET} \times (1 + \text{HRAF}), \text{ where}$$

P = Predicted Net Heat Rate, as used in Section 8.4

HRAF = Heat Rate Adjustment Factor, as provided in Tables I-1 and I-2.

Prior to the first major maintenance on the combustion turbine at the Mankato Facility, Table I-1 shall be used to calculate the Heat Rate Adjustment Factor (HRAF). The total fired hours on the combustion turbine shall be used to look-up the HRAF in the table. Linear interpolation shall be used to calculate the HRAF used to calculate the Predicted Net Heat Rate, between break points.

After the first major maintenance on the combustion turbine and after each following major maintenance, Table I-2 shall be used to calculate the HRAF. The total fired hours on the combustion turbine since the most recent major maintenance shall be used to look-up the HRAF in Table I-2. Linear interpolation shall be used to calculate the HRAF used to calculate the Predicted Net Heat Rate, between break points.

Major maintenance normally occurs after 48,000 hours of CT operation. Factors such as number of trips and a low average number of fired hours per start can accelerate the major maintenance schedule.

Table I-1:

Total combustion turbine fired hours (as of end of billing period)	Predicted Net Heat Rate Adjustment Factor (HRAF)
0	0%
5,000	1.5%
10,000	3.0%
15,000	4.5%
20,000	6.0%
25,000	7.5%
30,000	9.0%
35,000	10.5%
40,000	12.0%
45,000	13.5%

TRADE
SECRET

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TRADE SECRET DATA EXCISED

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>48,000	_____%
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TRADE
SECRET

Table I-2:

Total combustion turbine fired hours since last major maintenance (as of end of billing period)	Predicted Net Heat Rate Adjustment Factor (HRAF)
0	_____%
5,000	_____%
10,000	_____%
15,000	_____%
20,000	_____%
25,000	_____%
30,000	_____%
35,000	_____%
40,000	_____%
>45,000	_____%

TRADE
SECRET

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- EXHIBIT J -

MATERIAL PERMITS

Permit / Approval

Agency

Air Permit

Minnesota Pollution Control Agency

Site Certificate

Minnesota Environmental Quality Board

Annexation Process, including
Conditional Use Permit and
grey water supply

City of Mankato

Certificate of Need
(insofar as CON may be
required for the Mankato Facility,
not for any Expanded Capacity)

Minnesota Public Utilities Commission

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**PUBLIC DOCUMENT
TRADE SECRET DATA EXCISED**

FIRST AMENDMENT TO PURCHASED POWER AGREEMENT

THIS FIRST AMENDMENT TO PURCHASED POWER AGREEMENT ("Amendment") dated as of August 22, 2005, is entered into between Northern States Power Company ("NSP") and Mankato Energy Center, LLC ("Seller").

RECITALS:

NSP and Seller entered into a Purchased Power Agreement dated as of March 11, 2004 ("PPA"). All capitalized terms used herein and not specifically defined herein shall have the meanings set forth in the PPA for such terms. Since the date of the PPA, the Parties have moved forward with their respective plans and specifications relating to their obligations under the PPA sufficiently to determine that an amendment to the terms of the PPA is necessary, and the Parties desire to enter into this Amendment to reflect such amendment, as set forth herein.

AGREEMENT TO AMEND:

Now, therefore, for and in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and NSP, intending to be legally bound, agree to amend the PPA as follows:

1. The definition of "Environmental Contamination" is hereby amended to insert the word "Site" into Clause (ii) between the phrase "local laws and regulations that the" and "will not be available or usable." Such definition shall now read as follows: "Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, and/or of such form or character, as to (i) constitute a violation of federal, state or local laws or regulations, and (ii) present a material risk under federal, state, or local laws and regulations that the Site will not be available or usable for the purposes contemplated by this Agreement "
2. The first sentence of Section 5.3(C) is hereby amended to delete the following phrase: "(if so requested by NSP)". Such sentence shall now read as follows: "Seller may elect to install and maintain, at its own expense, backup revenue-grade metering devices and, if Seller installs Expanded Capacity, Seller shall install and maintain, at its own expense, appropriate revenue-grade submetering devices for the Mankato Facility (either, "Seller's Back-Up Metering") in addition to the NSP Metering."
3. The last sentence of Section 8.2(A) is hereby amended to replace the acronym "RAF" with "RRAF". Such sentence, excluding the formula, shall now read as follows: "The Ramp Rate used to determine RRAF shall be calculated by the following formula:"

PUBLIC DOCUMENT
TRADE SECRET DATA EXCISED

4. Clause (iv) of the second paragraph of Section 8.6 is hereby amended to delete the example calculation in its entirety and to substitute therefor the following:

[

]

TRADE
SECRET DATA
EXCISED

5. Section 19.1(C) is hereby amended to delete the Section in its entirety and to substitute therefore the following:

"NSP may assign this Agreement at any time to an Affiliate of NSP, *provided* that NSP first gives notice of such assignment to the MPUC with copy to Seller."

6. Paragraph 1.B of Exhibit A is hereby amended to delete the Paragraph in its entirety and to substitute therefore the following:

"A minimum regulating range of forty percent (40%) of the Net Capability in automatic load regulation capacity;"

The Parties hereby stipulate and agree that the PPA remains in full force and effect in accordance with their terms, except as amended hereby.

EXECUTED in multiple counterpart originals as of the date first set forth above.

[Remainder of this page intentionally left blank]
[Signatures begin on next page]

Seller:

Mankato Energy Center, LLC

By: 

James J. Shield, Senior Vice President

NSP:

Northern States Power Company

By: 

Paul J. Bonavia, Vice President

Approved as to form



POWER PURCHASE AGREEMENT

BETWEEN

**NORTHERN STATES POWER COMPANY, A MINNESOTA
CORPORATION
("COMPANY")**

AND

**MANKATO ENERGY CENTER II, LLC, A DELAWARE
LIMITED LIABILITY COMPANY
("SELLER")**



- April 28, 2015 -

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**Power Purchase Agreement,
between
MANKATO ENERGY CENTER II, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
AND
NORTHERN STATES POWER COMPANY, A MINNESOTA
CORPORATION**

This Power Purchase Agreement (this “PPA”) is made this 28th day of April, 2015 (the “Effective Date”), by and between (i) Northern States Power Company, a Minnesota corporation with a principal place of business at 414 Nicollet Mall, Minneapolis, Minnesota, 55401, (“Company”), (ii) Mankato Energy Center II, LLC, a Delaware limited liability company with offices at 717 Texas Avenue, Suite 1000, Houston, TX 77002 (“Seller”), and, with respect to Section 2.2 and Section 19.2 only, Mankato Energy Center, LLC, a Delaware limited liability company with offices at 717 Texas Avenue, Suite 1000, Houston, TX 77002 (“MEC I”). Company and Seller are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, Seller desires to develop, design, construct, interconnect, own, operate and maintain the Facility as defined herein; and

WHEREAS, Seller desires to sell and deliver and Company desires to accept and receive certain products and services delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

Article 1 - Rules of Interpretation

1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A-Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meanings consistent with Good Utility Practice, and (iii) be given their well known and generally accepted technical or trade meanings.

(B) The following rules of interpretation shall apply: (1) the masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA; *provided, however, that* in the event of a conflict with the terms of this PPA, the PPA shall

control; and (4) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

(C) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

1.2 Interpretation with Other Agreements.

(A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties’ rights and obligations under this PPA. Seller agrees that any applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party regardless whether such Transmission Authority is Company or an Affiliate of Company.

(B) This PPA does not provide for the supply of House Power. Seller shall contract with the Local Provider for the supply of House Power to the Facility. Seller acknowledges that obtaining House Power is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties’ rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company. To the extent allowed by Applicable Law, Seller shall obtain House Power for the Facility by self-generating and netting such self-generation from the Energy provided to Company, *provided, however, that* such netting shall not reduce Seller’s obligation to provide Contract Energy in the amounts and during the times called for by this PPA, and *provided further that*, if Applicable Law does not allow netting of House Power, Seller shall obtain House Power for the Facility exclusively from the Local Provider.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

1.4 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or

to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

Article 2 - Term and Termination

2.1 Term. This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until the Scheduled Termination Date, subject to delay or early termination as provided in this PPA. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties, and (iii) address any remedies or indemnification obligations, arising prior to termination.

2.2 Governing PPA. The Parties and MEC I agree that, notwithstanding any other provision in this PPA and the March 11, 2004 Purchased Power Agreement between Company and MEC I, as amended from time to time (the "MEC I PPA") (i) this PPA alone determines and governs the rights and obligations of the Parties and MEC I with respect to the Facility; (ii) except as expressly provided in this Section 2.2 and Section 19.2, the MEC I PPA alone determines and governs the rights and obligations of MEC I and Company with respect to the MEC I Facility; (iii) except as expressly provided in this Section 2.2 and Section 19.2, in no event shall the rights, benefits and obligations of MEC I or Company as set forth in the MEC I PPA in any way be affected, modified, curtailed, restricted or otherwise limited by this PPA and, for the avoidance of doubt, in no event shall any action or failure to act by MEC I that (A) is otherwise in compliance with the MEC I PPA and (B) proximately causes Seller not to be in compliance with this PPA, be construed as an Event of Default of Seller under this PPA; and (iv) in no event shall the rights, benefits and obligations of Seller or Company as set forth in this PPA in any way be affected, modified, curtailed, restricted or otherwise limited by the MEC I PPA, and, for the avoidance of doubt, in no event shall any action or failure to act by Seller that (A) is otherwise in compliance with this PPA and (B) proximately causes MEC I not to be in compliance with the MEC I PPA, be construed as an event of default or the equivalent thereof under the MEC I PPA. The Parties and MEC I further agree that upon execution of this PPA (i) any terms and conditions in the MEC I PPA referring to or regarding the Facility shall be null and void and have no effect on this PPA and (ii) except as expressly provided in this Section 2.2 and Section 19.2 any terms and conditions in this PPA referring to or regarding the MEC I Facility shall be null and void and have no effect on the MEC I PPA. To the extent reasonably practicable, the Parties and MEC I shall interpret the MEC I PPA and this PPA harmoniously.

2.3 Delay. Company may, at its option, delay the COD of the Facility to June 1, 2019 (the "Delay Period") upon delivery of Notice of such delay to Seller on or before January 1, 2016 (the "Delay Option"). Company shall reimburse Seller for Demobilization Costs and Re-mobilization Costs incurred by Seller to accommodate Company's exercise of the Delay Option under this Section 2.3. The Parties shall revise Exhibit B-Construction Milestones to this PPA to extend the Commercial

Operation Milestone and other Construction Milestones to reflect the impacts of any delay of the COD of the Facility pursuant to this Section 2.3.

(A) Subject to the maximum capped cost of **[Trade Secret Data Begins... ...Trade Secret Data Ends]** Demobilization Costs shall, subject to audit, include such activities and costs for disassembly, removal, transportation, storage or protection of equipment and supplies (and applicable labor of personnel associated therewith) which were delivered to the Facility Site in furtherance of and in performance of this PPA and which are not required for PPA performance during the Delay Period and/or which are required to be protected during the Delay Period.

(B) Subject to the maximum capped cost of **[Trade Secret Data Begins... ...Trade Secret Data Ends]** Remobilization Costs shall, subject to audit, include such activities and associated costs for transportation of equipment and supplies (and applicable labor of personnel associated therewith) to the Facility Site which were earlier contractually required to be on the Facility site but which were suspended as a direct result of Company's exercise of the Delay Option and for which Seller has incurred costs. Remobilization Costs may also include related job site costs and equipment standby costs.

2.4 Early Termination. Company has an option to terminate this PPA for its convenience ("Early Termination") by providing Notice to Seller on or before January 1, 2016; *provided, however, that* in the event Company elects to delay the deadline for State Regulatory Approval as provided in Section 6.1(B), Company may provide the Notice of Early Termination to Seller on or before **[Trade Secret Data Begins... ...Trade Secret Data Ends]**.

(A) Subject to Section 2.6, Company shall pay to Seller the maximum capped sum of **[Trade Secret Data Begins... ...Trade Secret Data Ends]** which shall constitute Seller's Unrecovered Costs for Early Termination, no later than sixty (60) Days after receipt of Seller's invoice for such costs. Said payment of Seller's Unrecovered Costs shall constitute full and complete compensation to Seller for (without duplication of any items): (i) work performed and expenses sustained in furtherance of and in support of this PPA, in accordance with the PPA, prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work and expenses; (ii) all claims, costs, losses, and damages (including but not limited to all fees and charges of material and equipment suppliers, engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with contractors, subcontractors, suppliers, consultants, and others; and (iii) reasonable expenses directly attributable to termination.

(B) Company shall also pay to Seller a Breakage Fee **[Trade Secret Data Begins... ...Trade Secret Data Ends]** for Early Termination, which Company shall pay no later than sixty (60) Days after receipt of Seller's invoice for such fee. Payment of the Breakage Fee shall constitute full and complete

compensation to Seller (without duplication of any items) on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

2.5 Limited Liability for Costs for Delay and Early Termination. The Parties agree that the amounts to be paid by Company to Seller for the exercise of the Delay Option or Early Termination by Company shall constitute compensation in full for such delay or termination, as applicable, including labor, equipment and materials attributable to Seller's contractors, subcontractors and suppliers, for all costs, damages, charges, and fees of whatever kind and nature directly or indirectly attributable to the exercise of the Delay Option or Early Termination. Markups (including without limitation overhead, general and administrative and profit) of Seller shall not be compensated by the Company for any delay in COD due to the exercise by Company of the Delay Option. Company will not be liable for costs which Seller could have avoided by Commercially Reasonable means, such as Commercially Reasonable handling of labor/personnel, materials, or equipment. Subject to Company's payment to Seller of any undisputed amounts due under Sections 2.3, 2.4, and 2.6, Seller shall indemnify and hold Company harmless from any demands, claims, costs and fees, including counsel fees, associated with mechanic's liens, stop notices, bonds, claims, and lawsuits and any other actions from Seller's contractors, subcontractors, consultants, and suppliers relating to the exercise by Company of the Delay Option or Early Termination; *provided, however, that* Company shall be released and held harmless from all such claims and actions before Company pays Seller.

2.6 Audit. Upon notice, Company shall have the right to audit at its own expense Seller's documentation of Demobilization Costs, Re-mobilization Costs, and Unrecovered Costs for Early Termination invoiced to Company as provided in Section 2.3 and Section 2.4 prior to payment by Company. Seller shall provide cooperation reasonably requested by Company in connection with any such audit. Company shall complete such audit within four (4) months following delivery of Company's notice of audit to Seller. Any resulting dispute shall be subject to Sections 9.3 and 13.1 of this PPA.

Article 3 - Facility Description

3.1 Description. Seller shall construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C-Facility Description, One-Line Diagram, And Site Map. A scaled map that identifies the Site, the location of the Facility, Interconnection Point, Interconnection Facilities, the Point of Delivery, the Fuel Delivery Point, and other important facilities, is included in Exhibit C-Facility Description, One-Line Diagram, And Site Map.

3.2 General Design of the Facility.

(A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement.

(B) The Facility shall include all equipment necessary to successfully interconnect with the Transmission Authority's System for the delivery of the Facility's output to the Point of Delivery.

(C) The Facility shall include all equipment and telecommunications capabilities necessary to communicate with Company's SCADA System.

(D) The Facility shall include all equipment specified in Exhibit C-Facility Description, One-Line Diagram, And Site Map or otherwise necessary to fulfill Seller's obligations under this PPA.

Article 4 - Implementation

4.1 Project Development.

(A) Seller represents and warrants that: (i) Seller has provided to Company copies of all environmental assessments performed for the Site by or on behalf of Seller or any of its Affiliates ("Environmental Assessments"), including the Wenck Environmental Assessments; (ii) Seller has no knowledge of any Environmental Contamination at the Site that is not disclosed in such Environmental Assessments; and (iii) the Site remains appropriate for its intended use by Seller. Seller shall provide Company with all future Environmental Assessments relating to or affecting the Facility or Facility Property, and Seller shall promptly inform Company if, due to any Environmental Contamination, Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) to allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of any backup data associated with the Environmental Assessments. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or Site is promptly remediated. Seller shall promptly disclose to Company the presence of any such Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

(B) Seller shall at its own expense enter the Construction Contract and all other major contracts necessary for the development, construction, operation of the Facility and delivery of products and services contemplated hereunder from the Facility with qualified and experienced contractors.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit quarterly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; and (ii) provide copies of reports

submitted to the Facility Lender relating to status, progress and development of the Facility.

(D) Upon request, Company shall have the right to monitor at the Site the construction, start-up, testing, and operation of the Facility for compliance with this PPA, *provided, however, that* Company shall comply with all of Seller's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections of or as endorsing the design thereof nor as any express or implied warranties relating to performance, safety, durability, or reliability of the Facility.

(E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company informed as to the status of its permitting efforts. Seller shall promptly inform Company of any Permits that Seller is unable to obtain or that are delayed, limited, suspended, terminated or otherwise constrained in a way, that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent such circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Seller shall provide Company copies of its Permit applications and Permits as such applications are filed and such Permits are received by Seller.

(F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection, which notification, in the case of any impromptu inspection, shall include a description of the nature and outcome of such impromptu inspection.

4.2 Commercial Operation. Subject to any extension as authorized in this PPA, the Facility shall achieve Commercial Operation no later than the Day after the Commercial Operation Milestone; *provided, however, that* Seller shall not be obligated to establish a Commercial Operation Date that is earlier than the Day after the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is earlier than the Day after the Commercial Operation Milestone.

4.3 COD Conditions. Subject to Section 10.6, Seller shall provide Company a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have up to 10 Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions, *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period. At Seller's option, Seller may provide Notice of completion of the COD Conditions on an

individual and/or incremental basis, including (i) by providing more than one (1) written confirmation from an officer of Seller as required under Section 4.3(A) so as to allow Seller to confirm completion of a subset of such items and/or (ii) pending resolution of any objections, *provided, however, that* Company shall in all cases have up to 10 Business Days to review and object to each Notice. The COD Conditions are:

(A) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all Material Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects; (3) the Facility is available to commence normal operations; (4) Seller is obligated under and in material compliance with the Interconnection Agreement, (5) all conditions of the Interconnection Agreement to obtain either NRIS or ERIS as applicable to the Seller have been completed; (6) all Network Upgrades required for NITS have been completed; (7) the Facility is fully interconnected to the Transmission Authority's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (8) Seller has completed any testing of the Facility and Interconnection Facilities required by the Interconnection Agreement; (9) Seller has met all Transmission Authority requirements for the Facility to be qualified as a Capacity Resource for the Planning Year of COD; (10) Seller has made all other arrangements necessary to deliver the output of the Facility to the Point of Delivery; (11) Seller has demonstrated (i) the reliability of the Facility's communications systems and communication interface with Company's Energy Markets Control Center ("EMCC") and the Facility is capable of receiving and reacting to signals from Company's SCADA System, and (ii) all Automatic Generation Control ("AGC") equipment is installed and operational; (12) the Facility has achieved three Successful Starts in combined cycle configuration without experiencing any abnormal operating conditions; (13) the Facility has generated in each possible combined-cycle operating configuration of the Facility while synchronized to Transmission Authority's System at full capacity without experiencing any abnormal operating conditions; (14) the Facility has generated continuously for a period of not less than 16 hours while synchronized to Transmission Authority's System at a net capacity output, adjusted to Reference Conditions, of at least 90% of the Net Capability without experiencing any abnormal operating conditions; (15) the Facility has demonstrated initial dispatchability capability, operational compliance capability, and verification of ramp range and ramp rate pursuant to Exhibit H-Operating Standards; (16) all natural gas interconnection and metering arrangements necessary to operate the Facility in compliance with this PPA have been completed, tested and are in effect; and (17) Seller has provided to Company copies of all Environmental Assessments performed for the Site by or on behalf of Seller or any of its Affiliates; and

(B) Seller has provided Company an independent registered professional engineer's certification that the Facility has been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose; and

(C) Seller has provided written confirmation that it has the right and access to use all the electric generating facilities and associated balance of plant, parts, equipment, and property necessary to operate and maintain the Facility in accordance with the terms of this PPA.

4.4 Test Energy.

(A) Pre-COD Test Energy. Seller shall be responsible for providing the necessary information to, and making all arrangements with, the Transmission Authority and any third parties to the extent required in advance and for the purposes of generating any pre-COD Test Energy, including, as applicable, the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, to allow the Facility to be registered in such model sufficiently in advance of generating any pre-COD Test Energy in accordance with the Transmission Authority's requirements.

1. Prior to the COD, Seller shall coordinate with Company the production and delivery of any Test Energy, and any other energy produced by the Facility that Company is required to purchase pursuant to Section 4.4(A)4, with not less than six (6) Days Notice to Company, subject to any changes as Seller may reasonably request no later than 24 hours prior to such production and delivery or as required by Good Utility Practices. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Company shall pay the Test Energy Rate for all Test Energy delivered prior to COD and energy Company is required to purchase pursuant to Section 4.4(A)4.

2. Seller shall reimburse Company for the cost of fuel used for such Test Energy, which shall be calculated as the volume of natural gas consumed to generate the Test Energy multiplied by the Daily Gas Cost.

3. Company shall pay Seller for Test Energy at the Test Energy Rate. Company shall have no obligation to make any other payments to Seller pursuant to Article 8 in connection with the purchase of such Test Energy.

4. Prior to the Delivery and Supply Commencement Notice Effective Date under Section 10.6(B), Seller shall have the right to sell energy and/or capacity from the Facility to third parties; *provided, however, that* Company shall not provide fuel for such sales; *and provided further that* such sales do not adversely affect, modify, curtail, restrict or otherwise limit the availability or operation of the MEC I Facility pursuant to the MEC I PPA. For avoidance of doubt, Seller shall not have the right to sell energy or capacity from the Facility to third parties on or after the Delivery and Supply Commencement Notice Effective Date. After the Delivery and Supply Commencement Notice Effective Date but prior to COD, Company shall purchase all energy produced by the Facility and delivered to the Company at the Point of Delivery.

(B) Post-COD Test Energy. After COD, to the extent practicable, Seller shall conduct all necessary testing of the Facility when Company is otherwise dispatching the Facility and post-COD Test Energy generated and delivered during such tests shall be treated as Contract Energy for all purposes. If Seller must conduct tests when the Facility would not otherwise be dispatched: (i) Company shall pay to Seller the Test Energy Rate; (ii) any restrictions in the amount of available Contract Capacity due to such testing shall be reflected in the monthly Capacity Payment specified in Section 8.1; and (iii) Seller shall reimburse Company for the cost of fuel used for such post-COD Test Energy, which cost shall be volume of natural gas consumed to generate the Test Energy multiplied by the Daily Gas Cost.

Article 5 - Delivery

5.1 Electric Delivery Arrangements.

(A) Seller shall be responsible for making, maintaining, and paying all costs associated with the interconnection of the Facility to the Transmission Authority's System. Company shall reimburse Seller for Seller's Reimbursable Transmission Costs. Upon the Parties' concurrence that Seller has met the requirements of Section 4.3, Seller shall provide an invoice to Company with appropriate detailed support that documents Seller's Reimbursable Transmission Costs. Notwithstanding anything to the contrary in this PPA, Company shall reimburse Seller for Seller's Reimbursable Transmission Costs within thirty (30) days from receipt of invoice. Seller shall comply with the Transmission Authority's requirements for the interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. The Point of Delivery shall be located in what the Transmission Authority currently designates as Local Resource Zone 1.

1. Seller shall obtain either (i) NRIS or (ii) ERIS. In the event Seller interconnects as an ERIS and without limiting Company's obligation to reimburse Seller for Seller's Reimbursable Transmission Costs, Seller shall be responsible for paying Company for any Network Upgrades costs associated with the Company obtaining firm Network Integration Transmission Service ("NITS") from the Point of Delivery to Company load and Company shall reimburse Seller for any such costs to the extent not already included in Seller's Reimbursable Transmission Costs within thirty (30) days of receipt of an invoice with appropriate detailed support. For either NRIS or ERIS all conditions of the Interconnection Agreement and any identified Network Upgrades associated with NITS must be satisfied by the Commercial Operation Date and the generation output must qualify as a Capacity Resource.

(B) Seller authorizes Company to contact and obtain information concerning the Facility and Interconnection Facilities directly from any applicable Transmission Authority and, upon request, Seller shall confirm such authorization in writing to such Transmission Authority or any applicable transmission owners in such form as requested by Company or the Transmission Authority.

(C) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm transmission service basis, the output from the Facility to the Point of Delivery.

(D) Company shall be responsible for delivering the Facility's output beyond the Point of Delivery. If at any time during the Term, the entity owning the transmission facilities at the Point of Delivery changes or the facilities at the Point of Delivery cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible cost to Company and Seller.

5.2 Electric Metering Devices.

(A) All Electric Metering Devices used to measure energy from the Facility shall be provided by Company to Seller for installation and owned and maintained by Company in accordance with the Interconnection Agreement.

1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided, however, that* the Operating Committee may revise this loss adjustment based on actual experience.

2. Company shall provide Seller the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), *provided, however, that* the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other Party. The actual cost of any retest shall be borne by the Party requesting the test, unless, upon such retest, Back-Up Metering is inaccurate by more than one percent, in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If an Electric Metering Device or Back-Up Metering, fails to register, or if the measurement is inaccurate by more than one percent, an adjustment shall be made correcting all measurements as follows:

1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, *provided, however, that* Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also

found to be inaccurate by more than one percent, the Parties shall use the best available information for the period of inaccuracy, adjusted as agreed by the Parties for losses to the Point of Delivery.

