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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

Arizona Corporation Commission

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JUN 13 2003

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AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR

Docket No. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE DATES

Docket No. E-01933A-02-0069

**NOTICE OF FILING
FINAL REPORT ON
TRACK B SOLICITATION**

Staff hereby provides notice of filing the redacted version of the Independent Monitor's Final Report on Track B Solicitation. A non-redacted version of the report is being provided to the Commissioners, their policy advisors and the Hearing Division.

RESPECTFULLY SUBMITTED this 13th day of June, 2003.

[Signature]
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1 Original and 19 copies of the foregoing
2 filed this 13th day of June, 2003 with:

3 Docket Control
4 Arizona Corporation Commission
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6 Phoenix, AZ 85007

7 Copy of the foregoing hand-delivered
8 this 13th day of June, 2003, to:

9 Hearing Division
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13 Chairman Marc Spitzer
14 Commissioner Jim Irvin
15 Commissioner William Mundell
16 Commissioner Jeff Hatch-Miller
17 Commissioner Mike Gleason

18 Copies of the foregoing e-mailed
19 this 13th day of June, 2003 to

20 All parties of record

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Nancy Roe



to

Arizona Corporation Commission



**INDEPENDENT MONITOR'S FINAL REPORT
ON
TRACK B SOLICITATION**

MAY 27, 2003

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**INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

I. EXECUTIVE SUMMARY OF RESULTS

As a result of the solicitations for power supplies conducted by Arizona Public Service Company (APS) and Tucson Electric Power (TEP) pursuant to Decision No. 65743 of the Arizona Corporation Commission (ACC), five contracts have been executed that will provide approximately 1900 MW of summer peaking capacity in 2003, 1975 MW of summer peaking capacity in 2004 and 2005, and 1825 MW of summer capacity in 2006, including peaking capacity.

APS executed three contracts; one with Pinnacle West Energy for 1700 MW of capacity during the third quarter of 2003 and the 4-month summer seasons (June through September) of 2004 through 2006, one with PPL Energy Plus for 112 MW of capacity during the third quarter of 2003 escalating to 150 MW in the summers of 2004 and 2005, and one with Panda Gila River for up to 450 MW of capacity during various non-summer periods during 2003 through 2005. APS has estimated that these contracts will provide power at costs that are approximately \$70 million less than the cost of alternative comparable power supplies that could have been procured in open market transactions, and represented the most economic combination of offers available to it.

TEP executed two contracts; one with PPL Energy Plus for 37 MW of capacity in 2003 and for 75 MW of capacity in 2004 through 2006, and one with Panda Gila River for 50 MW during 2003 through 2006. These were the only bidders that offered TEP supplies at prices that were competitive with open market prices. TEP estimates that

these contracts were executed at prices that were lower than the price of comparable power supplies available in the open market. As a result, TEP estimates that its power supply costs will be between \$1 million and \$2.5 million less than they would have been over the 2003 through 2006 period, had TEP acquired those products in the open market at the time it conducted its Request for Proposal (RFP).

Accion Group, Inc., which served as the Independent Monitor during this Solicitation, believes that APS and TEP have each carried out a fair, reasonable, transparent (within the bounds of good commercial practice) and effective procurement process. This observation is based on the manner in which the process was conducted, the evaluation processes used to select the winners of the competition, and the access provided us to information and personnel. Our role as Independent Monitor throughout the process provided us with ample opportunity to observe, influence and assess the way in which the process was designed and executed. We observed, and frequently commented on, the process design, the development of the key documents (data presentations, RFPs, pro-forma contracts, etc.) and the selection of evaluation criteria. We also reviewed the evaluation processes employed, the elimination of bids, and the selection of winners. Below, we briefly list the major observations that led us to this general assessment.

- **Open process.** Each utility expended significant effort in making the procurement widely known. This included: identifying entities that would have the greatest likelihood of being interested and able to provide the services requested, direct contact with every member of this set of suppliers to confirm their knowledge of the Solicitation, creation of an electronic mechanism to quickly and efficiently communicate with

interested parties, and conducting multiple stakeholders' meetings as required.

- **Clarity.** The initial contact documents provided clear and complete information on the services requested, the conditions of a conforming bid, the utilities' operating requirements and transmission limitations, and the information that each utility required from, and would provide to, bidders.
- **Complete information.** Each utility provided any potential bidder complete data on its load history and forecasts. It also answered any questions posed to it and published the answers for all other entities. This information was made readily available via each utility's web site.
- **Credit risk allocation.** Both utilities established credit criteria tailored to meet their individual risk management standards. Those criteria, which varied depending on the credit rating established for each potential bidder, addressed the credit limits and collateral requirements that TEP or APS would require from any bidder and the credit support either utility would provide to any successful supplier. The credit requirements were appropriately developed, provided an appropriate level of protection to each utility, and were administered in a fair and flexible manner.
- **Flexibility.** Both APS and TEP demonstrated a willingness to consider the concerns of bidders and potential bidders. Both provided RFP and pro forma contracts in draft form for comments and suggested changes before the formal initiation of the procurement process. During the evaluation process, each utility contacted bidders that had not submitted conforming bids to investigate ways in which any deficiencies might be cured in a

manner consistent with good commercial practices and the bidders' concerns, but still comply with the Solicitation's conditions.

- **Inclusive evaluation process.** In an effort to maximize the number of successful bidders, the evaluation process was designed to have only a minimum number of non-negotiable conditions. A bid did not advance to full evaluation only if the bid fee was not paid. All bids meeting that condition were evaluated to determine if the bidder was technically capable of providing the service. The remaining evaluation factors were applied on a consistent basis in order to distinguish among bids. All of the evaluation criteria were clearly articulated in the RFP.
- **Successful outcome.** APS received more than 175 bids from 10 bidders and TEP evaluated 26 bids from 5 bidders. Based on the number of bids received, we believe that the process produced competitive prices for the products purchased.

As previously noted, the process resulted in two supply contracts for TEP – the first with PPL Energy Plus, LLC for 37 MW in 2003 and for 75 MW in 2004 through 2006, and the second with Panda Gila River, LC for 50 MW of June through September on peak capacity in 2003 through 2006. APS contracted for 1700 MW of July through September 2003 capacity and for 1700 MW of June through September 2004 through 2006 capacity from Pinnacle West Energy Corp., and for 112 MW of capacity from PPL Energy Plus LLC for July through September of 2003 and for 150 MW of capacity for the periods June through September of 2004 and 2005. Additionally, APS executed a contract with Panda Gila River LC for

up to 450 MW of capacity for various non-summer month periods during 2003, 2004 and 2005.

While TEP will still have an unhedged capacity position for the summer of 2003 even after executing the contracts described above, the open position is relatively small and we are advised that TEP has already begun negotiations to acquire its remaining unmet need through both bilateral contracts and open market purchases.

APS has, as a result of this Solicitation, contracted for all of its anticipated summer 2003 capacity needs and will only require a limited amount of capacity to meet its summer 2004 anticipated needs.

Both companies recognize that in future years additional resources will be needed and are prepared to acquire those resources through appropriate procurement procedures including subsequent competitive solicitations similar to this Track B process, bilateral contracts and open market purchases.

- **Credible outcome.** The way the process was carried out, from initiation to completion, we saw no effort to advantage or disadvantage any competitor. The lengths that each utility went to in order to attract and retain as large a number of active bidders as possible provide support for this condition. Sixty (60) companies were contacted by APS while TEP contacted 55. Ten presented formal bids to APS and six submitted bids to TEP. In total, more than 200 individual bids were submitted offering more than 3400 MW of capacity to meet Arizona's peak load in 2003 and more than 4100 MW of capacity to meet load in 2005.