2. If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) 180 Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

3. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Company for this period from such re-computed amount. The net difference shall be reflected as an adjustment on the next regular bill in accordance with Article 9.

5.3 Fuel.

(A) All fuel for the Facility from and after the COD shall be procured and paid for by Company and shall be delivered to the Facility pursuant to this Section at a pressure not less than 550 psig at the Fuel Delivery Point. Title to the fuel shall be retained by Company at and from the Fuel Delivery Point to the burner tips of the Facility. As between the Parties, however, Seller shall be deemed to be in exclusive control and possession of all such fuel after the Fuel Delivery Point and Seller shall bear the risk of loss of any fuel after the Fuel Delivery Point and shall only be responsible for any costs, damages, fines or penalties associated with leaks, spills, remediation, or other causes associated with such fuel after the Fuel Delivery Point

(B) Seller shall accept delivery of all Acceptable Natural Gas Fuel delivered to the Fuel Delivery Point for the purpose of generating the Contract Energy from the Facility dispatched by Company to the full extent the Contract Capacity from the Facility is available to be dispatched. Seller shall not be obligated to accept natural gas fuel delivery to the extent Seller reasonably determines it does not materially conform to the specifications for Acceptable Natural Gas Fuel as set forth in Exhibit K-Fuel Quality Specifications, and that such nonconformance could reasonably be expected to have a Material Adverse Effect on the Facility ("Nonconforming Gas").

1. In the event that the Upstream Pipeline delivers Nonconforming Gas, Seller may refuse to consume such gas and cease delivering Contract Energy for the period of time that such natural gas fuel constitutes Nonconforming Gas. Seller shall promptly notify Company and the Upstream Pipeline of such Nonconforming Gas and the basis for its determination. The Parties shall cooperate to promptly identify and share any relevant information to determine the cause(s) for the delivery of the Nonconforming Gas and to enforce any available

remedies against the Upstream Pipeline or other third parties arising out of the delivery of such Nonconforming Gas.

2. In the event the Upstream Pipeline proposes to change its tariff specifications and requirements such that the fuel available for delivery constitutes Nonconforming Gas, Seller shall cooperate with Company to resist such changes and shall cooperate with Company to enforce all available remedies against the Upstream Pipeline or other third parties regarding such proposed change. In the event that the Upstream Pipeline successfully revises its tariff specifications and requirements for natural gas fuel such that the fuel available for delivery constitutes Nonconforming Gas: (i) at Company's request and expense, Seller shall modify the Facility or other equipment to allow the Facility to utilize such Nonconforming Gas, *provided, however, that* such modification is not required if it would void the manufacturer's warranty for such equipment then in effect or would have a Material Adverse Effect on the operation of such equipment, or (ii) at Company's request and expense, Seller shall construct and operate an appropriate natural gas conditioning facility at a reasonably convenient location, to condition the natural gas fuel to satisfy the requirements for Acceptable Natural Gas Fuel.

(C) As between the Parties, Seller shall be solely responsible for all natural gas interconnection, transportation, delivery and metering arrangements, and all associated costs, required to receive natural gas fuel at the Fuel Delivery Point to operate the Facility. Seller shall, at its sole expense, construct or cause to be constructed and, to the extent necessary, operate and maintain the Natural Gas Interconnection Facilities, natural gas metering facilities, any natural gas compression, regulation, heating and filter/separation equipment, and all other necessary equipment, of sufficient size and specifications to receive natural gas deliveries at the Fuel Delivery Point sufficient for the full operation of the Facility over the Term.

1. Seller shall separately meter and supply, at Seller's expense, the natural gas fuel consumed by the auxiliary boiler that will be used for both MEC I Facility and the Facility. Seller shall pay Company an amount equal to the applicable volume of fuel multiplied by the Daily Gas Cost.

2. Company may elect at Company's sole option whether to obtain and utilize firm gas transportation service or non-firm gas transportation service for the delivery of natural gas fuel to Seller at the Fuel Delivery Point.

3. Company may elect at Company's sole option to interconnect the Facility with one or more additional natural gas delivery systems at or near the Fuel Delivery Point identified in Exhibit C-Facility Description, One-Line Diagram, And Site Map and to designate such an additional interconnection as an additional Fuel Delivery Point, *provided, however, that* (i) Company shall be responsible for installing and paying for all natural gas interconnection and metering facilities required to establish such additional interconnection; (ii) such additional interconnection will not interfere with the operation of the Facility, other than during the time necessary to physically connect the additional interconnecting facilities; and (iii)

such additional interconnection will deliver natural gas fuel that provides the equivalent of Acceptable Natural Gas Fuel to the Fuel Delivery Point. Seller shall, with respect to any real property interests of Seller or its Affiliates, grant, or cause any such Affiliate to grant, Company or its designee an easement and access to the location of the Fuel Delivery Point for the purpose of constructing and maintaining any additional natural gas interconnection and metering facilities.

4. Company shall be responsible for all volume confirmations, allocations and balancing functions with the Upstream Pipeline. Seller shall be responsible for gas regulation and maintenance and testing arrangements for all natural gas metering from the Fuel Delivery Point. Seller shall also be responsible for all natural gas physical flow activities, such as flow control, valve operation, and contacting the delivering pipeline to initiate gas flow from the Fuel Delivery Point.

5. All natural gas custody transfer metering at the Fuel Delivery Point shall be installed, maintained and tested in accordance with accepted natural gas industry standards and shall comply with the Upstream Pipeline's tariff requirements. Seller shall provide written meter test results to Company within 30 days following completion. Company shall have the right to require additional tests, *provided, however, that* Company pays for the cost of such additional tests. Seller shall provide Company with at least 10 Business Days advance notice of such tests and a representative of Company shall be permitted to witness such tests, *provided, however, that* such Company representative shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Seller shall provide copies of all test data and testing reports to Company. If requested by Company in writing, Seller shall install (at Company's cost) check metering, in connection with the natural gas custody transfer metering, downstream from the Fuel Delivery Point. Disputes regarding the allocation of natural gas volumes and associated billings with the Upstream Pipeline, including meter reading adjustments for prior periods, shall be resolved in accordance with the Upstream Pipeline's tariff.

Article 6 - Conditions Precedent

6.1 Company CPs.

(A) No later than 15 Business Days after execution of this PPA, Company may make written request for State Regulatory Approval. If Company fails to apply for State Regulatory Approval within 15 Business Days following execution of this PPA, Company shall be deemed to have waived its right to seek such approval under this Section and, subject to the other terms and conditions of this PPA, this PPA shall remain in full force and effect thereafter.

(B) In the event that Company applies for State Regulatory Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by Notice to Seller not more than 10 Business Days after the earlier of: (i) receipt of any written order from a State

Regulatory Agency rejecting State Regulatory Approval or granting such approval with conditions reasonably and materially unsatisfactory to Company; or (ii) May 15, 2015, in the event Company has not received State Regulatory Approval as of such date; *provided, however, that* if Company has not received State Regulatory Approval by May 15, 2015, Company may provide Seller Notice within 48 hours after said date that it is electing to wait until August 17, 2015 for such approval and Seller shall then have the right to delay the COD from June 1, 2018 to June 1, 2019 at no cost to Company, notwithstanding anything to the contrary in Section 2.3, and Seller shall notify Company in writing on or before August 20, 2015 whether Seller has chosen to delay COD to June 1, 2019; and, *provided that*, in the event Company advises Seller at any time prior to August 17, 2015 that Company has received State Regulatory Approval or waives its right of termination of the PPA under this provision Seller shall then provide Company written notice within five (5) Business Days of being so advised whether Seller has chosen to delay COD to June 1, 2019; and, *provided further that*, the Parties shall revise Exhibit B-Construction Milestones to this PPA to extend the Commercial Operation Milestone and other Construction Milestones to reflect the impacts of such delay of the COD of the Facility. If Company fails to terminate this PPA in the time allowed by this paragraph, Company shall be deemed to have waived its right to terminate this PPA under this Section and, subject to the other terms and conditions of this PPA, this PPA shall remain in full force and effect thereafter.

6.2 Seller CPs. Either Party shall have the right to terminate this PPA, without any further financial or other obligation to the other as a result of such termination, by Notice to the other Party within 14 Business Days following the failure of Seller to satisfy any of the Seller CPs by the required deadline date in the table below. In the event that COD is delayed pursuant to Sections 2.3 or 6.1(B), the Parties shall revise the deadline dates in the table below to reflect the impacts of such delay of the COD of the Facility. If neither Party terminates this PPA in the time allowed by this Section, the Seller CPs shall be deemed to have been waived and, subject to the other terms and conditions of this PPA, this PPA shall remain in full force and effect thereafter.

Condition Precedent	Deadline Date
Seller has obtained the Air Permit, which Permit does not contain conditions reasonably and materially unsatisfactory to Seller.	September 1, 2016
Seller has obtained the Site Permit, which Permit does not contain conditions reasonably and materially unsatisfactory to Seller.	June 1, 2016
Transmission Owner, Transmission Authority and Seller have entered into the Interconnection Agreement.	June 1, 2016
Approval of this PPA, in the form submitted by Company to the MPUC for approval, by the board of directors	April 15, 2015

of Calpine Corporation.	
Approval of this PPA by the board of directors of Calpine Corporation in the event any conditions are added or modifications are made to this PPA after its submittal to the MPUC for approval	Thirty (30) Days after issuance of any order requiring such additional conditions or modifications

Article 7 - Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase from Seller at the Point of Delivery, the products and services required by this PPA. Seller shall not curtail or interrupt deliveries from the Facility required by this PPA for economic reasons of any type whatsoever.

(B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.

7.2 Capacity and Energy.

(A) Contract Capacity shall be the net generating capacity available at any time from the Facility.

(B) Contract Energy shall be the metered, net energy output generated by the Contract Capacity as delivered and adjusted for losses to the Point of Delivery, which shall include Test Energy produced when the Facility is otherwise dispatched by Company as provided in Section 4.4(B).

7.3 Alternate Generation Sources.

(A) If after the Commercial Operation Date more than 50 MW of the Facility is unavailable due to a Forced Outage, Seller may upon Notice use alternate generating units and /or systems ("Alternate Generation Source(s)") to provide Contract Energy to Company in accordance with this Section 7.3. Unless otherwise mutually agreed to by the Parties, Seller shall not use an Alternate Generating Source once such Forced Outage is remedied or less than 50 MW of Facility is unavailable.

1. Delivery of Contract Energy from an Alternate Generation Source must be made to either NSP.NSP or NSP.MEC ("Alternate Delivery Point(s)"). The Alternate Generation Source(s) designated by Seller shall: (i) not, in the aggregate, exceed the Nameplate Capacity of the Facility; (ii) not be subject to or limited by any operating restrictions imposed by any Governmental Authorities that would prohibit its use for the purposes hereof; and (iii) be available to be scheduled by Company.

(B) General Alternate Generation Source Provisions.

1. Notice for Contract Energy from an Alternate Generation Source must be provided no later than two (2) hours before each applicable daily submission deadline for the Transmission Authority's Day-Ahead Market. Such Notice from Seller shall include (i) a description of the Forced Outage, (ii) the amount and Alternate Delivery Point(s) of the Contract Energy deliverable from each Alternate Generation Source, and (iii) the period(s) during which such Contract Energy will be provided.

2. Company shall submit to Seller schedules for hourly deliveries of Contract Energy from Alternate Generation Source(s) ("Day-Ahead Bilateral Financial Schedule") no later than one (1) hour after the Transmission Authority posts the next-day nodal Locational Marginal Pricing.

3. Company's submittal and Seller's confirmation of a Day-Ahead Bilateral Financial Schedule shall be deemed to be delivered energy at the designated Alternate Delivery Points.

4. Company shall settle with the Transmission Authority pursuant to the Day-Ahead Bilateral Financial Schedule.

5. Seller shall be responsible for any Transmission Authority charges associated with deliveries of Contract Energy from the Alternate Generation Source(s) to the Alternate Delivery Point(s).

6. Company shall make the following payments to Seller with respect to Contract Energy from Alternate Generation Source(s): (i) payment for Contract Energy from Alternate Generating Sources(s) calculated as (Contract Energy x Tolling Price x Inflation Factor; and (ii) a Scheduling Charge for each schedule of an Alternate Generation Source that would qualify for a Turbine Start Payment if the schedule were for the Facility; and (iii) Company shall pay the sum of Seller's fuel costs associated with Contract Energy from Alternate Generation Source(s), where "Seller's fuel costs" for any Day shall equal the product of (a) the Daily Gas Cost for that Day, multiplied by (b) the quantity of Contract Energy from Alternate Generation Source(s) that is scheduled by Company and delivered by Seller to Company at the Alternate Delivery Point(s) on that Day, multiplied by (c) the most recent Actual Net Heat Rate for the Facility.

7. Seller shall have no obligation to cause or seek to cause any Alternate Generation Source to be subject to AGC, nor shall the Company be obligated to make payments for AGC service for any Alternate Generation Source deliveries. An Alternate Generation Source may be owned or controlled by Company or an Affiliate of Company or Seller or an Affiliate of Seller; *provided, however, that* the Alternate Generation Source may not be the MEC I Facility while subject to a power purchase agreement with the Company.

8. With respect to Alternate Generation Sources, the Company shall only pay for such costs and charges as expressly provided in this Section 7.3.

7.4 Dispatch.

(A) Company's EMCC shall have the right to determine the AGC control of the Facility, starts, shutdowns, ramping, and loading levels associated with the Contract Capacity and Contract Energy from the Facility, all in accordance with Good Utility Practices and the Facility operational information in Exhibit N-Facility Operational Information. Company shall not dispatch any portion of the Facility below Minimum Loading. For any Facility trip, Seller shall restart the Facility in coordination with the EMCC in accordance with Good Utility Practices.

(B) If Seller initiates a turbine start in response to a request by the Company, but fails to satisfy the requirements for a Successful Start as a result of: (i) the cancellation of the turbine start by Company within the applicable time period permitted for a Successful Start, (ii) a request from Company, within one hour from Facility start, to shut down the Facility, or (iii) a Company or Company system performance failure, then the initiated turbine start shall nevertheless qualify as a Successful Start. Seller shall not be credited a Successful Start following a turbine trip where Company directs the Seller to restart the Facility after it has tripped out of service even if the restart would otherwise meet the qualifications for a Successful Start.

(C) Each Party shall make Commercially Reasonable Efforts to avoid taking any action that would result in or materially contribute to a restriction under any Permit that would restrict or limit the delivery of any Contract Energy from the Facility.

7.5 Other Products and Services.

(A) Seller shall make available to Company all Generation Benefits and Ancillary Services associated with the Facility at no additional charge under this PPA, except for Reactive Power. Any compensation Seller receives under the Interconnection Agreement or otherwise for Generation Benefits or Ancillary Services, other than Reactive Power, associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually-agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services, other than Reactive Power, associated with the Facility and its output.

1. Seller shall use Commercially Reasonable Efforts to maximize the availability of Generation Benefits and Ancillary Services available from the Facility, *provided, however, that* Seller shall not be required to make any material capital expenditures or incur any material increased operating expenses in connection with such efforts.

2. In the event a Governmental Authority or Transmission Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services other than Reactive Power, requiring Seller to install additional equipment after the Commercial Operation Date to meet such requirements, then Seller shall install such additional equipment at Seller's expense, up to a cumulative amount equal to **[Trade Secret Data Begins...
...Trade Secret Data Ends]** during the Term. If such requirements require Seller to incur expenditures exceeding this cumulative amount during the Term, Seller and Company shall cooperate to determine and implement a mutually agreeable and Commercially Reasonable response to such requirements.

3. Seller shall be entitled to all revenue from Reactive Power associated with the Facility.

Article 8 - Payment Calculations

8.1 Capacity Payments.

(A) Capacity Testing of the Facility. For purposes of calculating Seller's Capacity Payment only, Seller shall test or cause to be tested the net generating capability of the Facility, at Seller's expense, (a) immediately prior to the Commercial Operation Date (the "Initial Capacity Test"), and (b) thereafter annually during the Term. The annual capacity test shall be conducted between January 1 and March 1 of each calendar year, unless the Facility is scheduled for a major overhaul prior to April 15 (in which case the capacity test for that year shall be conducted promptly following completion of the major overhaul).

1. For avoidance of doubt, the capacity testing requirements for calculating the Capacity Payment under this Article are not the capacity testing requirements that Seller shall complete as required by the Transmission Authority for the Facility to be accredited as a Capacity Resource pursuant to Section 10.6.

2. Upon request by Company from time to time following the Commercial Operation Date, not more frequently than twice per calendar year, Seller shall perform interim capacity testing of the Facility for purposes of calculating Seller's Capacity Payment. The Parties' out-of-pocket costs of any such interim testing requested by Company shall be borne by Company unless, upon such testing, the Net Capability of the Facility is determined to be more than one percent (1%) less than the Net Capability of the Facility determined by the capacity test next preceding the test requested by Company (in which event the Parties' out-of-pocket costs, excluding fuel costs, shall be borne by Seller).

3. Seller may perform interim capacity testing of the Facility from time to time, not more frequently than twice per calendar year (not including any re-testing necessitated by any Failed Capacity Test(s)). The Parties' out-of-pocket costs in connection with any such interim capacity testing shall be borne by Seller.

4. Seller shall set the date for the Initial Capacity Test on not less than five (5) Business Days' prior notice to Company. The Parties shall set the exact date for each subsequent capacity test to be performed under this Article 8 by mutual agreement; *provided that*, in the event that the Parties cannot agree upon a mutually acceptable testing date within ten (10) Business Days following either Party's request for a test, (a) by notice to Company, Seller shall set the date for the capacity test, which date shall be not less than four (4) weeks and not more than six (6) weeks following expiration of such 10-day period, and (b) the results of the capacity test shall be retroactively effective to the first Day of the billing period immediately preceding the billing period during which the test is conducted.

5. Notwithstanding Section 8.1(A)(4), in the event of a Failed Capacity Test, the capacity test shall be rescheduled unilaterally by Seller as soon as reasonably practicable following the Failed Capacity Test.

6. One or more representatives of Company shall be permitted to witness, record and verify all capacity testing process parameters and conditions; *provided that* any failure of Company to send a representative to witness a capacity test scheduled in accordance with this Section 8.1(A) shall not affect the validity of such test.

7. All capacity testing of the Facility will be conducted with the Facility operating at maximum design load, including full duct firing, using Acceptable Natural Gas Fuel. Testing shall be performed in accordance with mutually agreed upon test codes/procedures generally consistent with the current version of the ASME PTC 46. The test will be conducted over such period as Company may reasonably require, not to exceed four (4) hours, with operation of the unit held constant. Appropriate operational stability criteria shall be established and met. The Facility shall be operated in full compliance with all state and federal environmental regulations throughout the test, with all auxiliary equipment needed for normal operation of the Facility in service and in typical operating condition. Seller may be required to provide operational records to be used to substantiate the normal mode of operation. Seller shall provide to Company copies of all capacity testing reports.

8. For purposes of calculating the test results of the Facility, each hour of the test will be averaged and adjusted to Reference Conditions. After all adjustments have been made, the final capacity value used for purposes of determining Net Capability, as applicable, will be the average output of the hourly corrected results.

(B) Net Capability. For purposes of this PPA, the Net Capability of the Facility from time to time shall mean the lesser of (a) three hundred forty five (345) MW, or (b) the net generating capability of the Facility, as determined by the most recent capacity test thereof in accordance with Section 8.1(A), adjusted to Reference Conditions.

(C) Monthly Payments. Commencing on the Commercial Operation Date, Company shall pay to Seller in arrears a monthly capacity payment ("Capacity Payment"). All Capacity Payments shall be billed on a calendar month basis. Payments for partial calendar months shall be prorated appropriately. Capacity Payments shall be computed based upon the following formula:

Capacity Payment = NC x CP x AAQ, where:

NC = the then-current Net Capability of the applicable Facility.

CP = Capacity Price, stated in \$/kW-month, as set forth in the definitions.

AAQ = Availability Adjustment Quotient for that month, as defined in Section 8.1(D) below.

(D) Availability Definitions.

1. General. For purposes of this PPA, with respect to both On-Peak Months and Off-Peak Months:

Available The Facility is deemed "Available" if and to the extent it is capable of generating and delivering energy to Company at the applicable Point of Delivery, in response to dispatch/scheduling requests by Company, irrespective of whether such requests were actually issued.

AE Available Energy for any month or other measurement period means the amount of energy, stated in megawatt hours (MWh), Available from the Facility during that period; *provided that* regardless of actual Availability, the Facility shall be deemed to be Available during periods of (i) Excused Outage with respect to that Facility and (ii) Forced Outage with respect to the Facility when Seller provides Contract Energy pursuant to Section 7.3. AE shall be adjusted to Reference Conditions.

SME Scheduled Maintenance Energy for any month or other measurement period means the amount of energy, stated in MWh, that was not available from the Facility for dispatch and receipt by Company during the period due to outages / deratings that meet the requirements for credited Scheduled Maintenance Energy specified in Exhibit L-Maintenance Requirements. SME shall be adjusted to Reference Conditions. Seller will be eligible for SME with respect to (and only with respect to) the Facility, and only after the Commercial Operation Date.

PE Period Energy for any month or other measurement period means the product of the then-current NC and the total number of hours in the period, stated in MWh.

CAF Capacity Availability Factor for any month or other measurement period = $(AE + SME) \div PE$. CAF can never exceed 1.0.

2. On-Peak Months. For purposes of this Agreement, with respect to On-Peak Months:

MAF Monthly Availability Factor = $CAF + 0.03$.

RAF Rolling Availability Factor for any month means the rolling twelve-month average of the MAF for the On-Peak Month in question and the eleven (11) prior full On-Peak Months; *provided, however, that:*

- i. commencing as of COD and continuing through the end of the twelfth (12th) full On-Peak Month following the COD, RAF for On-Peak Months shall be calculated on a monthly basis (i.e., $RAF = MAF$ for that On-Peak Month);
- ii. beginning as of the end of the twelfth (12th) full On-Peak Month following the Commercial Operation Date, RAF shall mean the rolling twelve-month average of MAF for the On-Peak Month in question and the previous eleven (11) On-Peak Months; and
- iii. notwithstanding the foregoing, (a) during the period of any default by Seller under this PPA that affects the Availability of a Facility during an On-Peak Month, regardless of whether the default is subsequently cured or becomes an Event of Default, RAF shall be calculated on a monthly basis (i.e., $RAF = MAF$ for that period), and (b) if the default is subsequently cured, RAF following such cure shall be calculated with the MAF during the period of default assumed to equal 1.0.

AAQ Availability Adjustment Quotient for any On-Peak Month means either:

- i. $AAQ = RAF$, if $RAF \geq 1.0$, or
- ii. $AAQ = (2 \times RAF) - 1.0$, if $RAF < 1.0$ (*provided that AAQ may not be less than zero*).

3. Off-Peak Months. For purposes of this PPA, with respect to Off-Peak Months:

MAF Monthly Availability Factor = $CAF + 0.06$.

RAF Rolling Availability Factor for any month means the rolling twelve-month average of the MAF for the Off-Peak Month in question and the eleven (11) prior full Off-Peak Months; *provided, however, that:*

- i. commencing as of COD and continuing through the end of the twelfth (12th) full Off-Peak Month following the COD, RAF for Off-Peak Months shall be calculated on a monthly basis (i.e., $RAF = MAF$ for that Off-Peak Month);
- ii. beginning as of the end of the twelfth (12th) full Off-Peak Month following the COD, RAF shall mean the rolling twelve-month average of MAF for the Off-Peak Month in question and the previous eleven (11) Off-Peak Months; and
- iii. notwithstanding the foregoing, (a) during the period of any default by Seller under this PPA that affects the Availability of a Facility during an Off-Peak Month, regardless of whether the default is subsequently cured or becomes an Event of Default, RAF shall be calculated on a monthly basis (i.e., $RAF = MAF$ for that period), and (b) if the default is subsequently cured, RAF following such cure shall be calculated with the MAF during the period of default assumed to equal 1.0.

AAQ Availability Adjustment Quotient for any Off-Peak Month means either:

- i. $AAQ = 1.0$, if $RAF \geq 1.0$, or
- ii. $AAQ = (2 \times RAF) - 1.0$, if $RAF < 1.0$ (*provided that AAQ may not be less than zero*).

8.2 Payment for Dispatchability.

(A) Ramp Rate Testing. Company's EMCC shall test or cause to be tested the ramp rate of the Facility, after synchronization with the Transmission Authority's System at Company's expense, (i) before or immediately following the Commercial Operation Date, and (ii) thereafter in Company's discretion, without prior notice to Seller, periodically during the Term from time to time. At Seller's request, Company shall test the ramp rate of the Facility at Seller's expense at a mutually agreeable time no later than thirty (30) Days after Notice of such request. Company shall provide to Seller copies of all ramp rate testing reports. Ramp rates shall consist of four (4) tests: the unfired increasing ramp rate for the Base Capacity, the unfired decreasing ramp rate for the Base Capacity, the fired increasing ramp rate, and the fired decreasing ramp rate. Increasing ramp rates shall include the entire specified

ramp rate range, beginning at or below the applicable minimum load of the ramp rate range, and ending at the maximum output for the selected configuration during the hour of the test, adjusted to Reference Conditions. For the unfired ramp rate test, the maximum output shall be the Facility output when the gas turbine and steam turbine reach baseload. For the fired ramp rate test, the test shall end when the Facility output, adjusted to Reference Conditions, reaches the Net Capability during the hour of the test. The timed portion of the test used to determine the increasing ramp rate shall begin when the Facility is synchronized and its output level reaches the minimum load starting point of the specified ramp range, and shall end one (1) MW prior to achievement of the maximum load point of the ramp range. The timed portion of the test used to determine the decreasing ramp rate shall begin when the Facility output level is at the maximum load point of the ramp range and shall end one (1) MW prior to reaching the minimum load point. The Ramp Rate used to determine RRAF shall be calculated by the following formula:

Ramp Rate = $\sum (.38 \times \text{UIR}) + (.38 \times \text{UDR}) + (.12 \times \text{FIR}) + (.12 \times \text{FDR})$, where:

UIR = the measured unfired increasing ramp rate.

UDR = the measured unfired decreasing ramp rate.

FIR = the measured fired increasing ramp rate.

FDR = the measured fired decreasing ramp rate.

(B) Monthly Payments. Commencing on the Commercial Operation Date Company shall pay to Seller in arrears a monthly Dispatchability Payment. All Dispatchability Payments shall be billed on a calendar month basis; in the event that the Commercial Operation Date does not occur at the start of a calendar month, the first (1st) month's Dispatchability Payment shall be prorated to reflect the actual number of Days of Commercial Operation in such month. Dispatchability Payments shall be computed based on the following formula:

Dispatchability Payment = $\text{NC} \times \text{DAF} \times \text{RRAF} \times \text{Dispatchability Rate}$, where:

NC = the then-current Net Capability of the Facility

DAF = Dispatch Availability Factor

= a fraction, the numerator of which is the sum of all hours on-control during the month, and denominator of which is the sum of all hours on-line during the month, where:

Hours on-control = means the total time during the month when the Facility is receiving and responding (or capable of receiving and responding) to dispatch pulses transmitted from Company's EMCC; *provided, however, that* any period during which Company requests that the Facility be dispatched without AGC, and any period of Excused Outage, shall be counted as a period on-control (so that hours on-control/hours on-line = 1.0 for any such period(s)). The Facility will be

deemed not on control for any period during which any portion of the Facility is not Available to Company under Section 8.1(D).

Hours on-line = means the total time during the month when any portion of the Facility is synchronized to the Transmission Authority's System and Available, or when the Facility is not so synchronized or not Available due to an Excused Outage.

For the avoidance of doubt, Start-Up Periods and Shut-Down Periods shall be excluded from hours on-control and hours on-line for purposes of the calculation of DAF.

RRAF = Ramp Rate Availability Factor, determined by the following table:

Most Recently Tested Ramp Rate	RRAF
≥ 10 MW / minute	1.00
< 10 MW / minute; ≥ 5 MW / minute	(Actual Ramp Rate \div 5) - 1
< 5 MW / minute	0

8.3 Payment for Energy. Commencing on the Commercial Operation Date, Company shall pay to Seller in arrears a monthly Energy Payment for the Contract Energy that is dispatched/scheduled by Company and delivered by Seller to Company during the billing month. The monthly Energy Payment shall be determined by the following formula:

Energy Payment = (E x Tolling Price x Inflation Factor) - HRA, where:

E = Contract Energy, stated in MWh, that is dispatched or scheduled by Company and delivered by Seller to Company at the Point(s) of Delivery during the billing month.

HRA = Heat Rate Adjustment, determined as a dollar amount pursuant to Section 8.4.

8.4 Heat Rate Adjustment to Payments.

(A) If at any time following the Commercial Operation Date, the Actual Net Heat Rate for the Facility is more than **[Trade Secret Data Begins...**

...Trade Secret Data Ends] of the Predicted Net Heat Rate, a Heat Rate Adjustment ("HRA") determined by the following formula shall be used to reduce payments to Seller for Contract Energy delivered from the Facility, starting effective with the first (1st) full billing month following the most recent heat rate test and continuing effective through the end of the billing month during which the next heat rate test occurs:

$\underline{HRA} = \Sigma DFCC1 \times [1 - \{P \times [\textit{Trade Secret Data Begins...} \quad \dots \textit{Trade Secret Data Ends}] \div A\}]$, where:

$\Sigma DFCC1$ = Sum of all daily fuel consumption costs (DFCC1s) for that billing month.

$\underline{DFCC1}$ = Daily Fuel Consumption Cost for any Day means the sum of (i) the volume of Acceptable Natural Gas Fuel delivered to the Fuel Delivery Point to produce the Contract Energy (including any Test Energy that is economically dispatched by Company) that is dispatched by Company and delivered by Seller to Company on that Day (stated in MMBtu), multiplied by the applicable Daily Gas Cost, plus (ii) the associated demand charges incurred by Company for that Day.

\underline{P} = Predicted Net Heat Rate at the time of the most recent heat rate test.

\underline{A} = Actual Net Heat Rate for the Facility as determined from the most recent heat rate test.

(B) If at any time following the Commercial Operation Date the Actual Net Heat Rate for the Facility is less than $[\textit{Trade Secret Data Begins...} \quad \dots \textit{Trade Secret Data Ends}]$ of the Predicted Net Heat Rate, an HRA determined by the following formula shall be used to increase payments to Seller for Contract Energy delivered from the Facility, starting effective with the first (1st) full billing month following the heat rate test and continuing effective through the end of the billing month during which the next heat rate test occurs:

$\underline{HRA} = \Sigma DFCC2 \times (1 - [(P \times [\textit{Trade Secret Data Begins...} \quad \dots \textit{Trade Secret Data Ends}] \div A) \times [\textit{Trade Secret Data Begins...} \quad \dots \textit{Trade Secret Data Ends}]])$, where " $\Sigma DFCC2$ " is defined below, and "A" and "P" are as defined in Section 8.4(A):

$\Sigma DFCC2$ = Sum of all daily fuel consumption costs (DFCC2s) for that billing month.

$\underline{DFCC2}$ = (Daily Fuel Consumption Cost) for any Day means the sum of (i) the volume of Acceptable Natural Gas Fuel delivered to the Fuel Delivery Point to produce the Contract Energy (including any Test Energy that is economically dispatched by Company) that is dispatched by Company and delivered by Seller to Company on that Day (stated in MMBtu), multiplied by the applicable Daily Gas Cost, plus (ii) any demand charge savings actually realized by Company.

(C) If the Actual Net Heat Rate for the Facility is equal to or less than **[Trade Secret Data Begins...
...Trade Secret Data Ends]** of the Predicted Net Heat Rate, and is equal to or greater than **[Trade Secret Data Begins...
...Trade Secret Data Ends]** of the Predicted Net Heat Rate, the HRA for the billing month following the heat rate test until the billing month following the next heat rate test for Contract Energy delivered from the Facility, shall be deemed to be zero dollars (US\$0.00) for purposes of the payment calculations specified in Section 8.4.

8.5 Heat Rate Testing.

(A) The Actual Net Heat Rate shall be determined by heat rate testing of the Facility at the maximum design load for its combustion and steam turbine generators, including full duct firing, using Acceptable Natural Gas Fuel. For the purposes of heat rate testing and determination of the Actual Net Heat Rate, (i) fuel input shall be measured at the Fuel Delivery Point, and (ii) electric output shall be measured as provided in Section 5.2. The test will be conducted over a continuous 4-hour period, with operation of the generating unit held constant. The Facility will be operated in full compliance with all state and federal environmental regulations throughout the test, with all auxiliary equipment needed for normal operation of the Facility in service and in typical operating condition. Seller may be required to provide operational records to be used to substantiate the normal mode of operation. Testing shall be performed in accordance with the then-current ASME PTC 46. The net heat rate of the Facility so determined shall then be subject to one or two adjustments:

1. in the event that the capacity test of the Facility conducted simultaneously with the heat rate test yields (or, if no capacity test is conducted simultaneously, the capacity test most recently conducted yielded) a Net Capability for the Facility in excess of three hundred forty five (345) MW, the tested heat rate for each hour of the test shall be adjusted to the heat rate that would have been obtained had the duct firing rate during the test been limited to such rate as would have yielded a Net Capability of three hundred forty five (345) MW; and

2. following any adjustment pursuant to Section 8.5(A)(1), the tested net heat rate for each hour of the test shall be adjusted to Reference Conditions. Uncertainty, as defined in the ASME power test codes, shall not be used to adjust heat rate test results. After all adjustments have been made, the Actual Net Heat Rate shall equal the average tested net heat rate of the Facility, as adjusted, for each of the four (4) hours of the test.

(B) Seller shall perform an initial heat rate test of the Facility prior to or within thirty (30) Days following the Commercial Operation Date ("Initial HR Test"). Seller shall provide to Company at least five (5) Business Days' prior notice of, and shall permit one or more representatives of Company to witness and verify, the Initial HR Test. If the Initial HR Test is performed after the Commercial Operation Date, the Actual Net Heat Rate resulting from such Initial HR Test shall apply retroactively from the Commercial Operation Date for the purposes of determining the Heat Rate

Adjustment pursuant to Section 8.4. The heat rate test performed by or on behalf of Seller prior to the Commercial Operation Date may constitute the Initial HR Test, provided, that such test is performed in accordance with all the requirements for heat rate testing set forth in this Section 8.5. Seller shall perform the Initial HR Test at Seller's cost.

(C) Following the Commercial Operation Date, Seller shall perform an annual heat rate test of the Facility concurrently with the annual capacity testing of the Facility prescribed in Section 8.1(A). Seller shall perform the annual heat rate test of the Facility at Seller's cost.

(D) Each Party shall have the right to request and schedule an interim heat rate test of the Facility (not to exceed two interim tests per Party) on a Business Day, between annual heat rate tests, pursuant to the procedures set forth in this Section 8.5. Seller shall perform any and all interim heat rate tests. The Party requesting such test shall pay all costs thereof. The Parties shall set the exact date for each interim heat rate test by mutual agreement; *provided that*, in the event that the Parties cannot agree upon a mutually acceptable testing date within ten (10) Business Days following either Party's request for an interim heat rate test, by notice to Company, (i) Seller shall set the date for the test, which date shall be not less than four (4) weeks and not more than six (6) weeks following expiration of such 10-day period, and (ii) the results of the heat rate test shall be retroactively effective to the first Day of the billing period immediately preceding the billing period during which the test is conducted.

(E) Seller shall prepare and submit to Company for review and approval, at least sixty (60) Days prior to each heat rate test of the Facility, the proposed heat rate test procedures. Such test procedures shall include but not be limited to (i) specification of the governing test code(s), (ii) the extent, if any, to which the test code(s) will not be followed, (iii) provisions for testing, including collection of test data, (iv) operational stability criteria, and (v) methodology for calculating test results, including the planned method of adjusting the tested net heat rate to the NC and Reference Conditions. Seller shall be responsible for the full scope of heat rate testing, including but not limited to, furnishing the test instrumentation, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report. Company shall have the right to install, during the heat rate test and at Company's expense, any temporary, redundant test equipment complying with the governing test code(s), that Company deems necessary for the purpose of verifying test measurements obtained by, or on behalf of, Seller.

(F) Notwithstanding anything to the contrary in this Section 8.5, in the event of a Failed HR Test, the heat rate test shall be rescheduled unilaterally by Seller as soon as reasonably practicable following the Failed HR Test.

(G) One or more representatives of Company shall be permitted to witness, record and verify all heat testing process parameters and conditions; *provided that* any failure of Company to send a representative to witness and verify a

heat rate test scheduled in accordance with this Section 8.5 shall not affect the validity of such test.

(H) In connection with and during any heat rate test, for the sole purpose of developing a unit dispatch heat rate curve, Company may also require Seller to perform heat rate testing of the Facility, for up to thirty (30) minutes per load point after stabilization, at the Facility's Base Capacity and up to nine (9) other specified partial load points.

(I) Seller shall notify Company of any generation equipment tuning and adjustment that may impact the heat rate performance of the Facility or the accuracy of the correction curves utilized to adjust the results of the most recent heat rate test. Upon such notification, Company may require Seller to perform additional heat rate testing of the Facility and provide new correction curves that reflect the actual post-tuning condition of the Facility's equipment.

(J) Within sixty (60) Days following performance of each heat rate test of the Facility, Seller shall provide to Company for review and approval (i) all raw test data, calculations, fuel analyses and a final test report, in written and, to the extent possible, electronic format, (ii) equipment calibration specifications, and (iii) correction curves, equations, and other information necessary for review of the heat rate test results which have not been previously submitted to Company. The final test report shall include clear and complete explanations of the calculations resulting in the Actual Net Heat Rate, including the adjustment of the tested net heat rate to the NC and Reference Conditions.

8.6 Payment for Turbine Starts. Commencing on the Commercial Operation Date, Company shall pay to Seller in arrears monthly a Turbine Start Payment based upon the number of combustion turbine starts at the Facility requested by Company and successfully performed by Seller during the month, and the duration of combustion turbine operation following each such start. Each individual Turbine Start Payment ("TSP") shall be determined by the following formula:

$$\text{TSP} = (\text{Turbine Start Price} \times \text{Inflation Factor}) + ((\text{FH}-25) \times \text{Fired Hour Charge} \times \text{Inflation Factor}), \text{ where:}$$

FH = Fired hours are the greater of (i) twenty five (25), or (ii) number of continuous fired hours for the combustion turbine, following its start.

By way of example, assuming that (i) the Commercial Operation Date is June 1, 2018, (ii) inflation between June 1, 2018 and June 1, 2020 is five and two-tenths percent (5.2%), (iii) Company requests Seller to start the entire Facility or only such Facility's combustion turbine in July 2020, and (iv) following such start, the combustion turbine runs for thirty (30) continuous hours; then the TSP payable with respect to such one start would be: **[Trade Secret Data Begins...**

...Trade Secret Data Ends]. The monthly Turbine

Start Payment payable to Seller shall equal the sum of all individual turbine starts during the billing period.

For the avoidance of doubt, a combustion turbine restart at the Facility following a turbine trip not caused by an Excused Outage, all during a single continuous dispatch period scheduled by Company, shall not constitute a compensable start for purposes of this Section 8.6.

8.7 ESC Event Adjustment.

(A) In connection with each ESC Event during the Term, an adjustment in the payment due to Seller from Company shall be made for the billing period during which the ESC Event occurs ("ESC Event Adjustment"), based upon the Availability of the Facility during the ESC Event as set forth in Exhibit M-ESC Event Adjustment. The ESC Event Adjustment, if any, shall be in addition to (not in lieu of) any adjustment to the Monthly Capacity Payment based upon the Available Energy from the Facility during that billing period, pursuant to Section 8.1.

(B) The Parties shall take such steps as may be necessary from time to time to allow each of Seller and Company to receive notice of ESC Events and anticipated ESC Events.

Article 9 - Billing and Payment

9.1 Billing Invoices.

(A) The billing period shall be the calendar month with any partial months prorated appropriately.

(B) No later than thirty-eight (38) Days following the end of each billing period, Company shall (i) calculate the HRA for such billing month, and (ii) deliver to Seller, electronically, Company's calculation of the HRA together with such supporting data as will allow Seller to verify Company's calculation of the HRA for such billing period.

(C) As soon as practicable following the end of each billing period, Seller shall prepare an invoice for such billing period (a "Monthly Invoice") showing metered energy from the Facility (adjusted for losses at the Point of Delivery), all relevant billing parameters (including starts and fired hours per turbine), rates and factors, and other data reasonably pertinent to the calculation of the monthly payments and other amounts due to Seller for such billing month, and (ii) deliver the Monthly Invoice to Company electronically. All billing data based upon metered deliveries to Company shall be collected in accordance with Article 5. The Monthly Invoice for each billing period shall include the HRA for the next preceding billing period delivered to Seller by Company pursuant to Section 9.1(B), i.e., the HRA shall lag the current Monthly Invoice by one (1) month.

(D) In the event that Seller owes Company any amounts hereunder, including without limitation any indemnification payments, Company shall provide to Seller by electronic transmission an invoice showing the payment due to Company from Seller. The invoice will include any data reasonable pertinent to the calculation of the payment due to Company.

9.2 Payment.

(A) All regular monthly payments payable to Seller from Company for capacity, energy, tolling and other services after COD under Article 8 shall be due and paid by Company by electronic funds transfer, as designated by Seller from time to time, on or before the last to occur of (i) the twenty-fourth (24th) Day of the month following the end of the relevant billing period, or (ii) fifteenth (15th) Day following receipt by Company of the electronic copy of the Monthly Invoice under Section 9.1(C). Unless otherwise specified herein, all other payments under this PPA shall be due and payable by electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Day following receipt of the billing invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Day following receipt of the billing invoice.

(B) If any amount due under this PPA is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance commencing on such date and continuing until the amount is paid. The late payment charge shall be added to the next billing statement and to subsequent billing statements until the amount due is paid. Such late payment charge shall be calculated based upon a floating annual interest rate equal to the Prime Rate, as the Prime Rate may change from time to time. For purposes of this PPA, the "Prime Rate" as of any Day means the base rate on corporate loans posted by at least seventy-five percent (75%) of the nations thirty (30) largest banks for such Day, as published in the Wall Street Journal from time to time. In the event the Wall Street Journal ceases to publish the "Prime Rate," then Company and Seller shall agree as to an appropriate substitute reference that represents the base rate on corporate loans posted by major banks having one or more lending offices in New York, New York.

(C) Seller and Company shall net their undisputed payment obligations to each other under this PPA, and payment of the resulting net amount will fully discharge the netted underlying obligations between the Parties.

9.3 Billing Disputes.

(A) Either Party may dispute invoiced amounts, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed on or before the invoice due date.

(B) To resolve any billing dispute, the Parties shall use the procedures set forth in Article 13. When the billing dispute is resolved, the Party owing shall pay

the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount in accordance with the provisions of Section 9.2. Unless an invoice amount is being disputed pursuant to this Section 9.3, all invoices shall be deemed final two (2) years after the date issued and shall not be subject to dispute or audit thereafter.

Article 10 - Operations and Maintenance

10.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. Personnel shall be available at all times via telephone or other electronic means with the ability to be present at the Site within 30 minutes. Company will use Commercially Reasonable efforts to notify Seller at least twenty-four (24) hours in advance of potentially critical turbine starts, and upon such notification and during such identified critical periods, Seller shall make available on-site personnel capable of starting, operating, and stopping the Facility.

(B) Seller shall comply with the requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Exhibit H-Operating Standards, Governmental Authority, and Good Utility Practice in the operation of the Facility.

1. To the extent that a Party proximately causes monetary penalties assessed by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, that Party shall pay for all such monetary penalties so proximately caused.

2. Seller shall be responsible for providing accurate and timely updates on the current availability of the Contract Capacity to Company's EMCC ("Reported Availability"). Company shall have the right to verify at any time, without prior notice to Seller, Seller's current Reported Availability. To verify Seller's Reported Availability, Company shall dispatch the Contract Capacity to the level of Reported Availability ("Availability Verification Test"). If (i) the tested availability (rounded upward to the next whole MW) is less than **[Trade Secret Data Begins...
...Trade Secret Data Ends]** of the Reported Availability (rounded upward to the next whole MW), or (ii) such tested availability is more than five MW below the Reported Availability, such shortfall shall constitute a Deficiency. The Contract Capacity availability shall be derated by the Deficiency for the then current hour and all subsequent hours until Seller reports a revised level of available Contract Capacity. The amount of Contract Capacity available for any individual hour shall be integrated over the hour, on a prorated basis, to reflect any updates in Seller's Reported Availability made effective during such hour.

3. Company will notify Seller as soon as possible by telephone and thereafter in writing whenever an Availability Verification Test has identified a Deficiency. The occurrence of more than one Deficiency in any billing month shall result in derating the Contract Capacity availability retroactive to the

beginning of such billing month to the capacity level achieved in the most recent Availability Verification Test. Three Deficiencies in any two consecutive billing months shall result in a five percent reduction in the Capacity Price, as set forth in Section 8.1, applicable to the subsequent two billing months.

10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company. Maintenance Schedules shall comply with the requirements of Exhibit L-Maintenance Requirements ("Maintenance Schedule").

(B) Scheduled Outages/Deratings shall be coordinated between the Parties and shall be scheduled to avoid such outages during On-Peak Months.

1. Notwithstanding the foregoing, Company shall have the right to change the start date of any Scheduled Outage/Derating in a Maintenance Schedule; *provided, however, that* the changed start date must be within 45 Days, earlier or later, of the start date set forth for such outage/derating in the most recent Maintenance Schedule provided by Seller; *and provided further that*, Company shall reimburse Seller for the actual incremental direct costs incurred by Seller from third parties as a result of any such changes to the start date. Upon request, Seller shall provide Company its best estimate of the actual incremental direct costs that Seller would incur as a result of such change to the start date, broken out by type of expense and the third party to whom the expense would be owed.

2. Not less than 72 hours (with respect to major overhauls) and 12 hours (with respect to other Scheduled Outages/Deratings) prior to commencement of any Scheduled Outage/Derating, Company may request verbally or in writing, that Seller defer such Scheduled Outage/Derating. Subject to Good Utility Practice, Seller shall comply with any such request and reschedule such deferred maintenance to a subsequent date mutually agreed upon between the Parties if Company agrees to pay Seller the actual incremental direct costs incurred by Seller in such deferral or rescheduling. Seller shall provide to Company, in advance, a non-binding good faith estimate of such costs and Company shall promptly advise whether Company is willing to reimburse Seller to implement such revised schedule.

(C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one hour after the Forced Outage occurs. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of each Forced Outage.

1. Seller shall report to Company information on Facility performance during a calendar month within five Business Days after the end of the calendar month. For each turbine generator, and using definitions provided by, or consistent with, the NERC Generation Availability Data System ("GADS") Manual, or any successor document, the data reported shall include planned derated hours, unplanned derated hours, average derated kW from Net Capability during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of turbine starts, hours on-control and hours on-line and a preliminary billing invoice.

2. In addition to the foregoing notification, for any Forced Outage, shutdown, or material derating of the Facility (in each case, not otherwise attributable to any act or omission of Company), Seller shall promptly investigate the cause(s) and take corrective action to prevent reoccurrences in accordance with Good Utility Practices at Seller's cost and expense. Seller shall diligently complete such investigation, identify and implement corrective actions as soon as possible and provide to Company a written report containing a summary of the results of the investigation and the corrective action(s) taken or to be taken as soon as possible.

10.3 Books and Records.

(A) Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each clock hour; changes in operating status; Forced Outages; information required by Applicable Law, Governmental Authority, Transmission Authority, or the ERO in the prescribed format; and other information reasonably requested by Company.

(B) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by Governmental Authorities, Transmission Authority, NERC or ERO as applicable. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility or such other location as is mutually agreed to by the Parties.

(C) Each Party shall keep all books and records necessary for metering, billing and payment for a minimum of two years and shall provide the other Party Commercially Reasonable access to those records.

(D) Each Party shall be entitled to examine and audit the records, data, and other information maintained by the other Party relevant to performance or confirming performance of this PPA at any time and from time to time during the period such records, data, and information are required to be maintained, upon request, on reasonable prior notice, during normal business hours. Each Party's right to audit and examine any documents or other information under this Section shall be subject to any confidentiality obligations of the other Party to any third parties with respect to such documents or information.

10.4 Operating Committee and Operating Procedures.

(A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility. Operating Committee representatives shall be included in Exhibit D-Notices And Contact Information.

1. The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA, to address matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties.

(B) The Operating Committee shall review the requirements for AGC from time to time after the date hereof and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.

(C) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes, *provided, however, that* except to the extent explicitly provided for in this PPA, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this PPA.

10.5 Access to Facility. Appropriate representatives of Company shall have access to the Facility with Commercially Reasonable prior notice, to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA. While at the Facility, such representatives shall observe such Commercially Reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.

10.6 Accreditation.

(A) Seller shall at its own expense comply with the Transmission Authority's requirements for the Facility to be accredited as a Capacity Resource for each Commercial Operation Year under this PPA ("Transmission Authority Capacity Accreditation Requirements"), as such requirements are revised from time to time by the Transmission Authority.

(B) If on or prior to January 1 before the Planning Year of COD Seller has obtained the Full Interconnection Agreement, Seller shall deliver to Company Notice on or prior to such January 1 ("Delivery and Supply Commencement Notice") confirming Seller's commitment effective commencing such January 1 ("Delivery and Supply Commencement Notice Effective Date"), to (i) commence its capacity and energy delivery and supply obligations set forth in this PPA and (ii) adhere to the

established Commercial Operation Milestone, subject to the terms and conditions in this PPA.

(C) If Seller has provided Company with the Delivery and Supply Commencement Notice as provided in Section 10.6(B), no later than ten (10) Business Days before the Transmission Authority's deadline for accreditation of new generation for the Planning Year of COD ("Accreditation Deadline"), Seller shall provide Company Notice that it has completed and reported to the Transmission Authority the capacity testing results necessary for the Facility to be accredited by the Transmission Authority as a Capacity Resource ("Necessary Accredited Capacity Testing Results").

1. Subject to this Section 10.6(C)1 and Section 10.6(C)4, Seller's failure to provide the Necessary Accredited Capacity Testing Results to the Transmission Authority by the Accreditation Deadline shall be an Event of Default ("Failure to Meet Accreditation Deadline") notwithstanding anything to the contrary in Articles 12 and 14 of this PPA, which Seller shall be required to cure by paying Company the Auction Clearing Price for the amount of accredited capacity for the Planning Year of COD that Seller failed to obtain as a result of such failure to meet the Accreditation Deadline, which shall be paid within fifteen (15) Days of receipt of Company's invoice therefor. Upon Seller paying the Auction Clearing Price to Company as specified in this Section 10.6(C)1, the Failure to Meet Accreditation Deadline is cured and Seller shall not be liable to Company for any of the remedies under Article 12 associated with the Events of Default under Sections 12.1(H) or 12.1(K). Seller shall not sell any of the unaccredited capacity of the Facility in any Commercial Operation Year that Seller fails to obtain the Transmission Authority's re-accreditation of the Facility as a Capacity Resource.