II. INTRODUCTION

ACC Decision No. 65743 directed that APS and TEP solicit for power supplies to meet their unmet needs through a competitive process referred to as "the Track B Solicitation" (Solicitation), and "to test the market in this Solicitation beyond the amount of required power that cannot be produced from their respective existing assets or existing contracts," in order to evaluate all alternative supply options, and to assess any beneficial impacts on air and water quality of those alternatives. Decision at 15. The Solicitation was also intended to "further the goal of encouraging the development of a robustly competitive wholesale generation market in Arizona." Id. To assure compliance with the Commission Decision, the ACC Staff (the Staff) appointed Accion Group, Inc. to serve as an Independent Monitor with responsibilities to observe the Solicitation processes implemented, to report on the results achieved, and to assist in the Staff's efforts to ensure that the Solicitation was conducted fairly.

As directed in the Decision, absent evidence of abuse, the utility was responsible for preparing the Solicitation and conducting the Solicitation process. Acquisition of energy and capacity to meet the needs of customers remained the responsibility of the utility, and each utility was required to use accepted business standards for acquiring these resources, as it would when it buys all other products used in providing service.

In order for the Solicitation to attract wide participation, the process had to be accepted by participants as fair, open and transparent. To achieve this, prospective bidders and interested persons who agreed to keep certain information confidential had the opportunity to review supporting data and draft documents in advance of the RFP, the solicitation approach chosen by both utilities, being distributed to bidders. Many bidders and other interested persons provided comments to the utilities, the

Independent Monitor or the Staff regarding the completeness or quality of the information provided. Bidders and interested parties also provided comments to the utility, the Independent Monitor or the Staff regarding the process being employed or the decisions made regarding execution of the Solicitation process.

Bidders had the opportunity to review non-restricted information used by the utility in preparation for the Solicitation, as well as draft RFP and other Solicitation materials, before the Solicitation was released. Bidders provided comments to the utilities and the Independent Monitor regarding the materials, many of which were incorporated in the RFP or other Solicitation materials. Bidders' conferences were held so that all interested parties had the opportunity to ask questions directly of the utilities as well as to identify any deficiencies in the Solicitation documents or supporting data. TEP scheduled one bidders' conference prior to the distribution of its Solicitation materials and APS conducted two. Bidders were invited to review non-proprietary materials produced by each utility and to address comments or inquiries to the utility, the Staff or the Independent Monitor regarding those materials at any time between the release of reports, plans or drafts and the submission of bids.

Throughout the Solicitation process, the Staff reviewed data, draft materials, and were kept advised of the Solicitation process. The Staff observed the Solicitation process, but did not participate in any decisions made by either utility.

The Staff, in conjunction with the Independent Monitor, reviewed the resource plans, the price and cost forecast, and the network transmission assessments prepared by the utilities and made available, as appropriate, to bidders. The Staff also reviewed energy and capacity forecast data provided by the utilities to interested parties and

compared it to the forecasts previously filed with the ACC when assessing system needs.

During the pre-Solicitation process, the Staff took responsibility for validating the data for each utility identifying the amount of capacity and energy that was subject to competitive procurement and developing the overall policy guidelines that controlled the scope, nature and timing of this Solicitation. The Staff reviewed the transmission capability assessments of APS and TEP to establish their accuracy. The Staff reviewed the methodology prepared by the utilities for evaluating bids to assure that all bids would be evaluated using common standards and methodologies. Also, the Staff was present at the opening of bids to confirm that all bids were treated equitably.

However, neither the Staff nor the Independent Monitor had any role in the selection of bids that were accepted or in the negotiations of final contracts with any successful bidder. Further, neither the Staff nor the Independent Monitor determined whether the power supplies contracted for as a result of this Solicitation are appropriate, will be used and useful, or were reasonably or prudently acquired.

To assist the Staff and to assure all parties to the Solicitation for power supplies that the process employed was conducted in a transparent, effective, efficient and equitable manner, the Independent Monitor was appointed by the Staff and worked at the Staff's direction.

The Independent Monitor was responsible for:

- monitoring all communications regarding the Solicitation by and among the utility and any bidders or potential bidders;
- evaluating the adequacy, accuracy and completeness of all Solicitation materials, and the quality of the evaluations conducted;

- monitoring negotiations conducted by the utility and any bidder;
- keeping the Staff informed of the status and any significant developments during the Solicitation;
- advising the Staff and the utility of any issue affecting the integrity of the Solicitation process and providing the utility an opportunity to remedy the defect identified;
- periodically submitting informal status reports to the Staff on the Solicitation being conducted, noting any deficiencies identified in the preparation of Solicitation materials, maintenance of records, communications with bidders, or in evaluating or selecting bids;
- advising the Commission if significant issues compromised the integrity of the Solicitation;
- after bids were selected, preparing and submitting this report to the Commission detailing the Independent Monitor's observations and findings relating to the conduct of the Solicitation and any recommendations for improvements of the Solicitation process employed in the initial Solicitation.

The Independent Monitor had full access to all materials used in or relating to the Solicitation. Each utility made its personnel available for consultation with the Independent Monitor as requested. The Independent Monitor reviewed the evaluation of bids prepared by each utility and required that selected evaluations be rerun using alternative assumptions or definitions of bid terms. The Independent Monitor also monitored all negotiations conducted with bidders subsequent to the selection of bids.

As required, the Independent Monitor has previously submitted one status report and two preliminary final reports to the Commission and the Staff describing the progress made in executing this Solicitation noting any unresolved issues that could impair the equity or appropriateness of the Solicitation process. These reports are attached as Attachments 1 through 3.

III. DEFINITIONS OF PRODUCTS SOLICITED AND OFFERED

Bids for the following products were offered in the Track B RFP:

Standard Monthly Product(s)

- On Peak 6x16 – Blocks of firm energy delivered between 0700 to 2200 Pacific Prevailing Time (PPT) - 6 days/week (Monday through Saturday)
- Super Peak - Blocks of firm energy delivered between 1300 to 2000 PPT - 6 days/week (Monday through Saturday)
- Off Peak 7x8 - Blocks of firm energy delivered between 2300 to 00600 PPT - 7 days/week
- Round the clock 7x24 or ATC - Blocks of firm energy delivered 24 hours a day 7 days/week

These products were offered either with fixed or floating prices and are take or pay products.

Fixed Price

These products provide a guaranteed amount of energy at a fixed price. The contracted energy must be taken whether or not the purchaser has sufficient load to use this power. Energy deliveries in excess of load are sold in the hourly spot market at the current clearing price.

Indexed Price

These products provide a guaranteed amount of energy at a fixed heat rate based on an indexed gas price. The contracted energy must be taken whether or not the purchaser has sufficient load to use this power. Energy deliveries in excess of load would be sold in the hourly spot market at whatever the clearing price is. These products carry an additional risk of exposure to price changes in the gas market.

This risk is often hedged through the purchase of financial products.

Non – Standard Products

- Daily Call Options. These products give the purchaser the right to purchase blocks of on-peak, off-peak or super-peak power on a day ahead basis. The daily call options provide significant flexibility in matching resources and needs. They were offered with a wide variety of terms including fixed and indexed pricing, firm and unit contingent reliability and super peak and shaping flexibility.
- Unit Contingent Dispatchable Products. This group of products represents the largest component of the capacity offered in the Track B solicitation. These products give the purchaser the right to dispatch the power output of a generating facility on an as needed basis subject to minimum load requirements and ramping restrictions based on the physical characteristics of the unit. The units bid in the Track B solicitation were priced using a guaranteed heat rate and indexed to gas prices delivered to the unit. The units also were offered with varying levels of guaranteed availability with financial penalties if the unit failed to perform at the promised levels.
 - Ramping is the rate at which the power output of a unit can be increased or decreased, and is a factor in determining the value of a product.