2. Seller shall also provide Company on a monthly basis the amount of Contract Energy that Seller would have provided Company under this PPA for the Planning Year of COD had the Facility obtained accreditation as a Capacity Resource, for which Company shall pay Seller the Energy Payments and monthly Capacity Payments pursuant to Article 8, *provided, however, that* Seller has paid Company the Auction Clearing Price as required under Section 10.6(C)1. If Seller fails to pay the Auction Clearing Price to Company or provide Contract Energy to Company as set forth in this Section, Company shall have the right to terminate this PPA and collect Actual Damages, subject to Section 12.3(A).

3. Subject to Section 10.6(F), Seller thereafter shall at its own expense comply with the Transmission Authority Capacity Accreditation Requirements for the next Planning Year.

4. In the event Seller elects to provide the Necessary Accredited Capacity Testing Results for the Facility for the Planning Year of COD to the Transmission Authority in accordance with the Transmission Authority's Generation Verification Test Capacity Deferral Requirements ("GVTC Deferral Requirements") (such election, the "GVTC Deferral Election"), Seller shall provide

Notice to Company at least fifteen (15) Days before the Accreditation Deadline. Upon making the GVTC Deferral Election, Seller shall:

- a. Take all actions and make all payments required under the GVTC Deferral Requirements until the Facility is accredited as a Capacity Resource for the Planning Year of COD;
- b. Take all actions necessary to transfer Seller's capacity rights in the Facility to Company until such time as Company replaces Seller as the registered entity for the Facility for Transmission Authority capacity planning purposes.
- c. Provide Company on a monthly basis the amount of Contract Energy that Seller would have provided Company under this PPA for the Planning Year of COD had the Facility obtained accreditation as a Capacity Resource, for which Company shall pay Seller the Energy Payments and monthly Capacity Payments pursuant to Article 8, *provided, however, that* Seller is current in making all payments required under the GVTC Deferral Requirements. Seller's failure to take all actions or make all payments required under the GVTC Deferral Requirements or provide Contract Energy as set forth in this Section shall constitute an Event of Default, for which Company shall have the right to terminate this PPA and collect Actual Damages, subject to Section 12.3(A).

(D) Once Seller has delivered to Company the Delivery and Supply Commencement Notice for the Planning Year of COD, Seller and Company shall take such steps as are necessary under the Transmission Tariff and the Transmission Authority's requirements to timely transfer the registration of the Facility with the Transmission Authority such that Company replaces Seller as the registered entity for the Facility for the Planning Year of COD.

(E) If Seller has not obtained the Full Interconnection Agreement by January 1 before the Planning Year of COD, Seller may at its option elect to delay the COD to the next Planning Year under this Section by delivering to Company on or prior to January 1 before the Planning Year of COD Notice indicating that Seller has elected to delay the Commercial Operation Date to the next Planning Year ("Accreditation Delay Notice"). Seller's right to delay the Commercial Operation Date shall continue for each subsequent Planning Year, subject to the delivery of the Accreditation Delay Notice to Company on or prior to the January 1 before such Planning Year, until such time as the Interconnection Agreement has become a Full Interconnection Agreement. The Parties shall revise Exhibit B-Construction Milestones to this PPA to extend the Commercial Operation Milestone and other Construction Milestones to reflect the impacts of any delay of the COD of the Facility pursuant to this Section 10.6(E).

(F) For each Commercial Operation Year of the PPA after the Facility has been accredited by the Transmission Authority as a Capacity Resource, Seller shall at its own expense comply with all the Transmission Authority's requirements for

the Facility to be re-accredited as a Capacity Resource. In the event Seller fails to meet the deadline for such re-accreditation of the Facility for a Commercial Operation Year, Seller shall pay Company the Auction Clearing Price for the amount of accredited capacity for the Commercial Operation Year that Seller failed to obtain through re-accreditation, which shall be paid within fifteen (15) Days of receipt of Company's invoice therefor. Seller shall also provide Company the amount of Contract Energy for the Commercial Operation Year that Seller would have provided Company under this PPA had the Facility obtained re-accreditation as a Capacity Resource. Seller shall not sell any of the unaccredited capacity of the Facility in any Commercial Operation Year that Seller fails to obtain the Transmission Authority's re-accreditation of the Facility as a Capacity Resource. In the event that Seller fails to pay the Auction Clearing Price to Company or provide Contract Energy to Company as set forth in this Section, such failure shall constitute an Event of Default and Company shall have the right to terminate this PPA and collect Actual Damages, subject to Section 12.3(A).

(G) Notwithstanding any other provision in this PPA, in the event that the Transmission Authority Capacity Accreditation Requirements, the Transmission Tariff and/or the Transmission Authority's planning reserve procedures and requirements with respect to qualifying generation facilities as a Capacity Resource are changed, modified or revised such that the framework as contemplated in this Section 10.6 cannot be implemented or cannot be implemented without an unanticipated Material Adverse Effect on one or both of the Parties, the Parties shall in good faith promptly amend or modify this Section 10.6 to address such change(s), modification(s) or revision(s) in a manner consistent with the intentions of the Parties as originally set forth in this Section 10.6.

Article 11 - Security for Performance

11.1 Security Fund.

(A) No later than 60 (sixty) Days following Company obtaining or waiving State Regulatory Approval from the State Regulatory Agency, Seller shall establish, fund, and maintain a Security Fund that is available to pay any amount due and owing to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.

1. The Security Fund shall equal the Pre-COD Security Fund up to the COD and the Post-COD Security Fund on and after the COD and throughout the Term.

2. In the event of any draw by Company on the Security Fund, regardless of the nature of the collateral upon which such draw is actually made, for purposes of determining the required mix of the Security Fund to be posted by Seller following such draw, such draw shall be deemed to have been made against the HGC and non-HGC posted by Seller, *pro rata* to the applicable amounts thereof set forth in the tables in Section 11.1(D), rounded to the nearest whole thousand

dollars. Subject only to the foregoing regarding the relative mix of collateral, and notwithstanding anything to the contrary in this PPA, Seller shall not be required to replenish the amount of Security Fund following any draw thereon by Company.

(B) Company may draw from the Security Fund such amounts as are necessary to recover undisputed amounts due and owing to Company pursuant to this PPA, including any damages due to Company and any amounts for which Company is entitled to indemnification under this PPA if Seller does not pay such amounts within five (5) Business Days following written demand by Company therefor. Company may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Section and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(C) The Security Fund shall be maintained at Seller's expense and, to the extent applicable, shall be originated by or deposited in a financial institution or company ("Issuer") satisfying the requirements of this Section; and shall be in the form of one or more of the following instruments:

1. The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit G-1-Form of Letter of Credit, with such modifications as may be required by the Issuer of such letter of credit, subject to Commercially Reasonable review and approval by Company (the "Letter of Credit").

a. The Issuer for the Letter of Credit shall have and maintain a senior unsecured bond rating (unenhanced by third-party support) equivalent to A- or better as determined by all rating agencies that have provided such a rating, and if ratings from either one or both of Standard & Poor's and Moody's are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on negative credit watch or have a negative outlook by any rating agency.

b. The Letter of Credit must be for a minimum term of 360 Days. Seller shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of 360 Days or more (or, if shorter, the remainder of the Term) no later than 30 Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended at least 30 Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with subparagraph (2) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Section.

c. Seller shall have the right to change the amount of Security Fund provided by Letter of Credit in accordance with the other requirements

of this Section by amending an existing Letter of Credit or providing a new or replacement Letter of Credit. Seller shall provide no less than thirty (30) Days Notice of such change to Company. Company shall use Commercially Reasonable Efforts to cooperate with Seller in effecting any such change.

2. The Security Fund may be in the form of United States currency, in which Company holds a first and exclusive perfected security interest, deposited with an Issuer who is a state or federally-chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent acceptable to Company in its Commercially Reasonable discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form of Exhibit G-3-Form of Escrow Agreement. Funds held in the Escrow Account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed.

3. The Security Fund may consist of a guaranty substantially in the form of Exhibit G-2-Form of Guaranty, from the direct or any indirect parent of Seller (a "Parent Guaranty") with a minimum net worth of at least **[Trade Secret Data Begins... ...Trade Secret Data Ends]**. Said parent shall have a senior unsecured credit rating (unenhanced by third-party support) consistent with the credit ratings set forth in the tables in Section 11.1(D), which rating shall be as determined by all rating agencies that have provided such a rating, and if ratings from both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company). The amount of the Security Fund secured by the Parent Guaranty shall be based on the credit rating of such parent as set forth in the tables in Section 11.1(D). If the credit rating of the parent is downgraded to a level that requires a reduction in the amount of the Parent Guaranty as set forth in the tables in Section 11.1(D), to the extent Seller desires to retain the Parent Guaranty as part of the Security Fund, Seller shall, no later than ten (10) Business Days after receiving Notice from Company, amend or replace the Parent Guaranty such that the amount of the guaranty corresponds to the amount set forth in the tables in Section 11.1(D) for a parent possessing the credit rating of such parent following the downgrade.

(D) Seller may change the form or mix of the Security Fund at any time and from time to time upon thirty (30) Days prior Notice to Company, *provided, however, that* the Security Fund must at all times satisfy the requirements of this Section. Security satisfying the requirements of Section 11.1(C)1 or 11.1(C)2 shall be "High Grade Collateral" or "HGC". In the event that the Security Fund ever fails to meet the criteria set forth herein, Seller shall replace such collateral and take such other actions as are necessary to cause the Security Fund to be in compliance with

this Section 11.1 within thirty (30) Days following such failure. The required mix of collateral constituting the Security Fund from time to time shall be as follows:

1. Prior to COD:

a. If and for so long as Seller's equity investment in the Facility is less than **[Trade Secret Data Begins...**

...Trade Secret Data Ends]

b. If and for so long as Seller's equity investment in the Facility is **[Trade Secret Data Begins...**

...Trade Secret Data Ends]

2. On or after COD:

a. If and for so long as Seller's equity investment in the Facility is less than **[Trade Secret Data Begins...**

...Trade Secret Data Ends]

b. If and for so long as Seller's equity investment in the Facility is **[Trade Secret Data Begins...**

...Trade Secret Data Ends]

(E) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller within forty-five (45) Days of termination of this PPA.

(F) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Section.

11.2 Subordinated Mortgage.

(A) Prior to breaking ground for the Facility, Seller shall execute and deliver to Company a mortgage on the Facility and Facility Property, a security agreement with respect to Seller's licenses, permits, and contractual rights with respect to the ownership and operation of the Facility and Facility Property, to the extent assignable, and the equipment, fixtures and other personal property located or to be located on the Facility Property and/or principally related to Seller's operations on the Facility Property (collectively, the "Mortgaged Property"), associated financing statements, and other agreements, documents and instruments, in form and substance reasonably satisfactory to Company, Seller and, to the extent there is Facility Debt, the Facility Lender, under which Company shall enjoy a fully perfected

security interest(s) and mortgage lien (collectively, the "Subordinated Mortgage") in the Mortgaged Property; *provided, however, that* the Mortgaged Property shall not include Seller's cash, accounts, securities, books and records, as more specifically described in the Subordinated Mortgage. Company agrees to cooperate with Seller and diligently negotiate, at Seller's request, the form of the Subordinated Mortgage and to execute and deliver the Subordinated Mortgage as reasonably necessary. The Subordinated Mortgage shall secure Seller's continuing performance under this PPA and any amounts that may be owed by Seller to Company pursuant to this PPA, including, without limitation, any damages expressly excluded from the limitation on Seller's liability set forth in Section 12.3(C). To the extent there is Facility Debt, Seller agrees to, and Company shall, cause the Subordinated Mortgage to be subordinate in right of payment, priority, and remedies to the interests of the Facility Lender in the Facility Debt in accordance with an intercreditor agreement in form and substance satisfactory to the Company and Facility Lender. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to Company by reason of any breach by Seller of this PPA or the early termination of this PPA as provided herein. In the event that there is no Facility Debt until later during the Term, (i) Company shall at such time subordinate the Subordinated Mortgage to such Facility Debt and take whatever actions may be requested by Seller and Facility Lender in connection therewith consistent with this Section 11.2(A) and (ii) Seller shall take such steps as may be reasonably required to ensure compliance with this Section 11.2(A). Company shall take such further actions and execute such further documents and instruments, all as reasonably required by Company, to confirm the subordination provisions set forth in this PPA.

(B) The Subordinated Mortgage shall be discharged and released, and Company shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration or earlier termination of the Term of this PPA and satisfaction by Seller of all obligations hereunder.

(C) Seller shall reimburse Company for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or the discharge and release of the Subordinated Mortgage and any related documents.

Article 12 - Default and Remedies

12.1 Events of Default. Any of the following events shall constitute an Event of Default of the specified Party on such date indicated or if such event has not been cured within the cure period specified for such event:

(A) Either Party's failure to make any undisputed payment to the other Party as required by this PPA, including invoices pursuant to Article 9, Liquidated Delay Damages, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of ten (10) Business Days

after the date the defaulting Party receives Notice from the non-defaulting Party that the amount is overdue.

(B) Either Party's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from its inception.

(C) Either Party's inability to pay debts when due, authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

(D) The authorization or filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state by a Party (and, in the case of Seller, its parent or any other Affiliates of Seller) that could materially affect such Party's ability to perform its obligations hereunder, which proceedings remain undismissed or unstayed for sixty (60) Days, or which result in adjudication of bankruptcy or insolvency within such time

(E) Either Party's unauthorized assignment of this PPA or Change of Control, immediately upon its occurrence and without further notice from the non-defaulting Party.

(F) Any material representation or warranty made by a Party in this PPA that is proven to have been false in any material respect when made and such falsity shall remain unremedied for sixty (60) Days after Notice thereof has been provided to the defaulting Party (or, if only able to be remedied by performance, such longer period as may be reasonably required to effect such remedy, not to exceed an additional sixty (60) Days.

(G) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for ten (10) Business Days after Company provides Notice of Seller's failure.

(H) Seller's failure to achieve the Commercial Operation Milestone.

(I) Seller's failure, commencing eighteen (18) months after the COD, to maintain a RAF, pursuant to Section 8.1, greater than **[Trade Secret Data Begins... ...Trade Secret Data Ends]** on a twelve-month

rolling average basis utilizing data from the previous twelve months, if such failure shall remain unremedied for sixty (60) Days after Notice thereof has been provided to Seller; *provided, however, that* to the extent such failure of performance is attributable to Force Majeure, the contribution of such Force Majeure shall be eliminated from the RAF calculation for the purposes of, and only for the purposes of, establishing a default of Seller pursuant to this paragraph; *provided, further, that* if Seller provides a written opinion from an independent engineer retained and paid for by Seller and approved by Company that such failure was due to a Major Equipment Failure and Seller is diligently pursuing remedy of such Major Equipment Failure, Seller shall have an additional twelve (12) months following delivery of such opinion to Company to remedy such failure.

(J) Seller's material breach of the Interconnection Agreement that has a Material Adverse Effect on Company if such breach shall remain unremedied for thirty (30) Days after Notice thereof has been provided to Seller (or, if only able to be remedied by performance, such longer period as may be reasonably required to effect such remedy, not to exceed an additional sixty (60) Days).

(K) The failure by either Party to perform or observe any other material obligation to the other Party under this PPA, that is not excused by Force Majeure and such failure shall remain unremedied for thirty (30) Days after Notice thereof shall have been given by the non-defaulting Party (or, if only able to be remedied by performance, such longer period as may be reasonably required to effect such remedy, not to exceed an additional thirty (30) Days).

12.2 Remedies. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in accordance with the terms of this PPA. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

(A) Termination and Damages. The Parties agree that any uncured Event of Default is deemed to be material and justifies termination. For any uncured Event of Default, the non-defaulting Party may, at its option do any, some, or all of the following:

1. Offset from any payments due from the non-defaulting Party any amount otherwise due, including any unpaid Liquidated Delay Damages or Actual Damages;
2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;

3. In the case of an Event of Default by Seller, draw on the Security Fund for any unpaid Liquidated Delay Damages, Actual Damages, required payments under Section 10.6, or any other required and unpaid amount;

4. In the case of an Event of Default by Seller, exercise of Company's Step-In Rights.

5. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this Section, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the Damage Caps, all of the Liquidated Delay Damages owed hereunder and any Actual Damages in connection with the Event of Default resulting in such termination.

(B) Liquidated Delay Damages. Seller shall be liable to pay Company Liquidated Delay Damages as a liquidated damage and not a penalty for any delay in meeting the Commercial Operation Milestone on the terms and conditions as follows:

1. Provided Seller actually pays Liquidated Delay Damages as and when owed, (i) the payment of such Liquidated Delay Damages shall be Company's sole and exclusive remedy for Seller's failure to achieve, or Seller's delay in achieving, the Commercial Operation Milestone, and (ii) Company shall have no right to seek Actual Damages, terminate this PPA, seek specific performance, or exercise its Step-In Rights, notwithstanding anything to the contrary in this Article 12. Liquidated Delay Damages shall be payable in lieu of Actual Damages accrued for the period during which Liquidated Delay Damages are assessed. The Parties specifically recognize that Company's damages associated with any delays in achieving the Commercial Operation Milestone will be significant but that it will be difficult to quantify those damages. If Seller does not pay Liquidated Delay Damages as and when owed, Company shall have the right to exercise all remedies available for an Event of Default under Section 12.2(A).

2. All Liquidated Delay Damages shall begin to accrue on the Day after the Commercial Operation Milestone as may be extended pursuant to this PPA until but excluding the Day upon which the Commercial Operation Date is achieved.

3. For avoidance of doubt, Seller's failure to obtain accreditation of the Facility as a Capacity Resource is not subject to Liquidated Delay Damages but rather subject to the default, cure, and damage provisions of Section 10.6.

(C) Actual Damages. For all Events of Default under Section 10.6 and this Section, except for a Failure to Meet Accreditation Deadline that is cured as specified in Section 10.6(C)1 or the failure to achieve the Commercial Operation Milestone for which Seller is paying Liquidated Damages as and when owed pursuant to Section 12.2(B)1, the non-defaulting Party shall be entitled to receive from the defaulting Party Actual Damages incurred by the non-defaulting Party; *provided, however, that* if such an Event of Default has occurred and has continued uncured for

a period of 365 Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default, event, or breach or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages may include any direct damages available under this PPA.

(D) Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Company may elect to treat this PPA as being in full force and effect and shall have the right to specific performance. By way of example only, if the breach by Seller arises from a failure by third party operating the Facility pursuant to an operating agreement entered into with Seller, and Seller fails or refuses to enforce its rights under the operating agreement that would result in the cure, or partial cure, of the Event of Default, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

12.3 Limitation on Damages.

(A) Except as otherwise provided in this Section, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages and any other pre-COD Actual Damages shall not exceed the Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages post-COD shall not exceed the Post-COD Damage Cap (collectively the "Damage Cap(s)").

(B) If at any time during the Term, Company incurs damages under this PPA in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.

(C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:

1. Physical damage to Company-owned facilities caused by Seller's gross negligence or willful misconduct;
2. Seller's intentional misrepresentation or willful misconduct in connection with this PPA or the operation of the Facility;
3. The sale or diversion by Seller to a third party of any capacity or energy committed to Company under this PPA other than as permitted under this PPA;
4. Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds to restoration of damaged equipment of the Facility following a casualty except to the extent allowed by this PPA;

5. Any third party claim subject to indemnification under this PPA;

6. Any Environmental Contamination caused by Seller in connection with this PPA; or

7. Damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); *provided, however, that* if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.4 Step-In Rights.

(A) Upon the occurrence of an Event of Default, Company shall have the right, but not the obligation, to exercise its Step-In Rights for the period of time until Seller has cured its Event of Default or this PPA has been terminated. Exercising Step-In Rights shall not preclude or limit Company's right to exercise any remedy it has against Seller under this PPA.

(B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions necessary to implement Company's Step-In Rights. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.

(C) Company acknowledges that the Facility Lender may foreclose and take possession of and operate the Facility and Company may be required to relinquish its Step-In Rights in such circumstance. Prior to commencing construction of the Facility, in the event there is Facility Debt, Seller shall obtain the written agreement of the Facility Lender recognizing Company's Step-In Rights as being limited only by foreclosure of the Facility as a result of Seller's material default of its contractual obligations with the Facility Lender.

(D) Company shall implement its Step-In Rights in conformance with Good Utility Practice and shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA. Company shall indemnify Seller for any liabilities, losses, costs expenses and/or damages to Seller or the Facility to the extent such liabilities, losses, costs expenses and/or damages arise from Company's gross negligence or willful misconduct. Except to the extent such expenses and costs relate to Company's indemnification obligations to Seller in this Section 12.4(D), Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights. Company shall give Seller and, to the extent applicable, the Facility Lender 10 Days Notice in advance of exercising Company's Step-In Rights. Upon receipt of such Notice:

1. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice.

2. Seller shall give Company, its employees, contractors, or designated third parties unrestricted access to the Site and the Facility.

3. Seller shall cooperate in the implementation of Company's Step-In Rights.

4. Company shall use the output generated and delivered from the Facility during such period in partial satisfaction of Seller's obligations hereunder.

(E) Company may draw upon the Security Fund to cover any expenses incurred by Company in exercising its rights under this Section.

(F) Seller shall retain legal title to and ownership of the Facility.

(G) Company shall timely pay to Seller all amounts that would otherwise be due to Seller under this PPA for products and services delivered to Company in accordance with this PPA.

(H) Company shall provide Seller with at least 15 Days Notice of Company's intent to relinquish its Step-In Rights. Company shall relinquish its Step-In Rights on the earliest of (i) termination of this PPA; (ii) Seller has cured all outstanding defaults; (iii) Company's unilateral decision to relinquish possession of the Facility; or (iv) the Parties mutual decision.

(I) Company's Step-In Rights shall not constitute an assumption by Company of any liability attributable to Seller.

12.5 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use Commercially Reasonable Efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the PPA.

Article 13 - Dispute Resolution

13.1 Dispute Resolution.

(A) In the event of any dispute arising under this PPA (a "Dispute"), within 10 Business Days following Notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within 30 Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within 10 Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within 10 Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall meet and negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute within 30 Days after their first meeting, either Party may seek available legal remedies.

(B) If no Notice has been issued within 24 months following the occurrence of events or circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

(C) Seller and Company each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Company related hereto and expressly agree to have any disputes arising under or in connection with this PPA be adjudicated by a judge of the court having jurisdiction without a jury.

Article 14 - Force Majeure

14.1 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if, and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however, that:* (i) such Party gives prompt Notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with Commercially Reasonable due diligence to overcome the Force Majeure and resume performance of its obligations under this PPA; and (iv) such Party provides Notice prior to the conclusion of the Force Majeure.

14.2 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this PPA beyond its stated Term.

(C) In no event shall the existence of a claim of Force Majeure by Seller relieve Seller of its obligations under Section 10.6.

(D) If Force Majeure affecting a Party continues for an uninterrupted period of 90 Days from its inception (with respect to Force Majeure occurring prior to COD) or 365 Days from its inception (with respect to Force Majeure occurring after COD), the other Party may, at any time following the end of such period terminate this PPA upon Notice to the Party so affected, without further obligation by either Party except as to costs and balances incurred pursuant to this PPA prior to the effective date of such termination; *provided, however, that* if Seller within the first 90 Days of an uninterrupted Force Majeure event occurring prior to COD provides a written opinion from an independent engineer retained and paid for by Seller and approved by Company that the Force Majeure can be remedied within an additional 90 Days, then only after an uninterrupted period of 180 Days of a Force Majeure event affecting Seller may Company terminate the PPA under this Section.

14.3 Delays Attributable to Company. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company to perform its obligations under this PPA, or (ii) any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement, in each case whether or not caused by Force Majeure.

Article 15 - Representations and Warranties

15.1 General Representations and Warranties. Except for the requirements of Article 6 which the Parties will use their Commercially Reasonable Efforts to obtain, each Party hereby represents and warrants to the other as follows:

(A) It is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party; it has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary corporate action, and do not and will not:

1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full

force and effect (evidence of which shall be delivered to the other Party upon its request);

2. violate any Applicable Law, or violate any provision in any formation documents, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;

3. result in a breach or constitute a default under the representing Party's formation documents or bylaws, or under any agreement relating to its management or affairs or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or

4. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of the representing Party.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

(E) Within the meaning of the United States bankruptcy code, (i) this PPA constitutes a "master netting agreement", (ii) all transactions pursuant to this PPA constitute "forward contracts", (iii) the representing Party is a "forward contract merchant" and "master netting agreement participant", and (iv) all payments made or to be made pursuant to this PPA constitute "settlement payments."

(F) It is (i) an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18), (ii) a "market participant" under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or by products thereof; and (iv) entering into this PPA solely for purposes related to its business as such.

(G) This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Section 556, 560 and 561 of the bankruptcy code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with

the safe harbor provisions of the bankruptcy code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended superseded or replaced from time to time.

(H) Each Party is a commercial market participant that regularly makes or takes delivery of the commodity which is the subject of this PPA in connection with the ordinary course of its business, and who intends to make or take delivery, as applicable, of the commodity under the terms and conditions of this PPA in connection with such business.

(I) This PPA creates a binding obligation for each Party to either make or take delivery of the commodity which is the subject of this PPA, as applicable, without providing any right to offset, cancel, or settle such delivery obligations on a payment-of-difference basis.

15.2 Seller's Specific Representation. To the knowledge of Seller, and except for (i) Seller's CPs in Section 6.2 and (ii) any actions required by the Transmission Authority to qualify the Facility as a Capacity Resource, all actions required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

15.3 Company's Specific Representation. To the knowledge of Company, and except for the State Regulatory Approval identified in Section 6.1, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

Article 16 - Insurance

16.1 Evidence of Insurance. No later than commencement of construction of the Facility and then on or before the policy renewal date each year thereafter during the Term, Seller shall provide Company with two (2) copies of insurance certificate(s) evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E-Insurance Coverage. Such certificates shall (a) name Company as an additional insured to the extent of the indemnity obligations assumed by Seller hereunder (except worker's compensation); (b) provide Company 30 Days prior Notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such Notice shall be 10 Days for non-payment of premiums); (c) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (c) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A, or that the Company deems acceptable. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like

coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of five (5) years after the Term.

(B) The Parties shall modify the insurance types and minimum limits specified in Exhibit E-Insurance Coverage from time to time during the Term in order to maintain Commercially Reasonable coverage amounts in the event that Good Utility Practices so require and Seller can obtain the modified insurance on Commercially Reasonable terms. Seller shall make Commercially Reasonable Efforts to obtain such modified insurance.

(C) If any insurance required to be maintained by Seller hereunder ceases to be available in the commercial insurance market on reasonable terms for electric generating plants of a type, geographic location and capacity comparable to the Facility, Seller shall provide Notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is no longer so available. Upon receipt of such Notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.3 Application of Proceeds. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

Article 17 - Indemnity

17.1 Indemnification. Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party (the "Indemnified Party") from and against (a) all third party claims, demands, losses, liabilities, penalties, and expenses (including attorneys' fees) for personal injury or death to persons and (b) damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by the (i) an Event of Default or other breach under this PPA, (ii) violation of Applicable Laws, (iii) negligent or tortious acts, errors, or omissions, or (iv) intentional acts or willful misconduct, of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(A) This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in

proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the damages.

(B) Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

(C) Nothing in this Section shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

17.2 Notice of Claim. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified Party shall send Notice thereof to the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however, that* if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

17.3 Settlement of Claim. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

17.4 Amounts Owed. Except as otherwise provided in this Article, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 - Lender Provisions

18.1 Accommodation of Facility Lender. Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, information or other documents, as may be reasonably requested by Seller in connection with the financing of the Facility consistent with the terms set forth in Exhibit I-Lender Consent Provisions (generally, a "Lender Consent"), *provided, however, that* in providing a Lender Consent, Company shall have no obligation to alter or modify the terms of this PPA or provide any consent or enter into

any agreement, that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Company, pursuant to this Section.

18.2 Facility Lender Notice and Right to Cure. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such Notice, Company shall provide Notice of any breach or default of Seller to the Facility Lender, and Company will accept a cure performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA or such other period as may be specified in a consent to assignment or other agreement between Company and the Facility Lender.

18.3 Notice of Facility Lender Action. Within 10 Days following Seller's receipt of each Notice from the Facility Lender of default, or Facility Lender's intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of such Notice to Company.

18.4 Officer Certificates. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

Article 19 - Assignment and Other Transfer Restrictions

19.1 Transfer Without Consent is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.

(A) Except as permitted in this Section, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however, that* (i) at least 30 Days prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party, (iii) except as otherwise provided in Sections 19.1(A)1 and 19.1(A)3, no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, unless the other Party waives in writing the assignor's continuing obligations under this PPA; (iv) no assignment shall impair any security given by Seller unless such security has been replaced in accordance with Section 11.1; and (v) before this PPA is

assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

1. Seller's consent shall not be required for Company to assign this PPA to an Affiliate of Company; *provided, however, that* Company shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the MPUC and has an Investment Grade rating, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.

2. Company's consent shall not be required for Seller to assign this PPA for collateral purposes, to the Facility Lender. Seller shall provide Company Notice of any such assignment no later than 30 Days after the assignment.

3. Company's consent shall not be required for Seller to assign this PPA to MEC I if, as of the date of assignment, MEC I (i) owns all or substantially all of the Facility and the Facility Property, (ii) assumes Seller's obligations under this PPA, and (iii) has the technical expertise substantially similar to Seller to perform Seller's obligations under this PPA.

4. Company shall release Seller from its obligations under this PPA, upon request of Seller, in the event of any permitted assignment of this PPA by Seller to any assignee that: (a) is Investment Grade rated or has a parent that is Investment Grade rated; (b) provides a Security Fund meeting the requirements of Section 11.1; (c) assumes Seller's obligations under this PPA; and (d) has technical expertise (or has retained others with such expertise) substantially similar to Seller to perform Seller's obligations under this PPA as of the date of assignment.

(B) Any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Company, which shall not be unreasonably withheld, *provided, however, that* no such consent shall be required for any Change of Control of Seller if the ultimate parent entity of Seller following the Change of Control, together with its Affiliates, has an Investment Grade rating as measured by its senior unsecured credit rating unenhanced by third party support (or enjoys creditworthiness if such credit rating is unavailable as otherwise reasonably determined by Company) not worse than Seller's ultimate parent entity, together with its Affiliates, prior to the Change of Control.

(C) For the avoidance of doubt, the Parties acknowledge and agree that Seller shall not be relieved of its obligations under this PPA as the result of any Change of Control unless Company agrees in writing in advance to waive Seller's continuing obligations under this PPA.

19.2 ROFO.

(A) At any time after the Commercial Operation Date, if Seller or any Affiliate of Seller decides to solicit or proceed with unsolicited third-party offers to convey all or substantially all of the Facility Property and the assets comprising the MEC I Facility or a majority of the interests in Seller and MEC I (each a "Proposed Transaction") to an unaffiliated third party, Seller shall in advance of any such solicitation or pursuit of unsolicited offers provide Company with the right of first offer ("ROFO"). Under the ROFO, Seller shall furnish to Company (i) the terms Seller is willing to accept in connection with the Proposed Transaction, and (ii) the price Seller is willing to accept to proceed with the Proposed Transaction (the "ROFO Notice"). Company's ROFO shall only apply to a Proposed Transaction and its related terms and conditions where the conveyance of all or substantially all of the Facility Property and the assets comprising the MEC I Facility or majority of the interests in Seller and MEC I represents substantially all of the value of the assets or interests, as applicable, being conveyed in such Proposed Transaction. .

(B) Seller shall allow Company (a) where Seller has elected to solicit third party offers, forty-five (45) Days after the ROFO Notice to investigate the Proposed Transaction and conduct due diligence, (b) where Seller has elected to pursue unsolicited third party offers, thirty (30) Days after the ROFO Notice to investigate the Proposed Transaction and conduct due diligence. Within the applicable period, Company shall either (i) exercise its ROFO rights on terms equivalent to the terms and price set forth in the ROFO Notice or (ii) cancel its ROFO rights.

1. If Company exercises its ROFO, the Parties shall have a period of no longer than six (6) months to conduct due diligence and develop definitive agreements on terms no less favorable to Company than those contained in the ROFO Notice. Seller shall cooperate in all respects necessary for Company to exercise its ROFO rights.

2. If Company does not exercise its ROFO, Seller shall have the right to solicit offers on the Proposed Transaction from unaffiliated third parties, *provided, however, that* in the event Seller proceeds with the Proposed Transaction and the purchaser is an unaffiliated third party, (a) the price associated with such transaction shall have an aggregate value of not less than the price set forth in the ROFO Notice, and (b) the terms associated with such transaction shall be no less favorable to Seller than the terms set forth in the ROFO Notice. In the event Seller does not close on its Proposed Transaction with an unaffiliated third party, Seller shall offer Company a ROFO in connection with any new or subsequent Proposed Transaction as set forth in Section 19.2(A).

(C) In the event that: (a) a Proposed Transaction is part of a larger transaction to which Company's ROFO does not apply and (b) such Proposed Transaction represents more than twenty percent (20%) of the aggregate generating capacity that would be conveyed by such larger transaction, Seller shall provide

Notice to Company of its decision to solicit or proceed with the Proposed Transaction within thirty (30) Days of such decision, and Company may in its sole discretion make an offer for Seller's consideration to purchase all or substantially all of the Facility Property and the assets comprising the MEC I Facility or a majority of the interests in Seller and MEC I upon receipt of such Notice.

19.3 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Company, *provided, however, that* no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

Article 20 - Miscellaneous

20.1 Notices. Notices required by this PPA shall be in writing and addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in Exhibit D-Notices and Contact Information as either Party updates them from time to time by Notice to the other Party. Notices shall either be hand delivered or mailed, postage prepaid. If mailed, Notices shall be simultaneously sent by facsimile or other electronic means. Any Notice shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after the close of the Business Day, in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations, including with respect to provision of energy from Alternate Energy Source(s), shall be exempt from this Section.

20.2 Taxes, Emissions and Change of Law

(A) Seller shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, any sales or *ad valorem* taxes relating to the Facility, or any taxes on the products and services generated by Seller, sold and delivered to Company at the Point of Delivery. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term.

(B) Company shall be solely responsible for sales and use taxes imposed with respect to the purchase of fuel by Company for use in or consumption by the Facility to produce the electric energy dispatched and received by Company hereunder.

(C) The Parties shall cooperate to minimize and mitigate tax exposure, *provided, however, that* neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to Company hereunder shall be sales for resale, with Company reselling such electric energy. Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably

requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.

(D) Notwithstanding clause (A) of this Section, Company shall be solely responsible for the payment of any taxes and other impositions enacted or promulgated by Governmental Authorities after the Effective Date, that are assessed based upon the quantity of carbon dioxide emissions produced from the combustion of fuel purchased by Company for consumption by the Facility to produce Contract Energy or Test Energy during the Term of this PPA.

1. If (i) following the Effective Date of this PPA, Applicable Law imposes any enforceable limits or other enforceable compliance obligations related to carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy, (ii) the limits or obligations are not imposed on a facility specific basis, and (iii) such limits or obligations can be mitigated by the acquisition or application by Company of allowances, credits and/or eligible offsets, then (a) Company shall be responsible for compliance with the limits or compliance obligations from the Facility in its generation portfolio, and (b) Company shall be solely responsible for the acquisition costs, application and management of such allowances, credits and/or offsets necessary to mitigate carbon dioxide emissions produced from the combustion of fuel by the Facility to produce Contract Energy or Test Energy.

2. Nothing herein shall relieve Seller of its obligation to comply, at its sole cost, with Applicable Law or any Permit (including any emission limit or standard relating to carbon dioxide) imposed specifically on the Facility.

(E) With respect to any changes to Applicable Law with respect to emissions of carbon dioxide or other emissions, including SO_x and NO_x, enacted or promulgated by Governmental Authorities after the Effective Date that have or are reasonably likely to have a Material Adverse Effect on the economics of this PPA or the Facility with respect to either Party, the Parties will cooperate to consider a mutually agreeable and Commercially Reasonable response to mitigate such Material Adverse Effect.

20.3 Applicable Laws. Each Party shall at all times comply with all Applicable Laws, except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder.

(A) As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall promptly disclose to the other, any violation of any Applicable Laws arising out of or in connection with the Facility and this PPA.

(C) Upon permanent cessation of generation from the Facility, Seller shall decommission the Facility, remove the Facility and remediate the Site as, if and when required by Applicable Laws.

20.4 Fines and Penalties.

(A) Each Party shall pay when due all fees, fines, penalties or costs incurred by such Party or its agents, employees or contractors for noncompliance by such Party, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by such Party and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against a Party ("Aggrieved Party") by any Governmental Authority due to noncompliance by the other Party, its employees, or subcontractors ("Offending Party") with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or, if the performance of the Offending Party or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to the Offending Party's noncompliance with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, the Offending Party shall reimburse and hold the Aggrieved Party harmless against any such costs incurred by the Aggrieved Party, including claims for indemnity or contribution made by third parties against the Aggrieved Party in accordance with Article 17.

20.5 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of both Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as interpreted and applied by the Supreme Court of the United States in subsequent cases.

20.6 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any third parties, or lending money to or having other transactions with

Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

20.7 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons by such Party to perform such Party's obligations under this PPA, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by a Party shall be considered employees of the other Party for any purpose; nor shall a Party represent to any person that he or she is or shall become an employee of the other Party.

20.8 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action. Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law, including 41 C.F.R. §60-1.4(a)(1-7).

20.9 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.10 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however, that* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.11 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications,

representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of any output from the Facility. This PPA, including Exhibits, may be amended, changed, modified, or altered in accordance with the terms of this PPA, *provided, however, that* such amendment, change, modification, or alteration shall be in writing.

20.12 Binding Effect. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

20.13 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

20.14 Counterparts. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.15 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the state courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.

20.16 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.

20.17 Exhibits. Either Party may change the information in Exhibit D-Notices at any time by Notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.18 Confidentiality.

(A) This PPA and all appendices and amendments hereto are intended to be treated as Confidential Information. Within thirty (30) Days from execution of this PPA, Seller shall provide the Company with its version of this PPA with all of Seller's claimed Confidential Information redacted. Within 30 Days of receipt, Company shall provide Seller its version of this PPA with all of Company's claimed Confidential Information as well as Seller's claimed Confidential Information redacted ("Confidential PPA Version"). A Party may provide this Confidential PPA Version to Governmental Authorities or their staffs in connection with any regulatory proceeding, including regulatory filings and responses to discovery requests, without consent from the other

Party. Notice of a Party's disclosure of the Confidential PPA Version shall be provided to the other Party within 10 Days of such disclosure.

(B) The Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret ("Confidential Information").

1. Confidential Information shall include all documentation and data, including special techniques, methods, computer programs and software that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party. Such materials may be designated as Confidential Information by clear and distinct notation on such documentation or by equivalent method, and shall be treated as such by the receiving Party. Documentation and data not so designated need not be considered by the receiving Party to be proprietary or trade secret; *provided, however, that* any and all data and documentation regarding Facility output, performance, outages and similar operational information shall be considered Confidential Information without the need for further designation if any disclosure thereof would be in a form or by a means that associates such data or documentation with the Facility or Seller or any of its Affiliates, or from which a reasonable person could make such an association. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information for the purposes of this PPA, including keeping electronic copies of such Confidential Information. The receiving Party agrees to keep such Confidential Information confidential, except as set forth in this Section, to use it for work necessary to the performance of this PPA, and not to sell, transfer, sublicense, disclose or otherwise make available any such Confidential Information to others; *provided, however, that* Confidential Information may be disclosed by the receiving Party to the agents, employees, advisors, consultants, or potential or actual debt or equity investors of the receiving Party (including in the case of Seller, Facility Lender), subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this requirement of confidentiality the receiving Party shall be responsible.

2. Confidential Information shall not include any data or information:

a. Which can be documented was in the public domain as allowed by this Section, or through no fault or action of the receiving Party at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter;

b. Which can be documented was independently developed by the receiving Party;

c. Which can be documented was known to the receiving Party from an ultimate source other than the disclosing Party without breach of this PPA by the receiving Party;

d. Which is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or, in the opinion of its counsel, by Applicable Laws) to be disclosed, *provided, however, that* the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five Days of such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Section.

3. The obligation to maintain Confidential Information in confidence shall continue until two (2) years after the expiration or earlier termination of this PPA.

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IN WITNESS WHEREOF, the Parties and MEC I have executed this PPA.

Seller:

By:



John B. (Thaci) Hill
President



Company:

Northern States Power Company, a
Minnesota Corporation

By:



Christopher B. Clark
President
NSP Minnesota

MEC I:

By:



John B. (Thaci) Hill
President



EXHIBIT A

DEFINITIONS

The following terms shall have the meanings set forth herein:

“Acceptable Natural Gas Fuel” means (i) natural gas fuel procured from the Upstream Pipeline pursuant to the Upstream Pipeline’s tariff, which tariff includes the natural gas quality specifications, requirements, and minimum delivery pressures, as attached hereto as Exhibit K-Fuel Quality Specifications, or (ii) such other natural gas fuel delivered to a Fuel Delivery Point, the actual gas quality of which meets or exceeds the natural gas quality specifications, requirements and minimum delivery pressures in Exhibit K-Fuel Quality Specifications; or (iii) natural gas fuel that otherwise complies with the turbine manufacturer’s natural gas fuel quality specifications, requirements and delivery pressures and that would not otherwise void such manufacturer’s warranties.

“Accreditation Deadline” shall have the meaning set forth in Section 10.6(C).

“Accreditation Delay Notice” shall have the meaning set forth in Section 10.6(E).

“Actual Capacity” of the Facility means the actual (vs. tested) maximum net generating capability of the Facility from time to time, including capacity available from duct firing, unadjusted to Reference Conditions. Actual Capacity may be greater or less than the Net Capability of the Facility.

“Actual Damages” means direct damages proximately caused by an Event of Default.

“Actual Net Heat Rate” means the net heat rate for the Facility, stated in Btu/kWh, Higher Heat Value (“HHV”), as adjusted to Reference Conditions, resulting from a heat rate test conducted in accordance with Section 8.4.

“Affiliate” means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the named entity by the power to direct or cause the direction of the management of the policies of named entity, whether through ownership interest, by contract or otherwise.

“AGC” or “Automatic Generation Control” means the equipment and capability of an electric generation facility to automatically adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility’s capability of accepting AGC Set-Point electronically and automatically adjusting and regulating the Facility’s energy production via the Facility’s SCADA System. For the Facility to be considered capable of AGC, it must meet the dispatchability requirements described in Section (A) of Exhibit H-Operating Standards.

“Aggrieved Party” shall have the meaning set forth in Section 20.4(B).

“Air Permit” means any permit or permit amendment required by the Minnesota Pollution Control Agency under Chapter 7007 of the Minnesota Rules for construction and operation of the Facility.

“Alternate Delivery Point” shall have the meaning set forth in Section 7.3.

“Alternate Generation Source” shall have the meaning set forth in Section 7.3.

“Ancillary Services” means those ancillary services defined under the Transmission Tariff as well as those other services and products that may be included under such tariff from time to time, which are associated, directly or indirectly, with the capacity of the Facility or the transmission of energy from the Facility.

“Applicable Law” means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted, amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions.

“Auction Clearing Price” means the price at which capacity credit can be purchased in the Transmission Authority’s market for such credit for the Facility’s location, which the Transmission Authority currently designates as Local Resource Zone 1.

“Availability Verification Test” shall have the meaning set forth in Section 10.1(B).

“Available Energy” shall have the meaning set forth in Section 8.1(A)

“Back-Up Metering” shall have the meaning set forth in Section 5.2(B).

“Balancing Authority” means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

“Base Capacity” means the portion of the Facility’s Actual Capacity, without duct firing.

“Breakage Fee” shall have the meaning set forth in 2.4(B).

“Btu” means British thermal unit.

“Business Day” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“CAF” stands for Capacity Availability Factor and shall have the meaning set forth in Section 8.1.

“Capacity Price” means the \$/kW/month as set forth in the applicable following table:

If the Commercial Operation Date occurs during the Planning Year commencing on June 1, 2018:

[Trade Secret Data Begins...

...Trade Secret Data Ends]

If the Commercial Operation Date occurs during the Planning Year commencing on June 1, 2019:

[Trade Secret Data Begins...

...Trade Secret Data Ends]

If the Commercial Operation Date occurs later than the Planning Year commencing on June 1, 2019, the Capacity Price for each Commercial Operation Year shall equal the values in the table directly above escalated by 3 percent per Planning Year.

“Capacity Resource” means the amount of net generating capacity associated with the Facility for which capacity credit may be obtained under the Transmission Authority’s planning reserve procedures and requirements.

“Change of Control” means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller if the direct or indirect interest in Seller represents substantially all of the value of such owner’s assets: (i) a transfer of a majority of the ownership interests in Seller or such owner; or (ii) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity, or (iii) a sale or conveyance of any direct or indirect ownership interest in Seller following which the selling entity or entities that formerly owned, directly or indirectly, a majority of the ownership interest in Seller no longer own such a majority, *provided, however, that* a Change of Control shall not be deemed to have occurred as a result of (i) transactions exclusively among Affiliates of Seller, (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents, (iii) a change of the Ultimate Parent Entity of Seller (defined under Section 7A of the Clayton Act, 15 U.S.C. 18a, aka the Hart-Scott-Rodino Antitrust Improvements Act of 1976), or (iv) any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change.

“COD Conditions” means all of the requirements that must be satisfied by Seller in order to achieve Commercial Operation as set forth in Section 4.3.

“Commercial Operation” means the period beginning on the Commercial Operation Date and continuing through the Term of this PPA.

“Commercial Operation Date” or “COD” means 12:01 am on the date following the date upon which Seller satisfies the COD Conditions, or such other date as is mutually agreed upon by the Parties.

“Commercial Operation Milestone” means the Construction Milestone specified in Exhibit B-Construction Milestones, as may be extended pursuant to the terms of this PPA, by which Seller must have satisfied the COD Conditions to achieve the Commercial Operation Date on the following Day .

“Commercial Operation Year” means any consecutive 12 month period during the Term, commencing with the Commercial Operation Date or any of its anniversaries.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action and the competitive environment in which such action occurs.

"Company" shall have the meaning set forth in the first paragraph of this PPA.

"Confidential Information" shall have the meaning set forth in Section 20.18.

"Construction Contract" means the contract or contracts providing for the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the generating and step-up transformation equipment that is to be part of the Facility and the engineering, procurement and construction of the Facility.

"Construction Milestones" means the dates set forth in Exhibit B-Construction Milestones, as may be extended pursuant to the terms of this PPA.

"Contract Capacity" shall have the meaning set forth in Section 7.2(A).

"Contract Energy" shall have the meaning set forth in Section 8.3.

"Daily Gas Cost" for any Day, expressed in \$/MMBtu, means the sum of (i) the midpoint of the daily gas price survey for Northern, Ventura, as published for that Day by Platts Gas Daily (the "Gas Survey"), multiplied by the percentage fuel rate for the relevant delivering pipeline in effect for that Day, plus (ii) the applicable commodity transportation rate for the relevant delivering pipeline in effect for that Day, plus (iii) the midpoint of the daily gas price survey for Northern, Ventura, as published for that Day by Platts Gas Daily. If Platts Gas Daily ceases to publish the Gas Survey, or if the Gas Survey is changed so that it is intended to measure something materially different from the level of wholesale gas prices in the vicinity of the Site, the Parties shall substitute a new index that reasonably measures a comparable level of wholesale gas prices in the region.

"Damage Caps" shall have the meaning set forth in Section 12.3.

"Day" means a calendar day.

"Day-Ahead Market" shall have the meaning set forth in the Transmission Tariff.

"Deficiency" means the deficiency in Reported Availability and tested availability of the Facility as described in Section 10.1(B).

"Delay Option" shall have the meaning set forth in Section 2.3.

"Delay Period" shall have the meaning set forth in Section 2.3.

"Delivery and Supply Commencement Notice" shall have the meaning set forth in Section 10.6(B).

"Delivery and Supply Commencement Notice Effective Date" shall have the meaning set forth in Section 10.6(B).

"Demobilization Costs" shall have the meaning set forth in Section 2.3(A).

"Dispatchability Payment" shall have the meaning set forth in Section 8.2.

"Dispatchability Rate" means *[Trade Secret Data Begins...
...Trade Secret Data Ends]*.

"Dispute" shall have the meaning set forth in Article 13.

"Effective Date" shall have the meaning set forth in the introductory paragraph.

"Electric Metering Devices" means revenue quality meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the output from the Facility, including the metering current transformers and the metering voltage transformers.

"Emergency" means any event or occurrence after the date of this PPA that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

"Energy Markets Control Center" or "EMCC" means Company's merchant representatives responsible for dispatch of generating units, including the Facility.

"Energy Resource Interconnection Service" or "ERIS" shall have the meaning set forth in the Transmission Tariff.

"Environmental Assessments" shall have the meaning set forth in Section 4.1(A).

"Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, and present a material risk under Applicable Laws that the Site will not be available or usable for the purposes contemplated by this PPA.

"ERO" means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization; the Midwest Reliability Organization ("MRO") is the certified ERO as of the date of this PPA.

"ESC Event" shall mean those events described in Exhibit M-ESC Event Adjustment.

"ESC Event Adjustment" has the meaning set forth in Section 8.7.

"Event of Default" shall have the meanings set forth in Articles 10.6 and 12.

"Excused Outage" means a partial or complete outage of the Facility to the extent caused or extended by: (i) a breach of this PPA by Company; (ii) any disconnection of the Facility from the Transmission Authority's System not attributable to events or conditions at the Facility; (iii) an interruption in the supply of required House Power for the Facility, not attributable to the Facility, if the Facility is using the Company

distribution system for House Power; (iv) the Facility having reached the limits of the operating restrictions imposed by any Permits (or any subsequent amendments thereto) applicable to or affecting the Facility, *provided, however, that* if any Permit restriction results in the restriction of the amount of Contract Energy that is available for dispatch and receipt by Company to an amount which is less than the amount set forth in the original version of such Permit, then the Contract Capacity shall be considered unavailable to the extent that Seller cannot deliver Contract Energy to Company in an amount equal to such original amount; (v) modification of the Facility at Company's request pursuant to this PPA or otherwise; or (vi) Company's failure or inability to supply to a Fuel Point of Delivery sufficient Acceptable Natural Gas Fuel for operation of the Facility, whether due to Force Majeure or any other reason. Excused Outage does not include: (1) any disconnection of the Facility from the Transmission Authority's System attributable to events or conditions at the Facility except as described above; or (2) any event or condition of Force Majeure at the Site that affects the Availability of the Facility, not attributable to Company or events or conditions on the Company side of the Interconnection Point.

"Facility" means Seller's electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major equipment components, and all equipment necessary to interconnect such facilities to the Transmission Authority's System, all as further described in Exhibit C-Facility Description, One-Line Diagram, And Site Map, including all of the following: Seller's equipment, buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, Seller's Natural Gas Interconnection Facilities, and Seller's natural gas compression, heating and filter/separation equipment and associated piping and control systems, above ground and underground fuel piping systems and storage facilities, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

"Facility Debt" means the obligations of Seller or its Affiliates to any lender pursuant to the Financing Documents, or any portfolio financing, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"Facility Lender" means, collectively, any lenders providing any Facility Debt and any successors or assigns thereto.