- Delivery point swaps. These products provide the buyer with the ability to increase its transmission flexibility by buying blocks of power at one location and selling equivalent amounts at another.

RMR Products

- Dispatchable capacity/energy. These products are dispatchable unit contracts for generating facilities located within the constrained load pocket in the Phoenix area.

IV. REVIEW PROCESS

The review process began in the pre-solicitation phase with the determination of the background system information needed by bidders and ended with the awarding of contracts. Both APS and TEP used the same basic solicitation process, an RFP. Because of the participation of an affiliate in the APS solicitation, there were differences in how each company structured their solicitation.

A. TEP

1. Schedule

TEP began the pre-solicitation preparation before the ACC issued Decision No. 65743, and initially planned to use the schedule agreed to by participants to the Track B workshops. As permitted by the Decision, TEP adjusted the solicitation schedule to accommodate the need of TEP and bidders for more time between the

release of the Decision and the release of the RFP. The schedule used by TEP was as follows:

February 28	Draft Documents Released
March 5	Bidders' Conference
March 17	RFP Issued for Products 1-8
April 4	Products 4-8 Received
April 23	Products 1-3 Received
April 24	Bid Evaluation Completed
April 25	Winners Notified
May 5	Contracts Signed

2. Bidders

TEP compiled a list of potential bidders from a number of sources. All companies that had provided energy to TEP before the Solicitation were included as potential bidders. All WSPP participants were added to the bidder list, as were any supplier that requested inclusion. The suppliers who participated in the Track B workshops were also included on the list of potential bidders. The list of potential bidders numbered 55 (Attachment 4). By design, TEP made the list as expansive as possible, without any attempt to qualify companies before including them as potential bidders.

TEP obtained contact information for all of the companies and directly contacted each to advise them of the Solicitation, and directed them to the Solicitation web site as the way to participate in the Solicitation.

3. Solicitation Web Site

TEP established a web site through which it provided information and documents to bidders. The web site was the medium for communication between TEP and bidders, with telephonic or personal contact restricted to the bidders' conference and the discussion of bidder-specific financial information. Bidder questions were posted on the web site, and were subsequently coupled with TEP's response to each question. This procedure provided all bidders with access to the same information, while avoiding exchanges between TEP and only one bidder.

The TEP web site was accessible to the public without the requirement of registration and any access permission. The company chose this approach after determining that all information posted on the web site was already publicly available. Attachment 5 contains sample TEP Solicitation web site pages.

4. Solicitation Documents

As discussed in the Independent Monitor's Pre-Solicitation Report (Attachment 1), information available to bidders included the Transmission Assessment, RMR Analysis, Needs Assessment, and the company's Ten-Year Resource Plan. These documents were available on the company's Solicitation web site and as public documents at the ACC. During the bidders' conference, the bidders agreed that the information was adequate for them to prepare bids designed to meet TEP's needs. TEP solicited bidders' reaction and suggestions about the system information to confirm that bidders had the background system information they needed. With the compilation of the system information completed, the company turned to preparing solicitation documents. TEP made draft documents available to the

Independent Monitor and bidders before the bidders' conference. Comments about the drafts were considered and discussed during the bidder conference, with the final documents reflecting a consensus among the participants.

TEP made available two standard industry agreements for use by the winning bidders. The Western System Power Pool Agreement (WSPP) (Attachment 6) and the Edison Electric Institute Agreement (EEI) (Attachment 7) were produced by the collaborative effort of market participants and provide standard terms, with clearly delineated subject areas that parties to an agreement negotiate. TEP expressed a preference for the WSPP Agreement, because currently, TEP uses that contract for most of its purchases. However, TEP expressed a willingness to use the EEI Agreement if a bidder preferred.

5. Bidders' Conference

TEP held a Bidders' Conference on March 5, 2003, in Phoenix. The conference was held at the same location and on the same day as the APS conference, but at a different time. This was done for the convenience of the bidders, and to encourage maximum participation. The Independent Monitor and the Staff attended the conference. The notice of the bidders' conference was posted on the web site and it was open to all potential bidders. There was no teleconference option for bidders, but the materials presented at the conference were posted on the web site. No bidder objected to this approach. Participants were requested to sign-in, but this was not mandatory, so participants could remain anonymous.

In addition to the draft RFP, TEP provided a summary of the RFP and had technical and business personnel present to answer questions. The draft RFP and solicitation schedule were discussed and suggestions exchanged. Also, provisions of

the WSPP and EEI contracts were discussed. It is noteworthy that the atmosphere was professional and congenial with TEP solicitous of input from all participants. Throughout the conference, TEP and bidders worked together to edit the draft RFP, set an agreeable schedule for the solicitation, and reached agreement on generic contract terms. TEP provided all information requested by bidders and agreement was reached on all terms and conditions for the RFP (Attachment 8).

6. Evaluation and Selection

TEP evaluated all bids on an equal and consistent basis. There was no attempt to disguise the identity of bidders, primarily because no TEP affiliate participated in the Solicitation. TEP evaluated all bids, including those for products that were not expressly solicited. The evaluation included the assessment of deliverability, price, creditworthiness, experience of the bidder, and the impact of proposed changes to the proposed WSPP or EEI agreements.

After eliminating one bidder for failure to pay the bid fee, TEP attempted to find value in the bids from the remaining five bidders. One bidder suffered from an inability to deliver to the TEP system, one bidder was substantially more expensive than the other bidders, and one bidder was not price competitive with alternate power sources available to TEP. Consequently, each was eliminated. TEP conducted negotiations with the remaining two bidders, PPL Energy Plus and Panda Gila River, and, ultimately, executed contracts with both. Copies of the contracts executed will be provided to the ACC by TEP.

B. APS

1. Schedule

In anticipation of Decision No. 65743, APS began assembling system information before the Decision was released. As the solicitation progressed, APS adjusted the schedule to accommodate the ACC requirements enumerated in the Decision and the time frames established. The schedule initially used by APS was as follows:

February 28	Pre-Solicitation Documents Released
March 5	First RFP Bidders Conference
March 19	Final Date for Written Comments and/or Questions on Documents
March 19	Second Bidders Conference
March 21	Final RFP and EEI Master Agreement Issued
March 28	Notice of Intent to Respond to RFP Due
April 4	Sealed Proposal(s) Due Date for Group A Bids and Group B Bids (excluding <u>only</u> pricing for fixed price Proposals)
April 24	Due Date for Submitting Pricing for Fixed Price Proposals for Group A Bids and Group B Bids
April 25	Withdraw Deadline for Fixed Price Group A. and Group B Proposals
April 28	Begin to Notify Respondents of Short List (includes both Group A and Group B Bids)
April 28	Notification to Initial Successful Respondent(s) for Fixed Price Group A Bids and Group B Bids
April 28 – May 22	Final Evaluation Complete/Conduct Negotiations and Execute Contracts with Successful Respondent(s) for Other Group A and Group B Bids

July 1

Estimated Commencement of Service Under Contract

2. Bidders

APS included 60 potential bidders on its initial contract list, regardless of creditworthiness, states of their projects, or apparent transmission deliverability constraints (Attachment 9). APS directly contacted every company identified as a potential supplier to alert them to the Solicitation and directed them to the Solicitation web site as the way to participate and communicate.