"Facility Property" means all Seller's property rights necessary for the use of the Facility for its intended purpose, including (i) the Facility; (ii) the Site; (iii) Seller's Interconnection Facilities; (iv) the Facility collection facilities and substation; (v) Seller's rights and obligations under the Interconnection Agreement; (vi) Permits, and all material contracts; and (vii) all Facility fixtures, equipment and personal property.

“Failed Capacity Test” means a capacity test of the Facility that (i) must be cancelled because of a Forced Outage, failure of testing equipment, inclement weather, or any other reason, or (ii) if conducted, substantially fails to measure accurately the Actual Capacity of the Facility.

“Failed HR Test” means a heat rate test of the Facility that (i) must be cancelled because of a Forced Outage, failure of testing equipment, inclement weather, or any other reason, or (ii) if conducted, substantially fails to measure accurately the net heat rate of the Facility.

“Failure to Meet Accreditation Deadline” has the meaning set forth in Section 10.6(C)1.

“Federal Power Act” means the provisions of 16 U.S.C. 791(A) et seq. and amendments or supplements thereto.

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

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, portfolio financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“Fired Hour Charge” means ***[Trade Secret Data Begins...
...Trade Secret Data Ends]***.

“Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) was not reasonably anticipated as of the date of this PPA, (ii) is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided. Without limiting the preceding, Force Majeure shall include acts of God; floods, earthquakes, hurricanes, and tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming Force Majeure; terrorism; war; riots; fire; explosion; strike, slow down or labor disruption at the Site to the extent part of a general strike, slow down and/or labor disruption not otherwise confined solely to the Site; to the extent environmental hazards which could not have reasonably been detected by the environmental investigations of the Party claiming Force Majeure; severe cold or hot weather or snow or other extreme or severe weather conditions that the affected Party could not have reasonably anticipated based on the time of year and applicable geographic location; requirements, actions or failures to act by any Governmental

Authority taken after the date hereof (including the adoption or change in any rule, regulation, Permit, or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; mechanical or equipment breakdown, or inability to operate, attributable to circumstances occurring outside of design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity except to the extent attributable to Seller's failure to abide by Good Utility Practices; and inability, despite due diligence, to obtain any Permits required by any Governmental Authority; *provided, however, that* Force Majeure shall not include: (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this PPA; (b) acts or omissions of a third party in its capacity as a contractor or customer of the Party claiming Force Majeure unless such acts or omissions are themselves excused by reason of Force Majeure; (c) mechanical or equipment breakdown, or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity; or (d) changes in market conditions.

"Forced Outage" means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

"Fuel Delivery Point" means the natural gas delivery system point at which Company makes available and delivers to Seller the natural gas fuel consumed by the Facility to produce the Contract Energy dispatched by Company as described pursuant to Section 5.3. The Fuel Delivery Point shall be the outlet flange of the meter installed at the point of interconnection between the Natural Gas Interconnection Facilities and the Upstream Pipeline.

"Full Interconnection Agreement" means the conditions set forth in the Interconnection Agreement have been fulfilled, removed, or waived such that the Interconnection Agreement is no longer conditional and allows Seller to obtain accreditation of the Facility as a Capacity Resource for the Planning Year of COD pursuant to the Transmission Authority Capacity Accreditation Requirements. For the avoidance of doubt, the Interconnection Agreement shall not be deemed a "Full Interconnection Agreement" if it has not been accepted by FERC in accordance with Section 2.1 of the Interconnection Agreement.

"GDPIPD" means the Gross Domestic Product Implicit Price Deflator, as published by the US Bureau of Economic Analysis of the U.S. Department of Commerce.

"Generation Benefits" means existing or future environmental benefits or attributes, economic and other related carbon credits, carbon offsets, carbon allowances or benefits, renewable energy credits or green tags, carbon dioxide emissions credits, avoided or reduced carbon dioxide emissions, that are attributable to

Energy generated by the Seller and sold to Company under this PPA, whether pursuant to or arising from any Governmental Authority or international agreement or treaty, *provided, however, that* this definition excludes any credits, offsets or other benefits arising out of or associated with any emission or pollutant other than carbon dioxide emissions.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

“GVTC Deferral Election” shall have the meaning set forth in Section 10.6(C)4.

“GVTC Deferral Requirements” means the applicable Transmission Tariff requirements for deferring the capacity testing that Seller must complete and report to the Transmission Authority for the Facility to be accredited by the Transmission Authority as a Capacity Resource. The current generation capacity deferral requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated listed, or identified by any local Governmental Authority, any applicable State, or the United States of America, as hazardous, dangerous, damaging, or toxic to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a

“hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

“Heat Rate Adjustment” shall have the meaning set forth in Section 8.4.

“HHV” means Higher Heat Value.

“High Grade Collateral” or “HGC” shall have the meaning set forth in Section 11.1(D).

“House Power” means retail power to the Facility for purposes of Facility start-up or shut-down, or for any other purpose.

“Indemnified Party” shall have the meaning set forth in Section 17.1.

“Indemnifying Party” shall have the meaning set forth in Section 17.1.

“Inflation Factor” means, with respect to each Commercial Operation Year, a fraction, the numerator of which is the GDPIPD most recently announced as of the first (1st) Day of such Commercial Operation Year, and the denominator of which is the GDPIPD as of June 1, 2018.

“Initial HR Test” shall have the meaning set forth in Section 8.5(B).

“Interconnection Agreement” means the separate agreement among the Seller, Company, and the Transmission Authority for interconnection of the Facility to the Transmission Authority’s System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other Agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff.

“Interconnection Facilities” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Authority or another entity. This equipment is conceptually depicted in Exhibit C-Facility Description, One-Line Diagram, And Site Map to this PPA.

“Interconnection Point” means the physical point within the operational authority of the Transmission Authority as specified in the Interconnection Agreement, at which electrical interconnection is made between the Facility and the Transmission Authority’s

System in accordance with the Transmission Authority OATT and the Interconnection Agreement.

"Investment Grade" means a long-term credit rating (corporate or long-term senior unsecured debt) of (a) Baa3 or higher by Moody's, and (b) BBB- or higher by S&P.

"Issuer" shall have the meaning set forth in Section 11.1.

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Lender Consent" shall have the meaning set forth in Section 18.1.

"Liquidated Delay Damages" means **[Trade Secret Data Begins...
...Trade Secret Data Ends]** per MW of the Nameplate Capacity of the Facility per Day.

"Local Provider" means the utility providing House Power to the Facility.

"Locational Marginal Pricing" or "LMP" shall have the meaning set forth in the Transmission Tariff.

"Maintenance Schedule" shall have the meaning set forth in Section 10.2.

"Major Equipment Failure" means either a sudden, unexpected failure or a mechanical or equipment breakdown of the steam turbine generator, condenser, circulating water pump, or cooling tower used for the operation of the Facility that: (i) substantially reduces or eliminates the capability of the Facility to produce energy, and (ii) is beyond the reasonable control of Seller and could not have been prevented by the exercise of reasonable due diligence by Seller.

"Mankato Energy Center" means, collectively, the Facility and the MEC I Facility.

"Material Adverse Effect" means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

"Material Permit" means any Permit designated as a "Material Permit" on Exhibit F—Material Permits.

"MEC I" shall have the meaning set forth in the first paragraph of this PPA.

"MEC I Facility" means the Mankato Facility as defined in the MEC I PPA.

"MEC I PPA" shall have the meaning set forth in Section 2.2.

“Minimum Load Starting Point” means the minimum level of operation at which the Facility is capable of receiving a dispatch signal unless there is a physical limitation to the AGC.

“Minimum Loading” means the minimum capacity the Facility can be scheduled for continuous operation according to Good Utility Practices.

“MISO” means the Midcontinent Independent Transmission System Operator, Inc., a non-profit Delaware corporation, or successor organization. MISO is the current Transmission Authority.

“Mortgaged Property” shall have the meaning set forth in Section 11.2(A).

“MPUC” means the Minnesota Public Utilities Commission.

“MW” means megawatt or one thousand kW.

“MWh” means megawatt hours.

“Nameplate Capacity” means 345 MW.

“Natural Gas Interconnection Facilities” means Seller’s, or Seller’s agent’s, pipeline, compression and related facilities required to receive, regulate and meter natural gas fuel and to transport such fuel from the Fuel Delivery Point to the Facility for the generation of electric energy under this PPA, including those facilities required to heat or filter/separate such natural gas fuel as Seller, in its sole judgment, deems necessary to install.

“Necessary Accredited Capacity Testing Results” means the capacity testing that Seller must complete and report to the Transmission Authority for the Facility to be accredited by the Transmission Authority as a Capacity Resource. The current accredited capacity testing requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

“NERC” means the North American Electric Reliability Council or any successor organization.

“Net Capability” or “NC” means the lesser of (a) three hundred forty five (345) MW, or (b) the net generating capability of the Facility as determined by the most recent capacity test thereof, adjusted to Reference Conditions.

“Network Integration Transmission Service” or “NITS” shall have the meaning set forth in the Transmission Tariff.

“Network Resource” means the applicable amount of capacity for the Facility that has been designated as a “network resource” under the Transmission Tariff.

“Network Resource Interconnection Service” or “NRIS” shall have the meaning set forth in the Transmission Tariff.

“Network Upgrades” means the upgrades to any transmission facilities on the regional transmission system identified in the studies required pursuant to the Transmission Tariff.

“Notice(s)” shall have the meaning set forth in Section 20.1.

“Offending Party” shall have the meaning set forth in Section 20.4(B).

“Off-Peak Months” means the months of March, April, May, October and November.

“On-Peak Months” means the months of January, February, June, July, August, September and December.

“Operating Committee” means one representative each from Company and Seller pursuant to Section 10.4.

“Operating Procedures” means those procedures developed pursuant to Section 10.4, if any.

“Operating Records” means all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

“Operating Standards” means Company’s Operating Standards as set forth in Exhibit H-Operating Standards, as may be revised from time to time.

““Parent Guaranty” shall have the meaning set forth in Section 11.1(C)3.

“Party” and “Parties” shall have the meanings set forth in the introductory paragraph.

“Permit(s)” means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses and approvals from any Governmental Authority required under Applicable Laws for construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company.

“Planning Year” means the annual capacity accreditation period that the Company is subject to as designated by the Transmission Authority. Currently under the Transmission Tariff this period is June 1st to May 31st of the following year. A Planning Year is identified by the year in which it begins. For example, the 2018 Planning Year begins June 1, 2018.

“Point of Delivery” means the physical point within the operational authority of Transmission Authority at which Seller makes available to Company and delivers to Company the Contract Capacity and Contract Energy being provided by Seller to Company from the Facility under this PPA as specified in Exhibit C-Facility Description, One-Line Diagram, And Site Map to this PPA. The Point of Delivery shall be the dead end structure on the high side of Seller’s step-up transformer at the Facility.

“PPA” shall have the meaning set forth in the introductory paragraph hereto and includes all amendments hereto.

“Post-COD Damage Cap” means ***[Trade Secret Data Begins...
...Trade Secret Data Ends]***.

“Post-COD Security Fund” means ***[Trade Secret Data Begins...
...Trade Secret Data Ends]***.

“Pre-COD Damage Cap” means ***[Trade Secret Data Begins...
...Trade Secret Data Ends]***.

“Pre-COD Security Fund” means ***[Trade Secret Data Begins...
...Trade Secret Data Ends]***.

“Predicted Net Heat Rate” means the predicted net heat rate for the Facility, stated in Btu/kWh Higher Heating Value (“HHV”), at Reference Conditions and adjusted to reflect the turbine manufacturer’s estimated degradation in equipment performance over the period of Commercial Operation from new and clean equipment conditions as specified in Exhibit J-Predicted Net Heat Rate Degradation Adjustment. The initial Predicted Net Heat Rate at new and clean equipment conditions and at Reference Conditions shall be the lesser of (i) ***[Trade Secret Data Begins...
...Trade Secret Data Ends]*** Btu/kWh HHV or (ii) the Actual Net Heat Rate resulting from the Initial HR Test. The Predicted Net Heat Rate degradation adjustment, as specified in Exhibit J-Predicted Net Heat Rate Degradation Adjustment, shall be used to adjust such initial Predicted Net Heat Rate, and thereby establish the Predicted Net Heat Rate, over the period.

“Reactive Power” shall have the meaning of “Reactive Supply and Voltage Control” set forth in the Transmission Tariff.

“Reference Conditions” means the Facility operating in ambient conditions used to establish the Predicted Net Heat Rate to provide a reference for adjustment in determining the Actual Net Heat Rate from heat rate testing of the Facility pursuant to Section 8.5. The ambient Reference Conditions for the Facility shall be an ambient temperature of 6.0 degrees Fahrenheit (F), 68% ambient relative humidity, and standard ambient pressure (14.696 psia at mean sea level) adjusted to the Site elevation of 800 feet above mean sea level.

“Re-mobilization Costs” has the meaning set forth in Section 2.3(B).

“Replacement Power Costs” means the costs incurred by Company that are necessary to replace the products and services that Seller was required to provide under this PPA, but failed to so provide, less the sum of any payments from Company to Seller, under this PPA, and costs of fuel that were eliminated as a result of such failure; *provided, however, that* the net amount shall never be less than zero in any hour and if the calculation for any hour results in a number less than zero, the number for such hour shall be deemed to be zero. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of all hours where the following calculation achieves a positive number.

Replacement Power Costs = (A + B + C) – D, where

“A” is the product of (x) the number of MW of capacity derived by subtracting the number of MW of capacity that qualifies for capacity credit actually made available to Company from the Contract Capacity, and (y) the applicable market price for capacity made available to Company’s system plus any other associated costs and penalties arising out of Seller’s failure to perform;

“B” is the product of the number of MWh of energy purchased by Company associated with the replacement capacity and the applicable market price for energy delivered to Company’s system at a point nearest to the Point of Delivery for the hour plus any other associated costs and penalties arising out of Seller’s failure to perform; and

“C” an amount equal to the actual cost of transmission, ancillary services, fuel and fuel transportation and related penalties that could not be avoided or mitigated and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed;

“D” is the sum of any payments from Company to Seller, under this PPA that would have been made but were eliminated as a result of such failure and any costs of fuel that can be reasonably avoided by Company to obtain replacement energy.

“Reported Availability” shall have the meaning set forth in Section 10.1(B)(2).

“ROFO Notice” shall have the meaning set forth in Section 19.2(A).

“SCADA” means supervisory control and data acquisition.

“Scheduled Termination Date” means through and including the last Day of a Planning Year on or immediately after the twentieth (20th) anniversary of the COD.

“Scheduled Maintenance Energy” shall have the meaning set forth in Section 8.1.

“Scheduled Outage/Derating” means a planned interruption/reduction of the Facility’s generation that both (i) has been coordinated in advance with Company, with a mutually agreed start date and duration, (ii) is required for inspection, or preventive or corrective maintenance, and (iii) complies with the Transmission Authority scheduling

requirements as set forth in the Transmission Authority Business Practices Manual for Outage Operations.

“Scheduling Charge” means the product of ***[Trade Secret Data Begins...
...Trade Secret Data Ends]*** multiplied by the Inflation Factor.

“Security Fund” means the letter of credit, escrow fund, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Section 11.1, as security for Seller’s performance under this PPA.

“Seller’s Reimbursable Transmission Costs” means all the engineering, design, procurement, and construction costs Seller incurs for transmission facilities required under the Interconnection Agreement, and the costs Seller shall incur for Network Upgrades associated with Company obtaining firm NITS for the Facility.

“Shut-Down Period” means any period during which the Facility has completed its run schedule, is taken off AGC, and ramps down to breaker open.

“Site” means the parcel of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit C-Facility Description, One-Line Diagram, And Site Map to this PPA.

“Site Permit” means any Permit, or any amendment to an existing Permit, required by Applicable Law to authorize the construction and siting of the Facility at the Site.

“Start-Up Period” means any period during which the Facility is ramping from breaker close to its Minimum Load Starting Point.

“State Regulatory Agency” means the North Dakota Public Service Commission, and any successor agency thereof.

“State Regulatory Approval” means a final, non-appealable written order of the North Dakota Public Service Commission making the affirmative determination that Company’s execution of this PPA is reasonable, in the public interest, and all costs incurred under this PPA are recoverable from the retail customers pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudence review of Company’s performance and administration of this PPA.

“Step-in Rights” means Company’s right, but not the obligation, to assume control and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller’s right, obligations, and interest under this PPA.

“Subordinated Mortgage” shall have the meaning set forth in Section 11.2(A).

“Successful Start” means, in response to a request from Company to start the Facility, Seller’s start and operation of the Facility that: (i) achieves the Minimum Loading level for the requested operating configuration within the greater of (a) two hundred thirty (230) minutes after the time Company requested the turbine start to begin or (b) the operating parameters of the air Permit, and (ii) upon achieving the aforementioned Minimum Loading level, generates continuously for a period of not less than one hour while synchronized to the Transmission Authority’s System at or above such Minimum Loading level without experiencing any abnormal operating conditions.

“Term” means the period of time during which this PPA shall remain in full force and effect as further defined in Article 2.

“Test Energy” means that energy which is produced by the Facility, delivered to Company at the Point of Delivery, and purchased by Company pursuant to Section 4.4 in order to perform testing of the Facility.

“Test Energy Rate” means ***[Trade Secret Data Begins...
...Trade Secret
Data Ends]***.

“Tolling Price” means ***[Trade Secret Data Begins...
...Trade Secret
Data Ends]***.

“Transmission Authority” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to the Transmission Tariff, including (i) Midcontinent Independent Transmission System Operator, Inc. (“MISO”), a non-profit, Delaware corporation, or successor organization and (ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point and transmission system.

“Transmission Authority Capacity Accreditation Requirements” means the applicable Transmission Tariff requirements for accreditation of the capacity of new generation added to the Transmission Authority’s System. The current capacity accreditation requirements are set forth in Module E-1 Resource Adequacy of the MISO OATT.

“Transmission Authority’s System” means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Authority has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Transmission Tariff” means the applicable open access transmission tariff of the Transmission Authority, as amended from time to time. The current Transmission Tariff is the MISO OATT.

“Turbine Start Payment” shall have the meaning set forth in Section 8.6.

“Turbine Start Price” means *[Trade Secret Data Begins... ...Trade Secret Data Ends]* per Successful Start.

“UCP” shall have the meaning set forth in Exhibit G-1, Form of Letter of Credit.

“Unrecovered Costs for Early Termination” has the meaning set forth in Section 2.4(A).

“Upstream Pipeline” means Northern Natural Gas, the interstate natural gas pipeline interconnecting to the Facility at the Fuel Delivery Point and providing Acceptable Natural Gas Fuel to the Facility in accordance with its applicable tariff.

“Wenck Environmental Assessments” means the following Environmental Assessments performed by Wenck Associates, Inc.: Phase I Environmental Site Assessment—Mankato Energy Center Site, Mankato, Minnesota (September 2003); Limited Phase II Environmental Site Assessment—Mankato Energy Center Site, Mankato, Minnesota (December 2003); Phase I Environmental Site Assessment—Residential Property, 3274 Third Avenue, Mankato Minnesota (July 2004); Phase I Environmental Site Assessment—Remote Equipment Area, County Road 5 and Industrial Drive, Line Township, Minnesota (April 2005); Phase I Environmental Site Assessment—Pipeline Corridor, Mankato, Minnesota (July 2005); Phase I Environmental Site Assessment—Mankato Energy Center, LLC. 1 Fazio Lane, Mankato, Minnesota (August/September 2009); Phase I Environmental Site Assessment—Mankato Energy Center, LLC. Natural Gas Pipeline Corridor, Mankato, Minnesota (August, 2009); Phase I Environmental Site Assessment—Mankato Energy Center, LLC. Water Pipeline Within Section 31, T109N, R26W and Section 7, T108N, R26W, Mankato, Minnesota (August 2009).

EXHIBIT B

CONSTRUCTION MILESTONES

All Construction Milestones are subject to extension in accordance with the terms of the PPA.

Construction Milestone	Outcome
<i>[Trade Secret Data Begins...]</i>	
	Company shall have obtained State Regulatory Approval.
	Seller and all required counterparties have executed major procurement contracts, the Construction Contract (Limited Notice To Proceed Only), any operating agreements, and the Interconnection Agreement needed to commence construction of the Facility.
	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
	Seller shall have laid the foundation for generating facilities and step-up transformation facilities.
	The turbine(s)/generator(s)/step-up transformer shall have been delivered to, and set on foundation at, the Site.
	All Network Upgrades associated with obtaining NITS are completed.
	All fuel supply and transportation arrangements have been put in place and fuel interconnection facilities in have been constructed and are operational.
	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized
	Commissioning of the Facility commences.
	Seller shall have obtained either (i) unconditional ERIS and

	unconditional NITS, or (ii) unconditional NRIS.
	Seller shall have obtained MISO accreditation of the Facility as a Capacity Resource
	Commercial Operation Milestone
<i>...Trade Secret Data Ends]</i>	
June 1, 2018	Commercial Operation Date

EXHIBIT C

FACILITY DESCRIPTION, ONE-LINE DIAGRAM, AND SITE MAP

Site Location

The Facility will be located on a 25-acre site within the Mankato city limits in Blue Earth County, Minnesota, northwest of the County Highway 5 and Summit Avenue intersection. A one-line diagram of the Facility and site map is included in this Exhibit.

General

The Facility will consist of a combustion turbine generator (CTG) and heat recovery steam generator (HRSG) and associated balance of plant items required to supplement the MEC I Facility's 1x1x1 configuration to achieve a 2x2x1 configured plant. The Facility's CTG and HRSG will combust natural gas only.

Major New Equipment

The Facility's equipment will include: one (1) 501FD CTG, one (1) new generator step up transformer, one (1) natural gas, supplementary fired HRSG, plus associated switchgear, motor control centers, water treatment, and an expansion to the existing evaporative cooling tower.

Support Buildings

The existing administration/maintenance/warehouse/control building will be used for any Facility activities. Additionally, the existing water treatment building will be used to house any additional demineralization equipment and water lab equipment need to support the expanded operations.

Water

The Facility will make use of existing infrastructure to receive and discharge water. Gray water will be provided by the City of Mankato Municipal Wastewater Treatment Plant. Additional wastewater treatment facilities are located at the municipal treatment plant which is approximately one mile due south from the Facility. Two existing pipelines will transport gray water to the Facility and return discharged water from the Facility. The wastewater facilities are owned by the City of Mankato. Potable water is provided by the City of Mankato's water distribution system.

Gas Interconnection

A 20-inch natural gas lateral was constructed to provide fuel to the MEC I Facility and the Facility. The lateral connects to the Northern Natural Gas system which is located approximately 3.5 miles to the East of the Facility. The lateral is capable of serving the fuel requirements for the Facility and the MEC I Facility.

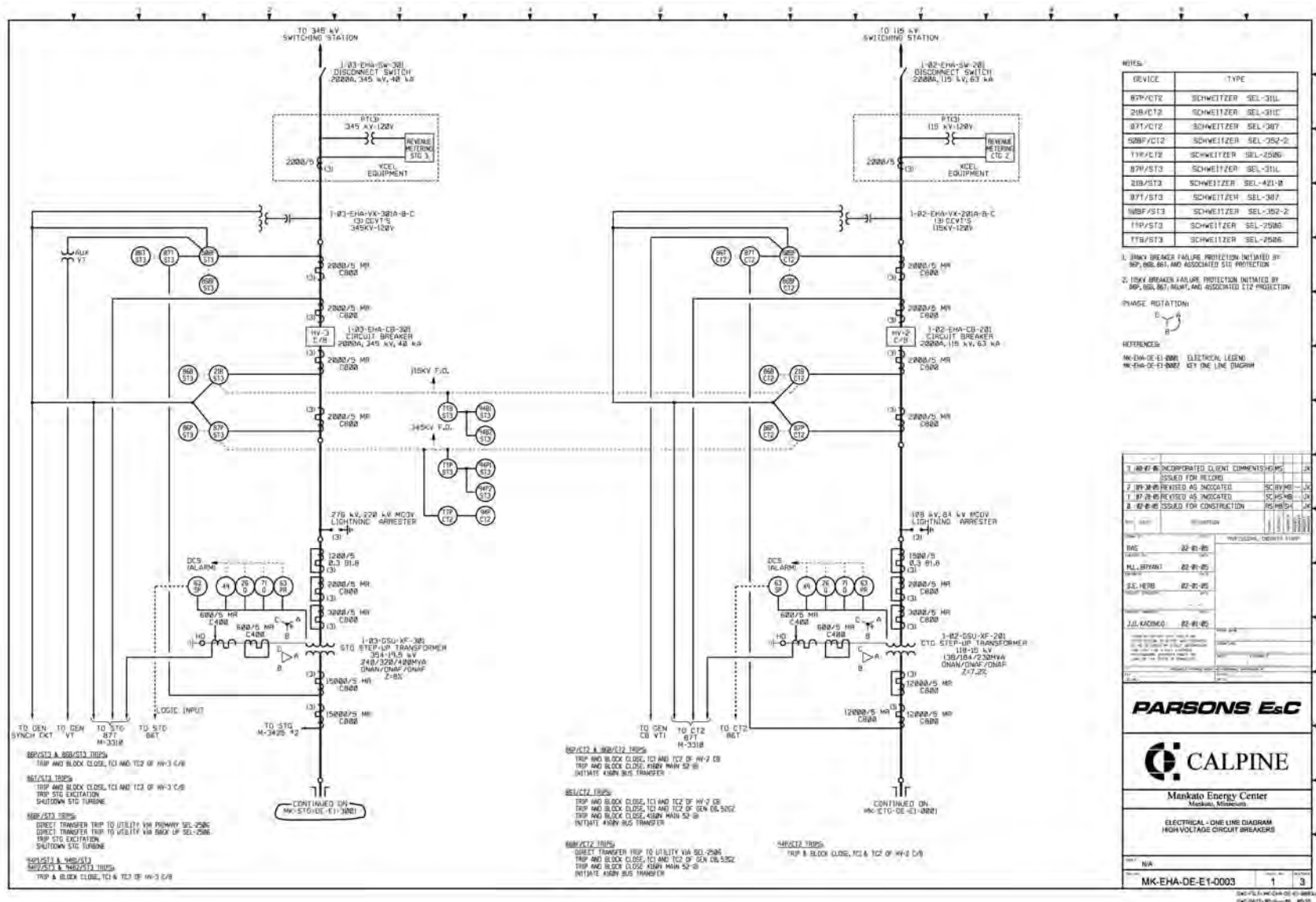
Electrical Interconnection

As described in the Interconnection Agreement, as may be amended from time to time, which as of August 29, 2014 provides as follows:

The Facility will be interconnected to Company's Wilmarth Substation, located approximately 2,500 feet west of the Facility, via a new 115 kV circuit.