3. Solicitation Web Site

APS established a web site through which it provided information and documents to bidders. The web site was the medium for communication between APS and bidders, with telephonic or personal contact restricted to the bidders' conference and the discussion of bidder-specific financial information. Bidder questions and responses from APS were posted on the web site. This procedure provided all bidders with access to the same information, while avoiding exchanges between APS and only one bidder. Access to the APS web site was restricted to the individuals who requested access and were provided with an identification and password. Attachment 10 contains sample APS Solicitation web site pages.

Initially, gaining access to the APS web site was needlessly cumbersome and created frustration for bidders, the Staff and the Independent Monitor. Once an individual requested access, APS insisted on talking to the person on the telephone before releasing the password necessary for access. Numerous parties were denied access for days while waiting for contact to be made. Rather than immediately posting

questions on its web site as asked by bidders, APS formulated responses to questions and then posted both the question and the answer. This often resulted in delays in responding to questions or in providing requested information. Ultimately, this situation was resolved before the RFP was issued.

4. Solicitation Documents

As discussed in the Independent Monitor's Pre-Solicitation Report, information available to the bidders included the Network Transmission Assessment, RMR Analysis, Load and Resource Plan, and the contestable load estimate produced by the Staff. These documents were available on the company's Solicitation web site and as public documents at the ACC. During the bidders' conference, the bidders agreed that the information was adequate for them to prepare bids. APS solicited bidders' reaction and suggestions about the system information to confirm that bidders had the background system information they needed. With the compilation of the system information completed, the company turned to preparing solicitation documents. APS made draft documents available to the Independent Monitor and bidders before the bidders' conference. Comments about the drafts were considered and discussed during the bidder conference.

APS chose to use the EEI Master Agreement (Attachment 11) for the Solicitation. The initial APS draft EEI Agreement elected some contract terms that were inconsistent with prevailing industry practices in the area of cross-collateral credit and credit assurances. Before releasing its final RFP (Attachment 12), APS agreed to provide cross collateral to bidders with superior credit rating to APS's, and to drop the initial demand for cash collateral from bidders with the credit rating equal to, or better

than, APS. Accordingly, APS revised its proposed EEI Master Agreement and posted it on the secure web site.

5. Bidders' Conferences

APS held two Bidders' Conferences, the first on March 5, 2003 and the second on March 19, 2003, in Phoenix. The Independent Monitor and the Staff attended both conferences, as did representatives of approximately twenty-five prospective bidders. The notice of the bidders' conference was posted on the web site and it was open to all potential bidders. There was no teleconference option for bidders, but the materials presented at the conference were posted on the web site. No bidder objected to this approach. Participants were requested to sign-in, but this was not mandatory, so participants could remain anonymous.

At the first bidders conference, APS provided a summary of the RFP and had technical and business personnel present to answer questions. The draft RFP, the solicitation schedule and provisions of the EEI contracts were discussed. The first bidders conference was a tense and contentious event, with bidders challenging numerous terms and provisions in the draft documents, and APS adopting a defensive posture. While many points of disagreement were identified, few issues were resolved. Because the range of disagreement was so vast, APS agreed to accept written comments and suggestions from bidders, and to conduct the second bidders' conference. Before the second bidders' conference, APS reviewed the suggestions received at the initial conference and through written submissions, along with any questions posted on the web site. A revised RFP, and EEI Master Agreement with modified credit requirements were posted on the web site before the second conference.

The second bidders' conference on March 19, 2003, was less contentious than the first. All issues were discussed and some resolved to the satisfaction of all parties. Though disagreements remained after the bidders' conferences, the conferences served the useful purpose of providing APS with additional suggestions to improve its documentation, many of which were adopted in APS' final RFP materials.

6. Evaluation and Selection

APS evaluated all bids in an equitable and consistent fashion including bids for products that were not expressly solicited. The evaluation included the assessment of deliverability, price, creditworthiness, experience of the bidder, and the impact of proposed change to the proposed EEI Agreement.

In order to demonstrate that the evaluation was not biased in favor of PWEC, an APS affiliate that submitted multiple bids in this Solicitation, APS with the assistance of the Independent Monitor attempted to devise a means for evaluating bids without identifying bidders. This proved impractical, principally because evaluation of bids required comparison of information that would identify the bidder. For example, once the delivery point, heat rate and generating unit description were disclosed, the bidder's identity would be apparent.

Because "blind" evaluation was impractical, APS and the Independent Monitor restricted APS' access to PWEC's bids until other bids were evaluated and ranked. Sealed bids from all bidders were received on April 4, 2003, without pricing information. The Independent Monitor opened all bids, except those from PWEC, and released them to APS. The Staff witnessed the bid opening. APS then evaluated contract terms proposed by bidders and ran a system optimization study to establish the

appropriate portfolio mix of products to be acquired. Additionally, each bid was modeled using proxy pricing data. Only after these two reviews were completed did the Independent Monitor release the PWEC bid to APS. This approach minimized the temptation to adjust the evaluation model, after reviewing PWEC's bid. In fact, there was no indication that APS in any way attempted to develop evaluation criteria or methodologies that favored its affiliate.

On April 23, 2003, bidders submitted pricing data which was input to APS' evaluation model to establish the value of bids when compared to market costs. PWEC submitted a sealed bid, while other bidders were free to send prices of their bids by fax, email, or hand copy. All bidders had until close of business on Friday, April 24, 2003 to withdraw their bids, after which bids were considered firm. APS evaluated all bids, except PWEC against the market price established as of close of business Thursday April 24, 2003. The model was run with an artificial "place holder" set at market price for PWEC. Once this analysis was completed, APS delivered it to the Independent Monitor, the PWEC bid prices were then released to APS. The full analysis, including the PWEC bid prices, was completed and delivered to the Independent Monitor on the night of Sunday, April 27, 2003. The following day, APS accepted bids from PWEC and PPL Energy Plus for power for summer months in 2003 through 2006.

Subsequent to advising PWEC and PPL Energy Plus of APS' intent to accept one bid from each of them, APS invited certain other bidders to re-bid their offers for discrete and specific non-summer time frames at refreshed prices by April 30, 2003. Most of the parties replied to APS' request with responsive new bids. On May 1, 2003, APS selected two additional offers and commenced negotiations to finalize contracts

pursuant to those offers. APS was able to finalize one contract with Panda Gila River. Copies of the contracts executed will be provided to the ACC by APS.

V. BIDDERS AND BIDS RECEIVED

As a result of the RFPs issued by APS and TEP, each company received bids to meet their unmet needs and to provide power that potentially could meet RMR needs or displace energy and capacity that would otherwise have been provided by assets owned or controlled by the utilities. Bids also provided both companies the opportunity to assess whether power supplies offered would reduce the amount of economy power either company would need to acquire through purchases in the short-term or through bilateral contracts.

In total, APS received more than 175 bids from ten distinct bidders including:

- Pinnacle West Energy Co.
- PPL Energy Plus LLC
- Panda Gila River LC
- FPL Energy Inc.
- Reliant Energy
- Dome Energy
- Harquahala Generating Co.
- Powerex
- Shell Coral Energy
- UBS Warberg

Of those bids, only two bidders were disqualified for failing to pay the required bid fee. Several companies that had participated in the Track B proceeding and initially expressed an interest in bidding failed to submit bids.

Bids submitted to APS totaled more than 2750 MW of on-peak capacity in 2003 and up to 4073 MW in 2004. These bids were for products ranging from short-term daily call options to longer term unit commitments. Because bids were submitted

pursuant to confidentiality agreements (Attachment 13), a detailed description of the bids submitted is attached as Confidential Attachment 14 which is for the exclusive use of the ACC and its Staff.

TEP received bids from:

- PPL Energy Plus LLC
- Panda Gila River LC
- Southwest Power Group
- North Branch Energy
- APS
- Shell Coral Energy

totaling a maximum of almost 1000 MW of on-peak capacity by 2006.

As was the case for APS, one bidder was eliminated because it failed to remit the required bidder's fee.

Bids to TEP included call options, firm on-peak energy and both long and short-term unit contingent power. Unlike APS, TEP bifurcated the bid process and sought bids for standard products separately from bids for non-standard products.

TEP received no bids for standard products. We believe that bidders chose to wait until the Solicitation ended and will offer standard products to TEP through bilateral transactions or in open-market transactions, in part to avoid the payment of the bidder's fee. We believe this is the case since, in TEP's case, owing to the relatively small value of the contracts TEP was likely to execute, the bidder's fee could represent a significant portion of the seller's anticipated margin.

As in the APS case, bids were submitted pursuant to confidentiality agreements (Attachment 15). Accordingly, detailed descriptions of bids received are being provided to the ACC in Confidential Attachment 16.

VI. EVALUATION OF BIDS

A. APS

APS developed a comprehensive process for evaluating the bids received under the Track B process. There were three simultaneous efforts undertaken to reduce the population of shorter terms bids (bids for less than 4 years) to a short list. These three efforts were an evaluation of the individual bids on an economic basis compared to market without regard to the impact of the product in serving the load of APS customers. The second effort was a detailed review of each proposal for non financial factors. This included reviews of credit quality, deliverability, and reliability as well as assuring that all Commission requirements such as the environmental data had been met. The final effort in the preliminary review was an analysis of the resource needs of the system to determine the optimum amount of each product needed to meet the load requirements of APS customers. This provided input as to the quantity of a given product that would be taken. Longer term bids were evaluated against a self build option. This process will be discussed below.

1. Market Valuation Study

a. Forward Price Curves

The process used in the development of the forward curves for the Track B evaluation process is exactly the same as the process used in APS's normal course of business. The APS traders continually maintain and update forward curves for all relevant markets.

- Development of Forward Power Curves for Standard Block Power Products

These forward curves were developed using information from a variety of sources including electronic trading platforms (such as ICE and Bloomberg), OTC broker quotes, and transactions that APS entered into directly with wholesale counter parties. The forward curves were developed for the primary market trading hubs for standard firm products (6x16 on-peak and standard-NERC off-peak). The primary market trading hubs are Palo Verde, SP15 NP15 and Mid-Columbia. In addition, basis curves (representing the cost of delivery from primary to secondary hubs) were developed for each relevant secondary trading location.

- Development of Forward Natural Gas Price Curves

The process for the development of forward natural gas price curves was similar to that described above for electric price curves. All natural gas price curves were established by using the NYMEX futures contract prices as the underlying market value. The NYMEX futures settlement prices as of the market close on April 24, 2003, were used in the market evaluation studies. Forward basis curves for each natural gas delivery point (Permian, SoCal BDecision, NW Rockies, etc.) were developed by the APS natural gas traders using markets obtained from OTC broker quotes, electronic trading platforms, and direct contacts with counter parties.

The forward price curves for electric at Palo Verde and NYMEX gas futures are included in Confidential Attachment 17 to this report.

- Shaping Factors

Shaping factors were used to develop daily and hourly forward price curves from the monthly price curves developed above. These factors were

important for establishing the market value of any product that is not a standard market product. For example a super peak price curve (8 hours) was needed for valuing super peak products. A daily 16 hour on-peak price curve was needed for valuing any product that is a daily exercise option on the 16 hour on-peak block. An hourly power price curve was necessary to value any product which involves the hourly dispatch of power plants. In general these factors have been developed based upon historical market prices (daily and hourly spot market data sources such as Dow Jones index data, Energy Market Report, Gas Daily and California PX historical Trading data).

b. Market Valuation Methods

Several market valuation models were used to evaluate the different products bid through the Track B process. These valuation models are described below. The valuation models/methods used by APS for Track B are the same as those used in its normal course of business.

- Take-or-Pay Block Products

These products include 6x16 block products, standard off-peak block products, super peak block products, and 7x24 block products. For all these products, the energy volume is exactly known and the valuation is accomplished by calculating a weighted average energy value based on the monthly forward price curves and the monthly delivery volume.

- Daily Call Options

A daily call option valuation model was used to value these bids. This includes several different products including call options on 16 hour on-peak blocks and 7x24 blocks, differing types of strike prices (fixed or floating), and different reliability (firm or unit contingent).

- Dispatchable Power Plant Products

This third model used the hourly forward electric price curve and the daily natural gas price curves created using the shaping factors described above. The specific generating unit inputs such as heat rates, capacity limits, startup limits, startup costs, variable O&M costs, and variable gas transportation costs were key inputs to this model.

2. Risk Evaluation

APS conducted a review of all of the proposals to determine the relative risk of the proposals in six areas.

a. Contract Flexibility

In this area the Company analyzed two specific attributes. The first was the liquidity of the contract in terms of its delivery point, with major hubs like Palo Verde and SP15 receiving maximum scores of 10 and a sliding scale downward to a minimum score of 2 for less liquid hubs. The second flexibility criteria was the ability to shape delivery under the proposal. Here, dispatchable contracts received the high score of 10 and decreasing scores given to less flexible options. The two factors were then weighted equally to establish a weighted flexibility score based on the matrix shown below.

50% <u>Liquidity Rating</u>		50% <u>Shaping</u>
10	PV, SP15	10=Controlled Dispatchable
8	MEAD, FC	7=Day Ahead Preschedule
6	WW, PP, Lib,Rudd Jojoba,Gila 69, North	5=Call Option
4	Gila	3=All Others
2	OTHERS	

Flexibility scores ranged from a high of 10 to a low of 2.5

b. Contract Reliability

The next area of review was reliability. Here a base score for operational reliability was established with firm power receiving a maximum score of 10 with decreasing scores for lesser levels of reliability. Then the operational score was adjusted for two factors. The first was the firmness of gas supply and the second was an adjustment for historical record. The matrix below shows the scores and adjustments used to evaluate reliability.

Reliability Matrix	<u>Operational Availability</u>	<u>Gas Supply</u>	Adjustments to Reliability	<u>Historical Record</u>
10	Firm Power	Firm Transport	0	Commercial
8	Unit Contingent- 90%+ EAF	Alternative	-1	Test Mode Permitted under construction
6	Unit Contingent- 80%- 89% EAF	Interruptible	-2	Not Permitted
4	Unit Contingent - 70% EAF or less	No physical transport	-5	
2	Non Firm			

The reliability scores ranged from a high of 10 to a low of 2.

c. Price Risk

The next risk that was evaluated was price risk. Here the high score was given to fixed price proposals and the lowest score given to floating price proposals for which there was no ability to hedge. A further adjustment was made to proposals for which the ability to hedge was present but had a medium or high risk that the hedge could be placed effectively. The matrix shown below was the basis for this review.

<u>Score</u>	<u>Fixed/Float</u>	<u>Hedge</u>	<u>Risk</u>
10	Fixed	0	Low
6	Float with Hedge	-1	Med
2	Float with no hedge	-2	High

The price risk evaluation resulted in scores ranging from 4 to 10.

d. Commitment Risk

The next area of risk that was evaluated was the level exposure in time of the proposed product and the extent to which the product provided for minimum block sizes and/or maximum hourly ramps. The longer the block of time the greater the exposure to loss as shown in the matrix below.