Point of Interconnection. The Facility's point of interconnection is identified in the Interconnection Agreement. Currently, the point of interconnection is identified as the point where the transmission owner's new 115 kV line from the Mankato substation connects with the dead-end A-frame structure at the high side of the Facility's step-up transformer.

Interconnection Facilities (including metering equipment) to be constructed by Facility. The Facility's interconnection facilities are identified in the Interconnection Agreement, and currently are identified as requiring the following: one 115 kV breaker, and new line relaying and associated protection and metering equipment on Facility's side of the new 115 kV point of interconnection.



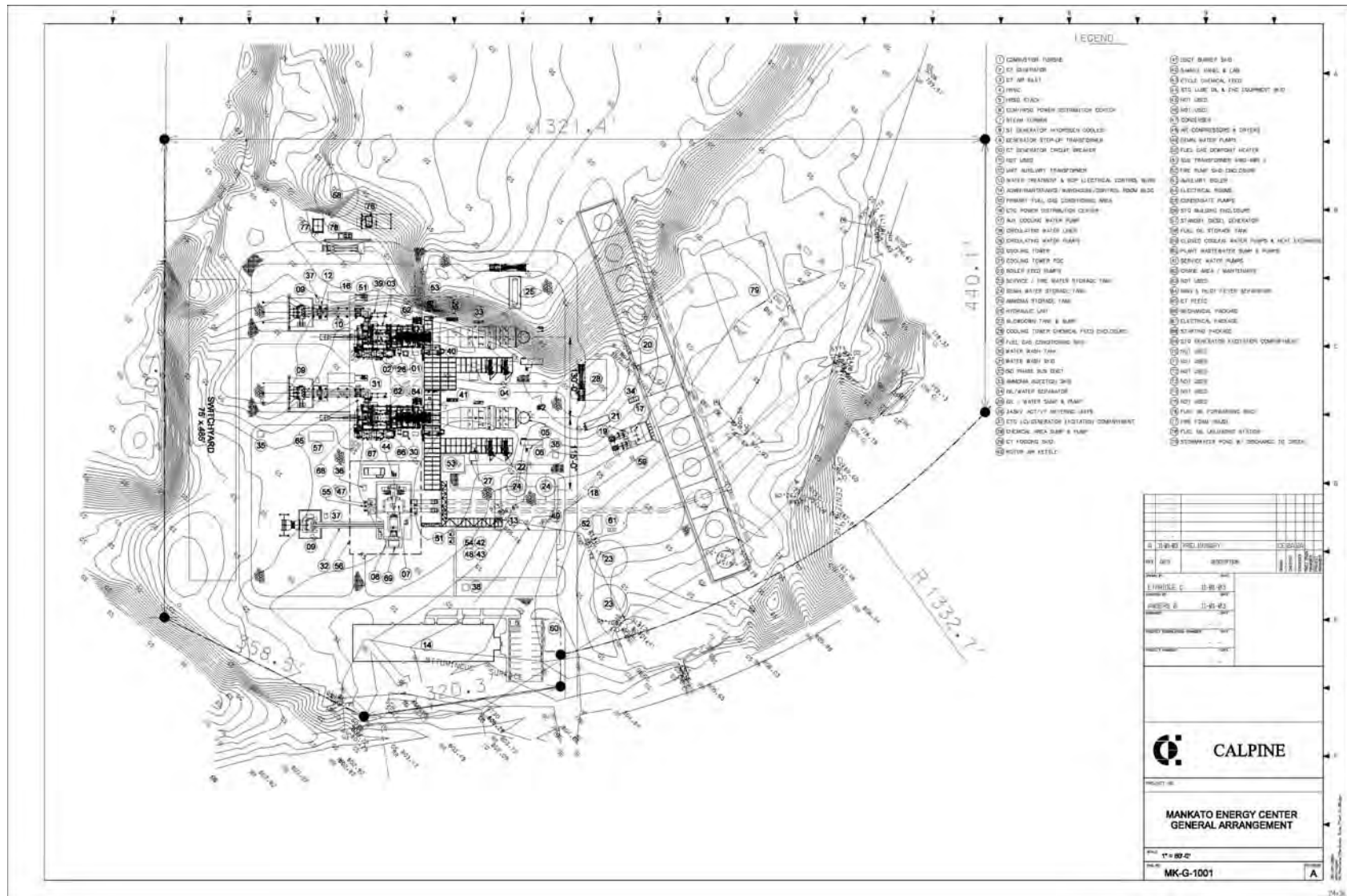


EXHIBIT D

NOTICES AND CONTACT INFORMATION

Company	Seller
<p>Notices:</p> <p>Tim Kawakami Director, Purchased Power Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303-571-2748 Email: tim.kawakami@xcelenergy.com Fax: 303-571-2913</p> <p>Jeff Klein Manager, Structured Purchases Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303-571-2732 Email: jeffrey.klein@xcelenergy.com Fax: 303-571-2913</p> <p>Jeanette Schuck Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303-571-7428 Email: jeanette.r.schuck@xcelenergy.com Fax: 303-571-2913</p>	<p>Notices:</p> <p>Mankato Energy Center II, LLC Attention: Vice President East Power Trading 717 Texas Avenue, Suite 1 000 Houston, TX 77002 Email: CommodityContracts@calpine.com Facsimile: 713-830-8751</p> <p>Mankato Energy Center II, LLC Attention: Risk Management Counsel 717 Texas Avenue, Suite 1 000 Houston, TX 77002 Email: CommodityContracts@calpine.com Facsimile: 713-325-1508</p>
<p>Operating Committee Representative:</p> <p>Jeff Klein Manager, Structured Purchases Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303-571-2732 Email: jeffrey.klein@xcelenergy.com</p>	<p>Operating Committee Representative:</p> <p>Asset Manager c/o Calpine Corporation East Region Office 500 Delaware Avenue, Suite 600 Wilmington, DE 19801 Phone: 302-468-5340</p>

<p>Fax: 303-571-2913</p> <p>Alternate: Jeanette Schuck Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303-571-7428 Email: jeanette.r.schuck@ xcelenergy.com Fax: 303-571-2913</p>	
<p>Real-Time Contact Information</p> <p>Real-time Communications Contact Real-time Generation Dispatch desk (24 hour coverage) Mark Schultz, or Shift Operator Phone: 303-571-7426 Fax: 303-571-7305 E-mail: mark.schultz@xcelenergy.com</p> <p>Transmission Operation Contact Position: Real Time Transmission Operations Todd Sarkinen, or Shift Operator Phone: 612-321-7432 FAX: 303-571-7305 E-mail: todd.k.sarkinen@ xcelenergy.com</p>	<p>Real-Time Contact Information</p> <p>Calpine 24-hour Desk Calpine Corporation 717 Texas Avenue, Suite 1000 Houston, TX 77002 Phone: 713-830-2083</p>

EXHIBIT E
INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed substantially (by blanket endorsement or otherwise) as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$1,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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Type of Insurance	Minimum Limits of Coverage
Employers Liability	\$1,000,000 each accident for bodily injury by accident, or \$1,000,000 each employee for bodily injury by disease.

Builder's Risk	Replacement value of the Facility.
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy, with sublimits as appropriate.

All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
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Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT F

MATERIAL PERMITS

1. Air Permit
2. Site Permit
3. [Reserved]

EXHIBIT G
FORM OF SECURITY DOCUMENTS

EXHIBIT G-1

FORM OF LETTER OF CREDIT

LETTERHEAD OF ISSUING BANK

Irrevocable Standby Letter of Credit No: _____ Date of Issuance: _____
Initial Expiration Date: [Must be at least one year after date of issuance]
Beneficiary: _____ Applicant: _____

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. _____ (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of USD \$ _____ (_____ U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds available to Beneficiary, upon presentation of the following documents (collectively, the "Presentation Documents"):

1. Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and signed on behalf of Beneficiary, with Beneficiary's signatory indicating his or her title or other official capacity;
2. This Letter of Credit; and
3. A statement signed by an authorized officer or representative of Beneficiary substantially as follows:

"The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Northern States Power Company, (ii) the amount of the draft accompanying this certification is an undisputed amount due and owing to Northern States Power Company by virtue of a breach by Mankato Energy Center II, LLC under the terms of the Power Purchase Agreement dated as of _____, and (iii) all applicable notice-and-cure periods have expired."

or as follows:

"The undersigned hereby certifies that (i) I am duly authorized to execute this document on behalf of Northern States Power Company, and (ii) Northern States Power Company has

received notice that this Letter of Credit will not be extended beyond its Expiry Date, and Mankato Energy Center II, LLC has failed to provide alternate security to Northern States Power Company as required under the Power Purchase Agreement dated as of _____ within ten (10) days prior to the Expiry Date of the Letter of Credit.”

No documents other than the Presentation Documents will be required to be presented. Issuer will effect payment under this Letter of Credit within three (3) banking days following the date of Issuer’s receipt of the required Presentation Documents. Payment shall be made in U.S. Dollars with Issuer’s own funds in immediately available funds.

Issuer will honor any Sight Draft presented in compliance with the terms of this Letter of Credit at the Issuer’s letterhead office, the office located at _____ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

Issuer acknowledges that this Letter of Credit is issued pursuant to the provisions of that certain Power Purchase Agreement between Beneficiary and Applicant dated as of _____, 20__ (as the same may have been or may be amended from time to time, the “PPA”). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary’s address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer’s letterhead address. The date on which this Letter of Credit expires (as such date may be extended pursuant to this paragraph) is referred to herein as the “Expiry Date.”

This Letter of Credit is not transferable or assignable by Beneficiary, except that this Letter of Credit may be transferred in its entirety to, and only to, any transferee who has succeeded to Beneficiary’s rights under the PPA, and notwithstanding any contrary provision in the UCP, such transferred Letter of Credit may be successively so transferred. Issuer agrees that it will affect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request in a form acceptable to Issuer in Issuer’s sole

discretion. Any transfer fees assessed by Issuer will be payable solely by Beneficiary.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (The "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: _____
Authorized Signature

Name: _____
Its: _____

EXHIBIT "A"
TO LETTER OF CREDIT

SIGHT DRAFT

Draft Number _____
\$ _____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of
USD \$ _____ (_____ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address].
Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No.
_____.

Dated: _____, 20__

[Name of Beneficiary to be inserted]

By: _____

Name: _____
Its Authorized Representative and [Title
or Other official Capacity to be
inserted]

Account: [Applicant to be inserted]

EXHIBIT G-2

FORM OF GUARANTY

This Guaranty is executed and delivered as of this ____ day of _____, 20__ by _____, a _____ ("Guarantor"), in favor of _____ ("Company"), in connection with the performance by _____, a _____ [limited liability company] ("Seller") of a Power Purchase Agreement dated _____, 20__ between Seller and Company (the "PPA").

- RECITALS -

A. Seller is planning to construct, own, and operate an electric generation facility having Nameplate Capacity of approximately ____ MW to be located in _____ County, _____ (the "Facility").

B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.

Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, including any applicable exceptions or limitations, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to (\$US_____).

3. Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and

without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA, except that any such renewal, compromise, extension, acceleration or other change shall not enlarge Guarantor's obligations under this Guaranty and Guarantor shall have the benefit of any such renewal, compromise, extension, acceleration or other change as Seller (e.g., if Seller's time for payment of an Obligation has been extended, Guarantor shall have no obligation under this Guaranty to make payment of such Obligation until such time as Seller is required under the extension to make payment);

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result of any efforts to collect or enforce any valid obligations under this Guaranty all in such manner and at such times as Company may reasonably direct. All payments hereunder shall be made without reduction, whether by offset, payment in escrow, or otherwise, except to the extent of any defenses to payment or performance which Seller may have under the PPA (other than defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller, the power or authority of Seller to enter into the PPA, and to perform the Obligations, and the lack of validity or enforceability of the PPA or any other documents executed in connection with the PPA).

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty, subject to any applicable limitations or exceptions hereunder, be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred,

regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company, subject to Company's obligation to reasonably mitigate damages;

(d) any duty of Company to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Project, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Termination and Release. This Guaranty shall terminate on the date (the "Termination Date") that is the earlier of (i) thirty (30) days after prior written notice of termination of this Guaranty has been received by Company, or (ii) the date when all Obligations have been paid; *provided, however, that* this Guaranty shall continue to remain in force following the Termination Date with respect to any Obligations of Seller arising on or prior to the Termination Date.

9. Release and Assignment. Upon (i) the transfer or assignment by Seller of the PPA or any rights thereunder to any third party that is not an Affiliate (as defined in the PPA) of Guarantor whereby Seller is released from or relieved of its obligations

under the PPA pursuant to the terms of the PPA or (ii) a Change of Control (as defined in the PPA) of Seller that results in Seller no longer being a direct or indirect subsidiary of Guarantor, Guarantor's obligations under this Guaranty shall be released and discharged, except with respect to Guarantor's guarantee of any Obligations of Seller arising on or prior to the effective date of such assignment or Change of Control. Company hereby agrees to enter into a mutually acceptable agreement to evidence, or otherwise provide adequate assurance of, any such release or discharge. Subject to the foregoing in this Section 9, Guarantor may not assign this Guaranty or its obligations hereunder without the prior written consent of Company, which consent of Company shall not be unreasonably withheld or delayed.

10. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

11. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

12. Collection Costs. Guarantor hereby agrees to pay to Company, upon demand, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing this Guaranty against Guarantor, whether or not suit is filed.

13. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

14. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company or as expressly provided herein.

15. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.

16. Governing Law and Limitation of Liability. **THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. CALPINE HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE. IN NO EVENT SHALL CALPINE BE LIABLE UNDER THIS GUARANTEE FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES AND NO SUCH DAMAGES MAY BE AWARDED IN ANY PROCEEDING.**

17. Miscellaneous. This Guaranty shall not be deemed to benefit any person except Seller, Guarantor and Company. This Guaranty supercedes and replaces any guarantees made by Guarantor that pertain to the PPA prior to the effective date of this Guaranty.

18. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Company as provided in the PPA

(b) if to Guarantor: _____

Attn:

Phone: (____) _____

Fax: (____) _____

with a copy to: _____

Attn:

Phone: (____) _____

Fax: (____) _____

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the day and year first above written.

[Name of Guarantor]

By: _____

Name:
Title:

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires:_____.

Notary Public

(S E A L)

(space above reserved for recording information)

EXHIBIT G-3

FORM OF ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into and effective this ____ day of _____, _____ by and among _____ ("Seller"), _____ ("Company") and _____ ("Escrow Agent").

RECITALS

WHEREAS, Seller and Company are parties to a Power Purchase Agreement dated _____ (the "PPA"), pursuant to which Seller agrees to build and operate an electric generating facility in _____ (the "Facility") and to sell energy from the Facility to Company. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PPA; and

WHEREAS, Section 11.1 of the PPA requires Seller to provide security in favor of Company in amounts set forth in the PPA up to a total of **[Trade Secret Data Begins...
...Trade Secret Data Ends]**; and

WHEREAS, Seller has elected to establish and deliver funds (the "Escrow Funds") into an escrow account with Escrow Agent to meet its PPA security obligations, and Seller, Company and Escrow Agent agree to enter into this Agreement to define the terms of that escrow account.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other consideration set forth in this Agreement and the PPA, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Seller and Company hereby appoint Escrow Agent as their agent and custodian to hold, invest and distribute the Escrow Funds and all interest and investment earnings thereon (the "Escrow Interest") in accordance with this Agreement. To the extent any Escrow Interest accrues during the term of this Agreement, such Escrow Interest shall be added to but shall not be included as part of the principal amount of the Escrow Funds except as set forth in Section 5.
2. Delivery of Funds to Escrow Agent.

- a. Seller shall deposit with Escrow Agent an amount equal to \$_____ (the "Escrow Total") on or before [_____] / [the date required by the PPA].
 - b. Escrow Agent shall retain and disburse the Escrow Funds pursuant to the terms of this Agreement. The execution and full performance of this Agreement by Seller and Escrow Agent, and retention and disbursement by Escrow Agent of the Escrow Funds pursuant to the terms hereof, fully satisfies Seller's initial obligations under Section 11.1 of the PPA to establish and maintain the Security Fund. Escrow Agent shall hold the Escrow Funds under the terms of this Agreement and distribute the Escrow Funds only in accordance with Section 5.
 - c. The Escrow Funds shall, for all purposes, be considered property of Seller unless and until distributed to Company in accordance with this Agreement. To protect Company prior to such distribution, Seller hereby grants to Company a first priority security interest in all of Seller's right, title and interest in and to the Escrow Funds held under this Agreement for the purpose of securing Seller's obligations under the PPA. However, any release of any portion of the Escrow Funds to Seller or Company in accordance with this Agreement shall act as an automatic termination of Company's security interest in the Escrow Funds so released. Seller authorizes Company to file such financing statements and other documents as Company reasonably deems necessary or advisable to protect Company's rights in the Escrow Funds. Each party will sign such documents (including upon the request of Company a control agreement), provide such information, send such notices and take such other actions as any other party reasonably requests to consummate more effectively the intent and purpose of the parties under this Section 2(c).
3. Investment. Escrow Agent shall hold and invest the Escrow Funds only in accordance with the terms of this Agreement. At the written direction of Seller, Escrow Agent shall invest and reinvest the Escrow Funds in cash or one or more of the following short-term securities: a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less. All investments of the Escrow Funds shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Interest and investment income earned on the Escrow Funds shall accrue for the benefit of, and be taxable to, Seller.
 4. Distributions of Escrow Funds by Escrow Agent. Escrow Agent shall hold the Escrow Funds until instructed or otherwise required to deliver the same or any portion thereof in accordance with Section 5.
 5. Distributions.

- a. Escrow Interest. Once Escrow Funds being held by Escrow Agent reach the Escrow Total, Seller may be paid Escrow Interest earned on the Escrow Funds at times and amounts in Seller's discretion as long as the amount of the Escrow Funds does not, as a result, become less than the Escrow Total.
 - b. Release at End of Term; Substitution of Security. After the full and final satisfaction of all of Seller's obligations under the PPA, any Escrow Funds remaining with Escrow Agent after all deductions for any damages or other allowed charges made by Company, and all accrued Escrow Interest, shall be released to Seller. If Seller provides a letter of credit or other security under the PPA in form and substance as required by the PPA to secure Seller's obligations to Company prior to the expiration or termination of the PPA, then all Escrow Funds and Escrow Interest in excess of the amount necessary to maintain the Security Fund under the PPA shall be released to Seller upon the delivery to Company of such effective letter of credit or security mechanism as permitted by the PPA.
 - c. Escrow Claims by Company. During the term of the PPA, Company may draw all or any portion of the Escrow Funds to the extent necessary to recover amounts due and owing to Company pursuant to the PPA that are not the subject of a good faith dispute. Each claim against the Escrow Funds under this Agreement shall be made by Company by delivering to Escrow Agent a certificate, in substantially the form of Exhibit A attached hereto, specifying the nature of the claim (a "Claim Certificate"). A copy of each Claim Certificate shall also be delivered to Seller contemporaneously with provision to Escrow Agent. Escrow Agent shall pay to Company the amount of Escrow Funds set forth in the Claim Certificate, in accordance with the Claim Certificate, on the third Business Day after it receives the Claim Certificate.
 - d. Regulations of the Comptroller of the Currency. Company and Seller acknowledge that regulations of the Comptroller of the Currency grant Company and Seller the right to receive brokerage confirmations of any security transactions as they occur. Company and Seller specifically waive such notifications to the extent permitted by law, and Seller will receive monthly cash transaction statements that will detail all investment transactions.
6. Rights and Obligations of Escrow Agent.
- a. Duties.
 - i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds held by Escrow Agent under

this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Company and Seller. Escrow Agent will deliver to Company and Seller written statements not less than quarterly summarizing any activity with respect to the Escrow Funds (including the amount of interest and earnings thereon) and detailing the balance of the Escrow Funds.

- ii. This Agreement may be terminated by a writing executed by all of Company, Seller and Escrow Agent.
 - iii. In the event that this Agreement is scheduled to expire or terminate during the term of the PPA, and Seller has not provided security pursuant to the PPA required to replace this Agreement, Company may draw the entire balance of Escrow Funds, up to the Escrow Total, within five (5) Business Days of the scheduled expiration or termination date, and without regard to any objection asserted by Seller, provided Company holds the Escrow Funds it draws in escrow until the earlier of (i) the date Seller provides adequate replacement security in compliance with the PPA, or (ii) the date Company is entitled to draw and retain all or any portion of the Security Fund under the PPA.
 - iv. Seller will provide immediate notice to Company in the event that the amount of Escrow Funds at any time falls below the Escrow Total.
- b. No Other Duties. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.
- c. Escrow Fee. Escrow Agent shall be entitled to receive solely from Seller (a) \$_____ annually (pro-rated for any partial year) on each anniversary of this Agreement as compensation for its regular services as escrow agent under this Agreement and (b) reimbursement for all reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations under this Section 6.c(b) shall be paid from time to time as incurred. In no circumstance will Company have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement, except for actual damages sustained by Escrow Agent that have been directly caused by Company's sole negligence or intentional tortious misconduct.

- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving thirty (30) days advance written notice of such resignation to Company and Seller. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (a) a successor escrow agent, as mutually agreed on by Seller and Company, shall have been appointed, (b) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement and (c) all Escrow Funds then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.
 - e. Liability of Escrow Agent. Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including, without limitation, any distribution of the Escrow Funds in accordance with Section 5, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own negligence or intentional tortious misconduct. Seller and Company agree to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or related to any breach of this Agreement by Escrow Agent or negligent or intentional tortious actions or omissions of Escrow Agent.
 - f. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given jointly by Company and Seller.
 - g. Interpleader. If Company and Seller shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.
7. Termination of Agreement. Unless terminated earlier by a writing executed by all of Company, Seller and Escrow Agent, this Agreement shall continue through, and terminate on, the earlier of: (i) the date on which all obligations of Seller under the PPA have been fully satisfied; or (ii) the date on which all of the Escrow Funds shall have been paid to Company pursuant to the terms of this Agreement.

8. Taxes. Taxes on distributions of the Escrow Funds shall be paid by Seller.
9. Notices. All notices and other communications (including all certificates delivered pursuant to Section 5) under this Agreement by Company or Seller to Escrow Agent shall be delivered contemporaneously to the other parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by telecopier or facsimile transmission or sent to the applicable parties at their respective addresses indicated in this Section 9 by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

If to Seller, to:

Attention: _____

Phone: _____

Fax: _____

If to Company:

Manager, Structured Purchases
Xcel Energy Services Inc.
1800 Larimer Street, Suite 1000
Denver, CO 80202
Phone: (303) 571-7714
Fax: (303) 571-7002

If to Escrow Agent, to:

Attention: _____

Phone: _____

Fax: _____

or to such other person or address as any party shall have specified by notice in writing to the other parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by telecopier or facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the

transmission is not made on a Business Day, the first Business Day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 9, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 9, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

10. Miscellaneous.

- a. Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- b. No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- c. Integration; Amendment. This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.
- d. Governing Law. The Agreement is made in the State in which the Facility is located and shall be interpreted and governed by the laws of such State or the laws of the United States, as applicable.
- e. Good Faith and Fair Dealing; Reasonableness. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action by a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- f. Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other

provisions of this Agreement shall not be affected and shall continue in force. The parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

- g. Cooperation. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.
- h. Execution in Counterparts and By Facsimile Transmission. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first set forth above.

Dated: _____ **(Seller)**

By: _____

Name: _____

Its: _____

Dated: _____ **(Company)**

By: _____

Name: _____

Its: _____

Dated: _____ **(Escrow Agent)**

By: _____

Name: _____

Its: _____

EXHIBIT A TO ESCROW AGREEMENT

ESCROW

CLAIM

CLAIM CERTIFICATE

TO: _____

This Claim Certificate is issued pursuant to that certain Escrow Agreement, dated as of _____, 2010, by and among Company, Seller and you, as Escrow Agent (the "Agreement"). Capitalized terms used but not otherwise defined in this Claim Certificate shall have the meaning ascribed to them in the Agreement.