Commitment	Operational Response	Financial Impact	Schedule Flex	
10	Hour Ahead	Hour Ahead	0	No Ramping limits or block size
8	Day Ahead	Day Ahead	-2	Minimum Block Size of 25 MW with a maximum hourly ramp of 100 MW
5	Month Ahead	Month Ahead	-4	Minimum Block Size of 50 MW with a maximum hourly ramp of 50 MW

Commitment risk scores ranged from a high of 8 to a low of 2.5

e. Credit and Contract Risk

The final risk evaluation done by APS was an evaluation of the credit worthiness of the parties making the proposals and the extent to which the contract terms requested by APS were amended in the proposal. An overall credit score was

established based on the credit rating of the counterparty. Companies rated AA or better received a score of 10. The minimum starting score of 8 was given to companies who had no published credit ratings. From these base scores downward adjustments were made to the extent contract terms were changed in the proposal. Adjustments were made for elimination of the requirement for an independent amount, placing an overall cap on the amount of credit support allowed under the contract, modification to the definition of which credit rating to use ("higher" or "lower"), requiring bilateral credit, elimination of the "regulatory out" provision and other factors. Under this methodology credit and contract score ranged from 1 to 10.

3. Short Term Bid Optimization Process

This step consisted of developing an optimized mix of bid products designed to meet APS' hourly load requirements in the least cost manner possible over the short term horizon of 2003-2005 assuming market prices. This optimized mix of products was then used as a guide in performing the final optimization of bids based upon prices received on April 24, 2003. The analytical tool employed in these analyses was an advanced production cost model known as RTSIM (Real Time Simulation).

Upon receipt of bid prices on April 24, 2003, a number of Track B scenarios were developed, each representing a combination of bid products and run through the RTSIM production costing model. Each scenario was developed with the multiple intent of (1) insuring each bid was modeled at least once in the analyses (2) the value of all non-PWEC bids was identified and (3) sufficient bid product combinations were created to identify the most economic portfolio of bids. An initial total of 14 scenarios were selected and evaluated for presentation to senior management on April

27, 2003 together with and complimentary to parallel economic one-off analyses performed by the front office.

Assumptions underlying the RTSIM base case used in the analyses were provided to the Independent Monitors on April 16. Changes implemented on April 24 at the start of the final analyses included an update of power and gas forward curves (fixed as of April 24), a surplus generation and purchase power sale criteria of 75% of economic opportunities for such sales, and a 1200 MW limit placed on hourly purchases and sales. Of critical importance in understanding the results of the system analyses performed with RTSIM is that the analyses were performed on a relative basis. All scenarios developed were compared against a base case which represented an unhedged and, therefore, under priced resource plan. The base case was adjusted to include PWEC's West Phoenix CC units 4 & 5 upon determination that no other options were available to meet APS' must run requirements.

According to APS, questions raised as a result of the meeting with senior management resulted in additional scenarios being created. A reevaluation of the system study results was undertaken to assess the new scenarios and the opportunity taken to correct those errors which had been identified following the presentation to senior management as well as to extend the evaluation through 2006. They were shared with and reviewed by senior management on April 30, prior to making final commitments to the successful bidders.

4. Supplementary Short List Bid Evaluation

The last step in the short term bid evaluation process was undertaken in support of the short list, supplementary bid process. Negotiations were

initiated with a short list of bidders soliciting bids to meet APS' non-summer month capacity and energy requirements. The RTSIM analysis performed consisted of 12 scenarios, most of which evaluated individual bid proposals. The same base case previously used in the Track B evaluation was used for this purpose with an update in forward power and gas prices. May 1 prices were used.

5. Analysis Of Long Term Bids

APS received bids for long term commitments from four bidders. These offers included proposals that extended in time for varying periods ending in 2026. APS used a separate long term model to evaluate these proposals. The basis of this analysis was the long term resource plan of the company and the methods and assumptions used were consistent with those used in the normal course of business and the analysis of the short term proposals in Track B.

a. Long Term Resource Plan

The base plan used for evaluation assumed that APS would use open market purchases through 2005 to meet any capacity shortfall. In 2006 the plan assumed that approximately 1700 MW of resources were to be added to the system. These resources include 1000 MW of combined cycle generation located near Palo Verde, 618 MW of combined cycle generation located in the transmission constrained area available for RMR needs, and 79 MW of combustion turbine generation with an undesignated location. (Note: This mix of resources is substantially equivalent to the resources offered by PWEC (Redhawk 1&2 – 990 MW at Palo Verde, West Phoenix 4&5 – 634 MW at West Phoenix, and Saguaro SC 3 – 79 MW at Saguaro). In addition, the long term plan added generic resources as follows:

Year	Simple Cycle	Combined Cycle	Base Load
2007	750		
2008	150		
2009		500	350
2010			
2011	150		
2012	150		
2013		500	200
2014			
2015	150		200
2016	300		
2017			300
2018		500	
2019			300
2020	300		
2021	600		300
2022	450		
Total	3000	1500	1650

Each of the proposals was evaluated against this base resource plan. Each long term bid was analyzed and compared to the cost of building the required capacity if the bid was for like assets. If no like assets were in the base case, the bid was compared to open market purchase prices developed by APS. Present Value differences were determined for ten, twenty, and thirty year periods for each bid. The result of the analysis indicated that on a stand alone basis some proposals demonstrated benefits in the ten and twenty year cases but none in the 30 year case. However, when the Track B purchases made to meet 2003 to 2006 load were considered none of the long term proposals had positive value during any period and therefore they were not selected.

6. Independent Monitor Conclusions Concerning The APS Analysis

In our opinion, the analyses were conducted in a fair and consistent manner and did not advantage or disadvantage any bid or bidder.

B. TUCSON ELECTRIC POWER

TEP developed a comprehensive process for evaluating the bids received under the Track B process. The first effort was an evaluation of the individual bids on an economic basis compared to market, generation by TEP's own units and, in the case of long term contracts, a comparison with TEP's estimates of its cost to build. This analysis was done without regard to the impact of the product in serving the load of TEP customers. From this analysis of the individual offers a short list was created and negotiations were undertaken. The final effort was an analysis of the selected products impact on meeting the load requirements of TEP customers. This second step provided input as to the quantity of a given product that would be taken.

1. Market Valuation Study

a. Forward Price Curves

The process used in the development of the forward curves for the Track B evaluation process was exactly the same as the process used in TEP's normal course of business. The TEP traders continually maintain and update forward curves for all relevant markets.

- Development of Forward Power Curves for Standard Block Power Products

The forward curves were developed using Natsource. The forward curves were developed for the primary market trading hubs for standard firm products (6x16 on-peak and standard-NERC off-peak). The primary market trading hubs are Palo Verde, SP15 NP15 and Mid-Columbia. In addition, basis curves (representing the cost of delivery from primary to secondary hubs) were developed for each relevant secondary trading location.

- Development of Forward Natural Gas Price Curves

The process for the development of forward natural gas price curves was similar to that described above for electric price curves. All natural gas price curves were established by using the NYMEX futures contract prices as the underlying market value. The NYMEX futures settlement prices as of the market close on 4/3/03 were used in the market evaluation studies. Forward basis curves for each natural gas delivery point (Permian, SoCal BDecision, NW Rockies, etc.) were developed by the TEP natural gas traders using markets obtained from OTC broker quotes, electronic trading platforms, and direct contacts with counter parties.

The forward price curves for electric at Palo Verde and NYMEX gas futures are included in Confidential Attachment 18 to this report.

- Shaping Factors

Shaping factors were used to develop daily and hourly forward price curves from the monthly price curves developed above. These factors were important for establishing the market value of any product that is not a standard market product. For example a super peak price curve (8 hours) is needed for valuing super

peak products. A daily 16 hour on-peak price curve is needed for valuing any product that is a daily exercise option on the 16 hour on-peak block. An hourly power price curve is necessary to value any product which involves the hourly dispatch of power plants. In general these factors have been developed based upon historical market prices.

b. Market Valuation Methods

Several market valuation models were used to evaluate the different products bid through the Track B process. These valuation models are described below. The valuation models/methods used by TEP for Track B are the same as those used in the normal course of its business.

- Take-or-Pay Block Products

These products include 6x16 block products, standard off-peak block products, super peak block products, and 7x24 block products. For all these products, the energy volume is exactly known and the valuation was accomplished by calculating a weighted average energy value based on the monthly forward price curves and the monthly delivery volume.

- Daily Call Options

A daily call option valuation model was used to value these bids. This included several different products including call options on 16 hour on-peak blocks and 7x24 blocks, differing types of strike prices (fixed or floating), and different reliability (firm or unit contingent).

- Dispatchable Power Plant Products

This third model used the hourly forward electric price curve and the daily natural gas price curves created using the shaping factors described above.

The specific generating unit inputs such as heat rates, capacity limits, startup limits, startup costs, variable O&M costs, and variable gas transportation costs were key inputs to this model.

2. Analysis Of Long Term Bids

TEP evaluated each of the long-term bids it received against a self-build option. The self-build option reflected construction costs estimated by TEP for appropriately sized generation to be added to its system based on TEP's current resource plan. None of the long-term bids received were competitive with TEP's available alternatives.

3. Non-Economic Factors

While TEP evaluated the creditworthiness of each bidder and reviewed suggested changes to its proposed form of contract, those factors did not, ultimately, effect the decisions made by TEP. Each bidder provided sufficient data to qualify and all proposed contract changes were either acceptable to TEP or, in TEP's opinion, capable of resolution through negotiation.

4. Independent Monitor Conclusions Concerning The TEP Analysis

The Independent Monitor believes that TEP conducted a fair and consistent evaluation of all bids and its approach and method did not unduly advantage or disadvantage any bid or bidder.

VII. OBSERVATIONS RE DECISION PROCESSES EMPLOYED

Each utility approached this Solicitation in a manner that reflected its own unique needs and concerns. TEP's unmet needs were modest and it had a relatively small unhedged power position and it had no affiliate bidding. APS, on the other hand, had both significant unmet needs and a larger unhedged position. Additionally, the

likelihood that PWEC, its affiliate, would bid required APS to be able to clearly demonstrate that its affiliate was afforded no undue advantage. These factors significantly influenced the approaches to the procurement effort each company followed.

TEP's decision process was flexible and streamlined. Credit requirements were established which afforded all potential bidders an opportunity to participate. Evaluation procedures were concise and essentially required two steps to determine whether or not to short list a bid. The first was a high level review to determine whether the product offered was reliable. Owing to the nature of the bids received, this required a subjective as well as an objective evaluation of bids which proposed to provide services from plants which had not yet been constructed. The second step was to evaluate bid prices against a standard market price to rank order the value of the bids received. Once the short list was created, selected bids were run through TEP's standard dispatch model to establish the value of the bids and to determine any refinements to the offer that should be negotiated. To carry out this process, TEP assigned qualified staff who were able to present their results and to answer questions in a timely and appropriate manner. TEP was able to maintain this approach in large part because it neither anticipated nor got a large number of bids.

APS' decision-making process was far more complex. Initially, APS expended considerable effort to develop an optimized power supply portfolio. The purpose of that effort was to determine the specific types and quantities of power supply products APS should purchase. This effort was conducted prior to the submission of bids. Once bids were received, they were assigned to a particular product type and evaluated individually against a fixed market price developed by APS based on forward price

curves that it uses in the normal course of its business. Each bid, except for long-term bids, was assessed using the same evaluation model, and market price and gas price forward curve. Long-term bids were assessed against a self-build alternative developed by APS which reflected anticipated construction costs of units APS would build based on its long-term resource plan and a standard gas price forward curve. This process allowed APS to establish a short list to model using its standard load dispatch model. APS uses RTSIM as its dispatch model which, because of the number of bids received, proved to be a tool not well suited to support a decision making process that required fast data turnaround times and in the end, provided data that was only marginally more useful in evaluating the impact of choices made than the data produced during APS' comprehensive screening of bids.

In both TEP's and APS' Solicitations, the economics of the bids submitted was the only factor that ultimately determined the bids selected. As required by the Decision, both utilities required bidders to summarize environmental impact data with bids, and required the winning bidders to submit more comprehensive data concerning environmental issues. However, neither TEP nor APS used the environmental information in their evaluation. Although significant time and effort was expended in developing credit criteria and standard contract terms, both utilities found that they were able to accommodate each bidder's credit or contract language needs. The economic advantages of the bids selected were, however, so obvious that the subjective differences in value created by the alternate credit or contract terms proposed did not need to be assessed.

VIII. APS STANDARDS OF CONDUCT

Because PWEC indicated that it intended to bid in the APS solicitation, the separation of APS confidential data and personnel from its affiliates was of major concern throughout the Track B Solicitation. No similar concern arose during the TEP solicitation because from the outset TEP assured all parties that no TEP affiliate would bid in its Track B Solicitation.

From the viewpoint of bidders, confirmed separation was necessary to permit all bidders to compete on equal terms. For APS, it was necessary to develop adequate safeguards in order to establish that the company conducted an unbiased solicitation. From the perspective of the Independent Monitor, clear and confirmed separation of APS data and personnel from contact with any affiliate submitting a bid was a threshold indication of whether the solicitation was fairly conducted.

The ACC held that:

[e]mployees of and contractors for APS's parent and affiliates, including but not limited to M&T, PWEC and Pinnacle West, who may be involved in the preparation of a bid in the solicitation process, shall not have contact with employees that will conduct the solicitation, concerning any business matter related to APS' parent or affiliates pertaining to the Track B Solicitation. Decision at 77.

The ACC observed that its Decision "shall [not] be construed as prohibiting APS, Pinnacle West, or PWEC officers and directors from providing corporate oversight, support and governance to their employees so long as such activities do not favor PWEC in Track B or provide PWEC with confidential bidding information during the Track B procurement that is not available to all other Track B bidders" Decision at

58. However, it noted that APS affiliates should seek "expertise that is dedicated to APS in the procurement process" from third party sources, rather than create "even an appearance of impropriety in the solicitation process" through the use of services shared among Pinnacle West companies. Decision at 58, 59.

As noted in the Pre-solicitation Report, during the pre-solicitation phase of this Track B process, APS established protocols to ensure that the evaluation of bids would be conducted in an equitable and auditable fashion. In order to accomplish this, APS set up a team of personnel who would conduct the process and would refrain from any communication with any other Pinnacle West personnel, including and especially, personnel from PWEC, on any matter relating to this solicitation. Attachment 19. Concurrently, PWEC also established a team to prepare any bid it chose to submit to APS. Attachment 20. APS also prepared a written set of Standards of Conduct (Attachment 21) that were published on the Solicitation web site. To see that the Standards of Conduct were understood within the corporation. APS appointed one attorney with responsibility for provided training throughout the corporation to all employees, other than PWEC personnel. PWEC employees received training in the Standards of Conduct from their own counsel to avoid direct contact with personnel, even lawyers, who would interact with the APS bid team. We were advised that all employees who had any possibility of being in contact with the APS bid team received instruction on behavior under the Standards of Conduct. The Independent Monitor reviewed the APS training materials and found them to be reasonable and appropriate. Attachment 22 illustrates the Pinnacle West organization as structured during the Track B Solicitation.