The undersigned representative of Company hereby certifies that Company is entitled to receive Escrow Funds in the amount of \$_____ pursuant to the terms of the Agreement and the PPA, due to the following (generally):_____

_____.

Accordingly, subject to the terms of the Agreement, you are hereby instructed to distribute, on the third Business Day after your receipt of this Claim Certificate if you have not received written notice from the Seller that the disbursement is the subject of a good faith dispute, the sum of \$_____ from the Escrow Funds to the undersigned by wire transfer to the following account:

Bank: _____
Account: _____
Routing Number: _____

Date: _____, 20____

(Company)

By: _____
Name: _____
Title: _____

EXHIBIT H

OPERATING STANDARDS

(A) Dispatchability Requirements. Each unit shall be capable of providing:

1. Automatic Generation Control (AGC) from the EMCC;
2. A minimum regulating range 30 MW per unit in automatic load regulation capacity;
3. Continuous response to EMCC pulsing at a minimum rate of five percent of the capacity available at the time per minute over the regulating range of increasing MW of the Facility dispatched and five percent of the capacity available at the time per minute over the regulating range of decreasing MW of the Facility dispatched; and
4. A low load point for the regulating range of the Facility, which is equal to or less than the Minimum Loading level for operation with AGC.

(B) Operations Requirements. The following operations requirements will apply throughout the Term.

1. Operations Log. Seller shall maintain an hourly operation log that identifies real-time unit operating information including: current level of unit capacity availability, planned and unplanned maintenance outages or deratings, circuit breaker operation and any other significant events related to the operation of the unit. Any changes in the generating status or availability of the unit shall be reported immediately to the EMCC operator by telephone.

2. Telemetry/Generation Load Control Requirements. Company shall design, purchase, own, install and test, in accordance with the procedures set forth in this Exhibit, the telemetry equipment, generation load control equipment and the circuits from the Facility demark to the EMCC. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a signal to the governor of Seller's equipment. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by Company. The telemetry and generation load equipment is to provide the following: instantaneous net MW and MVAR levels, control status (available for automatic generation control), load regulation range limits, remote pulsing circuit, and any other parameters deemed necessary by Company. Seller shall install at the Facility MW and MVAR indicating equipment that reflects the identical MW and MVAR values as those telemetered to the EMCC.

3. Periodic Verification of Compliance. Subsequent to the initial verification of AGC compliance as provided for above, Company shall have the

right, at any time and without prior notice to Seller, to verify the continued compliance of such requirements. The subsequent tests will be performed by Company on an as needed basis with a frequency of not greater than every two years. Seller will be notified of test results for any noncompliance.

(C) Automatic Generation Control Availability. Company will monitor Seller's ability to be automatically dispatched. It is the expectation of the Parties that the Facility will be available for automatic generation dispatch during 100% of the Facility's on-line hours (excluding periods of failure of Company's telemetry, during which Seller will manually be dispatched by Company).

* * *

EXHIBIT I

LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to the Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

1. Seller and Company will neither modify nor terminate the PPA other than as provided therein, without the prior written consent of the Facility Lender.
2. The Facility Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself.
3. If Company becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such uncured Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Section 12.1 of the PPA, plus an additional 30 Days beyond Seller's cure period to cure such Event of Default; *provided, however*, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional 30-Day cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Lender.
4. Neither the Facility Lender nor any other participant in the Facility Debt shall be obligated to perform or be liable for any obligation of Seller under the PPA until and unless any of them assumes possession of the Facility through the exercise of the Facility Lender's rights and remedies.
5. Any party taking possession of the Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of the PPA and shall assume all of Seller's obligations under the PPA, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Facility Lender or its successor assumes the PPA in accordance with this paragraph 6, Company shall continue the PPA with the Facility Lender or its successor, as the case may be, substituted wholly in the place of Seller.
6. Within ninety (90) Days of any termination of the PPA in connection with any bankruptcy or insolvency Event of Default of Seller, the Facility Lender (or its successor) and Company shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

EXHIBIT J

PREDICTED NET HEAT RATE DEGRADATION ADJUSTMENT

The Predicted Net Heat Rate (P), as used in Section 8.4, shall be calculated as follows:

P = initial Predicted Net Heat Rate \times (1 + HRAF), where

HRAF = Predicted Net Heat Rate Adjustment Factor, as provided in Tables J-1 and J-2

Prior to the first major maintenance on the combustion turbine (CT) at the Facility, Table J-1 shall be used to calculate the HRAF for the Facility. The total fired hours on the CT shall be used to look-up the HRAF in the table. Linear interpolation shall be used to calculate the HRAF used to calculate the Predicted Net Heat Rate, between break points.

After the first major maintenance on the CT and after each following major maintenance, Table J-2 shall be used to calculate the HRAF. The total fired hours on the CT since the most recent major maintenance shall be used to look-up the HRAF in Table J-2. Linear interpolation shall be used to calculate the HRAF used to calculate the Predicted Net Heat Rate, between break points.

Major maintenance normally occurs after 48,000 hours of CT operation. Factors such as number of trips and a low average number of fired hours per start can accelerate the major maintenance schedule.

Table J-1:

Total combustion turbine fired hours (as of end of billing period)	Predicted Net Heat Rate Adjustment Factor (HRAF)
0	0%
5,000	1.13%
10,000	1.44%
15,000	1.63%
20,000	1.78%
25,000	2.17%
30,000	2.56%
35,000	2.87%
40,000	3.06%
45,000	3.22%
>48,000	3.25%

Table J-2:

Total combustion turbine fired hours (since last major maintenance) (as of end of billing period)	Predicted Net Heat Rate Adjustment Factor (HRAF)
0	1.70%
5,000	2.83%
10,000	3.14%
15,000	3.33%
20,000	3.48%
25,000	3.54%
30,000	3.58%
35,000	3.61%
40,000	3.65%
>45,000	3.70%

EXHIBIT K

FUEL QUALITY SPECIFICATIONS

See attached pages taken from the tariffs of the Upstream Pipeline and Northern Border Pipeline Company. The specifications are subject to change by the Upstream Pipeline and Northern Border Pipeline Company in accordance with the modification requirements of the tariff and other applicable regulations.

Northern Border Pipeline Company
FERC Gas Tariff
Second Revised Volume No. 1

PART 6.5
6.5 - GT&C
Quality of Gas
v.1.0.0 Superseding v.0.0.0

6.5 QUALITY OF GAS

1. Quality Standards of Gas Received by Company.

Company may refuse to accept gas which does not conform to the following specifications:

- (a) The gas shall not contain sand, dust, gums, crude oil, impurities or other objectionable substances which may be injurious to pipelines or may interfere with the transmission of the gas.
- (b) The gas shall have a hydrocarbon dew-point less than -5 degrees F at 800 psia, -10 degrees F at 1000 psia, or -18 degrees F at 1100 psia, or such higher dew point approved by Company as, without treatment by Company, may be compatible with the operating conditions of Company's pipeline.
- (c) The gas shall not contain more than 0.3 grains of hydrogen sulphide per Ccf.
- (d) The gas shall not contain more than 2 grains of total sulphur per Ccf.
- (e) The gas shall contain not more than 0.3 grains of mercaptan sulphur per Ccf, or such higher content as, in Company's judgment, will not result in deliveries by Company to Shippers of gas containing more than 0.3 grains of mercaptan sulphur per Ccf.
- (f) The gas shall not contain more than 2 percent by volume of carbon dioxide.
- (g) The gas shall not have a water vapor content in excess of 4 pounds per MMcf.
- (h) The gas shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than 0.4 percent by volume of oxygen.
- (i) The gas shall have a gross heating value of not less than 967 Btu per cf.

2. Quality Tests.

At each Point of Receipt of a Shipper, Company shall cause tests to be made, by approved standard methods in general use in the gas industry, to

determine whether the gas conforms to the quality specifications set out in Section 6.5 paragraph 1 hereof. Such tests shall be made at such intervals as Company may deem reasonable, and at other times, but not more often than once per day, at the request of any Shipper.

Issued: December 13, 2010
Effective: July 28, 2010

Docket No. RP10-1004-001
Accepted: August 16, 2011

Northern Natural Gas Company
FERC Gas Tariff
Sixth Revised Volume No. 1

Original Sheet No. 281

GENERAL TERMS AND CONDITIONS

44. QUALITY

All gas shall conform to the following specifications:

- a) The gas shall be commercially free from objectionable odors, solid matter, dust, gums and gum-forming constituents, or any other substance which might interfere with the merchantability of the gas, or cause injury to or interference with proper operation of the lines, meters, regulators, or other appliances through which it flows.
- b) Oxygen - less than or equal to 0.2% by volume.
- c) Hydrogen sulfide - less than or equal to 1/4 grain/Ccf.
- d) Total Sulphur - less than or equal to 20 grains/Ccf.
- e) Carbon Dioxide - less than or equal to 2.0% by volume.
- f) Water - less than or equal to 6 pounds/MMcf.
- g) Heating Value - greater than or equal to 950 Btu/Cubic Foot.
- h) The temperature shall be less than or equal to 120 degrees Fahrenheit.

If any gas received by Northern shall fail at any time to conform to the specifications set forth above, Northern may refuse to accept delivery pending correction by the other party. Northern may, on a basis that is not unduly discriminatory, elect to accept gas which fails to meet specifications.

Issued on: September 24, 2010

Effective on: September 24, 2010

EXHIBIT L

MAINTENANCE REQUIREMENTS

(A) Seller shall provide a schedule of the expected Scheduled Outages/Deratings for the Facility ("Maintenance Schedule") for the first Commercial Operation Year at least ninety (90) Days prior to COD. Thereafter, at least ninety (90) Days prior to each successive Commercial Operation Year, Seller shall: (1) submit an annual Maintenance Schedule for the next successive Commercial Operation Year; each scheduled outage shall include the start time and expected duration of the outage; and (2) supply a long-term Maintenance Schedule that will encompass the following four Commercial Operation Years. Any change in the annual Maintenance Schedule, by either Party, shall be furnished to the other Party with advance notice. Minimum advance notice of any change in or extension of the Maintenance Schedule is as follows based on the original total duration:

<u>Scheduled Outage Expected Duration</u>	<u>Advance Notice Required</u>
(1) Less than 2 Days	at least 24 hours
(2) 2 to 5 Days	at least 7 Days
(3) Major overhauls (over 5 Days)	at least 90 Days

(B) Scheduled Maintenance Energy.

1. If the Facility is comprised only of combustion turbine units, Company shall provide Seller the opportunity to use 360 MWh of Scheduled Maintenance Energy ("SME") per MW of Net Capability during each Commercial Operation Year as a credit towards Seller's Capacity Availability Factor ("CAF") pursuant to the payment calculation specified in Section 8.1, *provided, however, that* such SME is scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller's use of such SME. If Seller uses less than 360 MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over for use in the next Commercial Operation Year unused SME as additional credit towards Seller's CAF during the next Commercial Operation Year, *provided, however, that* such SME carried over shall also be scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller's use of such SME, and *provided, further, that* the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, beginning with the second Commercial Operation Year and including carry over SME, shall not exceed 672 MWh of SME per MW of Net Capability for that Commercial Operation Year. SME may not be advanced from future Commercial Operation Years.

2. If the Facility is comprised of combustion turbine and steam turbine units operating in combined cycle mode, Company shall provide Seller the opportunity to use 456 MWh of Scheduled Maintenance Energy ("SME") per MW of Net Capability during each Commercial Operation Year as a credit towards Seller's

Capacity Availability Factor ("CAF") pursuant to the payment calculation specified in Section 8.1, *provided, however, that* such SME is scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller's use of such SME. If Seller uses less than 456 MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over for use in the next Commercial Operation Year unused SME as additional credit towards Seller's CAF during the next Commercial Operation Year, *provided, however, that* such SME carried over shall also be scheduled in advance with Company pursuant to this Exhibit L and approved in writing by Company prior to Seller's use of such SME, and *provided, further, that* the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, beginning with the second Commercial Operation Year and including carry over SME, shall not exceed 720 MWh of SME per MW of Net Capability for that Commercial Operation Year. SME may not be advanced from future Commercial Operation Years.

EXHIBIT M

ESC EVENT ADJUSTMENT

(A) If during some or all of an event (an “ESC Event”) deemed an “Energy Emergency” by the applicable “Reliability Coordinator” under NERC Standard EOP-002-3, or its replacement, the entire Facility either (i) is fully available, (ii) is deemed fully available pursuant to Section 8.1 and this Section, and/or (iii) is subject to a scheduled maintenance outage eligible for SME under Section 10.2 (an “SME Outage”), Seller shall be entitled to a positive ESC Event Adjustment with respect to such ESC Event in the amount of $NC \times DE \times ABF$, where consistent with NERC Standard EOP-002-3, or its replacement, Capacity and Energy Emergencies:

NC = the Net Capability of the Facility expressed in kW;

DE = the number of hours during the ESC Event, during which the Facility is fully available (excluding the number of hours (if any) during the ESC Event when the Facility was subject to an SME Outage); and

ABF = the applicable Availability Bonus Factor:

EEA-1:	<i>[Trade Secret Data Begins... Secret Data Ends]</i>	<i>...Trade</i>
EEA-2:	<i>[Trade Secret Data Begins... Secret Data Ends]</i>	<i>...Trade</i>
EEA-3:	<i>[Trade Secret Data Begins... Secret Data Ends]</i>	<i>...Trade</i>

(B) If some or all of the Facility is not fully available (other than due to SME Outages) during some or all of an ESC Event, Seller shall be subject to a negative ESC Adjustment with respect to such ESC Event in the amount of $ANC \times DO \times ARF$, where:

ANC = the Affected Net Capability of the Facility (i.e. the portion of the Net Capability subject to the outage), expressed in kW;

DO = the hours during which the Net Capability of the Facility is not fully available due to causes other than SME Outages; and

ARF = the applicable Availability Reduction Factor:

EEA-1:	<i>[Trade Secret Data Begins... Secret Data Ends]</i>	<i>...Trade</i>
EEA-2:	<i>[Trade Secret Data Begins... Secret Data Ends]</i>	<i>...Trade</i>
EEA-3:	<i>[Trade Secret Data Begins... Secret Data Ends]</i>	<i>...Trade</i>

provided, however, that with respect to each Commercial Operation Year, in no event shall aggregate net ESC Event Adjustment under this Section exceed:

(i) an amount equal to 200 hours x EEA-1 x NC, with respect to EEA-1 Events during such Commercial Operation Year;

(ii) an amount equal to 50 hours x EEA-2 x NC, with respect to EEA-2 Events during such Commercial Operation Year; or

(iii) an amount equal to 25 hours x EEA-3 x NC, with respect to EEA-3 Events during such Commercial Operation Year.

(C) In determining whether the Facility is “fully available” for purposes of an ESC Event (in contrast to Section 8.1), the availability of the Facility will be adjusted to Reference Conditions.

EXHIBIT N

FACILITY OPERATIONAL INFORMATION

General

The information contained in this Exhibit is indicative only and merely the Seller's best representation of the operational characteristics of the Facility at the time of execution of the Agreement. Updates to the information are possible based on final design and construction and environmental permitting.

Heat Rate information

Unit Loading	Summer Load (MW)	Summer Net Heat Rate (Btu/kWh) HHV	Winter Load (MW)	Winter Net Heat Rate (Btu/kWh) HHV
[Trade Secret Data Begins...]				
Low operating point (Minimum Load)				
Minimum Loading Starting Point				
25% of base capacity				
50% of base capacity				
75% of base capacity				
100% of base capacity				
100%, plus supplemental capacity				

...Trade Secret Data Ends]

Summer reference conditions are at an ambient temperature of 90°F dry-bulb, and 68% relative humidity. Winter reference conditions are at an ambient temperature of 6°F dry-bulb, and 68% relative humidity.

Start Up information

Start Type	Duration (mins)	Fuel Consumed (MMBtu)	Energy Produced (MWh)
[Trade Secret Data Begins...]			
Warm			
Cold			
Lag			

...Trade Secret Data Ends]

A warm start is defined as less than or equal to 48 hours off-line and a cold start is when the steam turbine is off-line for more than 48 hours. A lag start refers to a start when the MEC I Facility is already operating.

The startup is initiated at “flame on” at the plant and ends when the unit is at Minimum Load Starting Point.

Shutdown and Minimum On/Off line

Minimum Up Time (minimum time between generator breaker close and re-open): 4 hours.

Minimum Down Time (minimum time Facility must be off-line before restarting): 60 minutes, unless the steam turbine generator has been placed on turning gear, in which case the Facility must be off-line for 4 hours.

Amendment No. 1

To

Power Purchase Agreement

Between

Northern States Power Company And Mankato Energy Center II, LLC

This Amendment No. 1 ("Amendment No. 1") to Power Purchase Agreement Between Northern States Power Company and Mankato Energy Center II, LLC dated April 28, 2015 ("Power Purchase Agreement" or "PPA") is made this day, August 13, 2015, by and between Northern States Power Company ("Company") and Mankato Energy Center II, LLC ("Seller"). Seller and Company are hereinafter referred to individually as a "Party" and collectively as the "Parties." Capitalized terms used herein but not defined shall have the meanings set forth in the PPA.

WHEREAS, the Parties have entered into the Power Purchase Agreement for the sale and purchase of capacity and associated energy from Seller's Mankato II electric generating plant; and

WHEREAS, the Parties desire to modify certain provisions of the PPA as a result of the delayed receipt of State Regulatory Approval from the State Regulatory Agency, as such terms are defined in the PPA, which provisions are specifically Section 2.4- Early Termination, Section 6.1- Company CPs, Section 6.2 – Seller CPs, and Exhibit B- Construction Milestones.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, the Parties hereby agree as follows:

1. The first sentence of Article 2.4 of the Power Purchase Agreement is hereby deleted in its entirety and replaced by the following:

"2.4 Early Termination. Company has an option to terminate this PPA for its convenience ("Early Termination") by providing Notice to Seller on or before April 1, 2016; *provided, however, that* if on or before such date Company has pursuant to Section 6.1(B) filed a Minnesota Cost Recovery Request as that term is defined in Section 6.1(B) with the Minnesota Public Utilities Commission ("MPUC") and provided Notice thereof to Seller, the deadline for Company to exercise the Early Termination right in this Section 2.4 shall be extended to the earlier of (i) 30 Days following the date on which the MPUC issues a written order approving the Minnesota Cost Recovery Request or (ii) **[Trade Secret Data Begins... ...Trade Data Secret Ends]."**

2. Article 6.1 of the Power Purchase Agreement is hereby deleted in its entirety and replaced by the following:

"6.1 Company CPs.

(A) No later than 15 Business Days after execution of this PPA, Company may make written request for State Regulatory Approval. Seller acknowledges and agrees that the Company filed for State Regulatory Approval of this PPA on February 13, 2015.

(B) Company shall have the right to terminate this PPA pursuant to this Section 6.1, without any further financial or other obligation to Seller as a result of such termination, by Notice to Seller not more than 10 Business Days after the earlier of: (i) receipt of any written order from a State Regulatory Agency rejecting State Regulatory Approval or granting such approval with conditions reasonably and materially unsatisfactory to Company; or (ii) March 31, 2016, in the event Company has not received State Regulatory Approval as of such date.

Notwithstanding the foregoing, in the event Company has not received State Regulatory Approval as of March 31, 2016, or by such date the State Regulatory Agency has rejected this PPA or has limited or prohibited Company's recovery of its costs and payments under this PPA, Company shall within 10 Business Days after the earlier of (i) March 31, 2016, in the event Company has not received State Regulatory Approval as of such date, or (ii) the receipt of the State Regulatory Agency's written order rejecting the PPA or limiting/prohibiting cost recovery under the PPA file a request with the MPUC to approve recovery from Minnesota ratepayers of the PPA's costs and payments that have not been approved by the State Regulatory Agency for recovery from North Dakota ratepayers ("Minnesota Cost Recovery Request"), and shall at the time of such filing provide Notice thereof to Seller.

Upon Company making such filing and providing such Notice, Company shall retain the right to terminate this PPA at no cost to Company, notwithstanding anything to the contrary in Section 2.4, until no later than 10 Business Days after the earlier of (i) July 15, 2016, in the event that, as of such date, the MPUC has failed to issue a written order that is a final and unappealable determination of Company's Minnesota Cost Recovery Request on the merits or (ii) receipt of a written order from the MPUC that is final and unappealable (a) rejecting the Company's Minnesota Cost Recovery Request, or (b) granting the Company's Minnesota Cost Request with conditions reasonably and materially unsatisfactory to the Company. For avoidance of doubt, any delay of COD that results from the Company's exercising its rights under this Section 6.1(B) does not constitute a delay of COD pursuant to Section 2.3 and Company shall not be liable to Seller for any Demobilization Costs or Re-mobilization Costs Seller incurs as a result of the delay in COD.

If Company fails to terminate this PPA in the time allowed by this Section, Company shall be deemed to have waived its right to terminate this PPA under this Section and, subject to the other terms and conditions of this PPA, this PPA shall remain in full force and effect thereafter."

3. The Table in Section 6.2 of the Power Purchase Agreement is hereby deleted and replaced in its entirety with the following:

Condition Precedent	Deadline Date
Seller has obtained the Air Permit, which Permit does not contain conditions reasonably and materially unsatisfactory to Seller.	September 1, 2017
Seller has obtained the Site Permit, which Permit does not contain conditions reasonably and materially unsatisfactory to Seller.	June 1, 2017
Transmission Owner, Transmission Authority and Seller have entered into the Interconnection Agreement.	June 1, 2016
Approval of this PPA, in the form submitted by Company to the MPUC for approval, by the board of directors of Calpine Corporation.	April 15, 2015
Approval of this PPA by the board of directors of Calpine Corporation in the event any conditions are added or modifications are made to this PPA after its submittal to the MPUC for approval	Thirty (30) Days after issuance of any order requiring such additional conditions or modifications

4. The following term and meaning corresponding thereto shall be added to Exhibit A, Definitions of the Power Purchase Agreement:

""Minnesota Cost Recovery Request"" shall have the meaning set forth in Section 6.1(B)."
5. The Table in Exhibit B, Construction Milestones of the Power Agreement is hereby deleted in its entirety and replaced by the following:

Construction Milestone	Outcome
<i>[Trade Secret Data Begins...</i>	
	Company shall have obtained State Regulatory Approval.
	Seller and all required counterparties have executed major procurement contracts, the Construction Contract (Limited Notice To Proceed Only), any operating agreements, and the Interconnection Agreement needed to commence construction of the Facility.
	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the

	Facility.
	Seller shall have laid the foundation for generating facilities and step-up transformation facilities.
	The turbine(s)/generator(s)/step-up transformer shall have been delivered to, and set on foundation at, the Site.
	All Network Upgrades associated with obtaining NITS are completed.
	All fuel supply and transportation arrangements have been put in place and fuel interconnection facilities in have been constructed and are operational.
	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized
	Commissioning of the Facility commences.
	Seller shall have obtained either (i) unconditional ERIS and unconditional NITS, or (ii) unconditional NRIS.
	Seller shall have obtained MISO accreditation of the Facility as a Capacity Resource
	Commercial Operation Milestone
<i>...Trade Secret Data Ends]</i>	
June 1, 2019	Commercial Operation Date

5. The terms and provisions contained in this Amendment No. 1 to the PPA constitute the entire agreement between Company and Seller with respect to the amendment of the PPA and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller regarding amendment of the PPA. This Amendment No. 1 may be amended, changed, modified, or altered in accordance with the terms of the PPA, *provided, however, that* any such amendment, change, modification, or alteration shall be in writing and executed by both Parties.
6. This Amendment No. 1 is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.
7. Except as specifically provided in this Amendment No. 1, no other amendments, revisions or changes are or have been made to the PPA.

8. Upon the effectiveness of this Amendment No. 1, each reference in this Amendment No. 1 to "this PPA", "the PPA", "thereunder", "hereto", "herein", or words of like import shall mean and be a reference to the PPA, as amended hereby.
9. This Amendment No. 1 may be executed in one or more counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date first set forth above.

Seller:

MANKATO ENERGY CENTER II, LLC

By  

Name Jennings Goodman

Title Vice President

Company

XCEL ENERGY SERVICES INC. AS AGENT FOR

NORTHERN STATES POWER COMPANY, a Minnesota Corporation

By 

Name Tim Kawakami

Title Director, Purchased Power

CERTIFICATE OF SERVICE

I, Lynnette, 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

Docket No. **E002/AI-19-____**

Dated this 3rd day of October 2019

/s/

Lynnette Sweet
Regulatory Administrator

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
David	Aafedt	daafedt@winthrop.com	Winthrop & Weinstine, P.A.	Suite 3500, 225 South Sixth Street Minneapolis, MN 554024629	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
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 Misl Electric
Alison C	Archer	aarcher@misoenergy.org	MISO	2985 Ames Crossing Rd Eagan, MN 55121	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
James J.	Bertrand	james.bertrand@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
James	Canaday	james.canaday@ag.state.mn.us	Office of the Attorney General-RUD	Suite 1400 445 Minnesota St. St. Paul, MN 55101	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
John	Coffman	john@johncoffman.net	AARP	871 Tuxedo Blvd. St, Louis, MO 63119-2044	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
Riley	Conlin	riley.conlin@stoel.com	Stoel Rives LLP	33 S. 6th Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
George	Crocker	gwillc@nawo.org	North American Water Office	PO Box 174 Lake Elmo, MN 55042	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric
John	Farrell	jfarrell@ilsr.org	Institute for Local Self-Reliance	1313 5th St SE #303 Minneapolis, MN 55414	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Misl Electric

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Edward	Garvey	edward.garvey@AESLconsulting.com	AESL Consulting	32 Lawton St Saint Paul, MN 55102-2617	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Janet	Gonzalez	Janet.gonzalez@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 55101	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Michael	Hoppe	il23@mtn.org	Local Union 23, I.B.E.W.	932 Payne Avenue St. Paul, MN 55130	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
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