Pinnacle West has established several functions as "shared services" throughout its organization. The existing "shared services" design employed by Pinnacle West proved to be a continuing source of potential conflict during the solicitation. In some areas, such as human resources, the sharing of services was inconsequential and quite apart from the APS solicitation. The sharing of dispatch services provided an opportunity for the exchange of confidential information. That potential problem was avoided by full disclosure of system specifics to all bidders. However, under the Pinnacle West structure, PWEC and APS remained linked in two areas significant to the solicitation, legal services and risk management.

During the pre-solicitation phase, APS was insensitive to the potential appearance of impropriety created by allowing its lawyers to advise both APS and PWEC. The ACC's recognition of the need to provide "corporate oversight" was presented as the reason to exempt lawyers from the rigorous standards applied to all other employees. At the strong urging of the Independent Monitor, an attorney was assigned to advise PWEC during the solicitation. That lawyer was prohibited from advising APS during the Solicitation period. Similarly, we were assured that all Pinnacle West attorneys would be subject to the Standards of Conduct during the solicitation. This arrangement was maintained during the solicitation process and satisfied the ACC directives.

Risk management, another shared service, was not as easily dealt with. APS needed risk management authorization before accepting a bid. PWEC needed risk management authority before bidding. Pinnacle West operates as one risk pool, with authority for risk tolerance established by the Pinnacle West Board of Directors. Accordingly, individual business units do not at this time have individual risk limits.

Initially, both APS and PWEC intended to use the risk management services provided by APS as a shared service during the solicitation process. Thus, in order to do their work the personnel advising both companies would have required access to confidential information that could not be made available to other bidders. Since virtually every member of the Pinnacle West risk management group provided direct or indirect assistance to APS in the risk management assessment of all bids, no employees were sufficiently segregated to advise PWEC without creating a potential conflict.

To deal with this situation, prior to the receipt of bids from any bidder, PWEC was isolated from, and did not rely on the Pinnacle West risk management shared services. Instead, PWEC received advice and authorization for each bid it tendered from the Chief Financial Officer of Pinnacle West who was not involved directly with the APS bid team.

This arrangement was awkward and disadvantageous to PWEC. At the same time it provided sufficient safeguards for the Track B Solicitation, but does not represent a practical long term solution. Unless Pinnacle West restructures its shared services organization, this will continue to be a source of potential conflict any time PWEC would be bidding against non-affiliated suppliers.

IX. SUGGESTED PROCESS IMPROVEMENTS

The Track B Solicitation process, while comprehensive and well designed, presents several opportunities for improvement. While most problems encountered proved insignificant and were easily solved, some approaches unduly complicated the process and added unnecessary time, effort and inflexibility to the utilities' normal business processes and therefore warrant review.

1. Bid Fee

Bid fees are frequently used in competitive Solicitations, though not in all Solicitations. Participants to the Track B workshops agreed that any bid fee should be applicable to each bidder, as opposed to each bid, and recognized the Track B Solicitation would require APS and TEP to incur additional costs. Most bidders were willing to pay the \$10,000 bid fee, but some did not. Two bidders submitted bids, but failed to provide the requisite bid fee. Both companies were given additional days to submit the bid fee, but chose to be disqualified rather than pay the fee.

From our discussion with bidders, we believe other potential bidders may have elected not to participate because of the bid fee. Some of these bidders either have or had contracts to supply APS or TEP that were arranged bilaterally, without a bid fee. Some may have chosen to wait until the Solicitation was over and to then deal with the utilities bilaterally because the bid fee represented a disproportionately large percentage of their anticipated profit margin.

We believe the bid fee was reasonable as applied, that is, each bidder paid one bid fee. At the same time, APS and TEP may have received more competitive bids if there had been no bid fee. In future solicitations, it may be appropriate to eliminate bid fees for all bids for short-term standard products.

2. Regulatory Out

APS proposed the inclusion of a "Regulatory Out" provision in all contracts with power deliveries after 2005. The provision permits APS or bidders to terminate a Track B power supply contract in the event of certain regulatory actions or inactions. This provision appears to have been acceptable to the marketers that submitted bids.

However, it was identified as one reason some bidders chose not to provide bids for power to be supplied after 2005.

PWEC, one of the few bidders offering supplies beyond 2005, accepted the Regulatory Out provision, but, for purposes of its firm energy bid, it required a risk premium for energy contracted through the year 2006. PWEC offered prices for 2006 power that differed, depending on whether the Regulatory Out clause was included in the contract. By PWEC's calculation, the risk premium associated with the Regulatory Out provision for a firm energy commitment through 2006 was \$28 million. PWEC's firm energy bid was not among the bids accepted by AEP.

Prior to any future solicitation, the ACC should determine whether it will permit the use of Regulatory Out clauses in mandated solicitations.

3. Bidder Certificate

The ACC Decision required each bidder to certify it would not engage in unlawful market manipulation, and that the ACC may terminate a contract and exclude the bidder from future solicitations if it violates this pledge. Further, the certificate needed to be signed by the bidder's Chief Financial Officer (CFO). This requirement created considerable concern among bidders, due to a misunderstanding of the scope and intent of the requirement. APS required bidders to execute a separate Bidder Certificate (Attachment 23), and TEP included the commitment in the body of the RFP bidders were required to sign.

Most bidders agreed to a verbatim recitation of the Decision requirement, while expressing reservations. One potential bidder expressly declined to bid because of uncertainty of what obligations could flow from agreeing to the Decision requirement, as drafted. At least two bidders submitted bids without the signature of their CFO, while

others submitted bids with the understanding that clarification would be available before contracts would be executed. Release of a Federal Energy Regulatory Commission (FERC) Staff Report on market manipulation, after the Decision was issued, added to the confusion. The principal concern of bidders was a desire to avoid creating a dispute between FERC and the ACC concerning jurisdiction to determine market manipulation, and whether the ACC would attempt to rescind a contract retroactively to the date of execution.

With the assistance of the Staff, the Independent Monitor provided clarification of the ACC requirements. The clarification assured bidders that the ACC required FERC's authority to determine market manipulation, and that the ACC would only act after a FERC determination. Also, the Independent Monitor clarified that the ACC would only terminate contracts prospectively from a determination of unlawful market manipulation. Finally, the Independent Monitor confirmed that certification by the most senior officer of a bidder's company was acceptable, and that the absence of an officer holding the title of CFO was not a barrier to executing a contract. Prior to future solicitations, the Commission should clarify the scope and intent of the required Officer's Certification.

4. Procurement Freeze

APS and TEP were required to procure their unmet needs for 2003 through the Track B Solicitation process before contracting for or otherwise hedging their needs through bilateral contracts or open market transactions. When the Track B process became more protracted than expected, the utilities found themselves unable to take advantage of market opportunities even as they foresaw market prices rising.

We have not identified lost opportunities from this approach, and we appreciate the legitimate reasons for requiring the concurrent solicitation of all needs.

Only through a comprehensive, open-ended, solicitation could the utilities test, and the ACC evaluate the ability of a competitive solicitation process to create market opportunities for meeting system needs. In the future however, we believe that ongoing solicitations, whether through RFP's or other auction methods, should not limit a utility's ability to enter into appropriate power supply arrangements through open market transactions or to execute bilateral contracts in arm's length transactions, with non-affiliated suppliers. Transactions with affiliated suppliers should, however, remain subject to objective and transparent competitive procurement processes.

5. Future TEP Solicitations

Owing to TEP's relatively small unmet needs for the next 3 years and the transmission constraints of its system, TEP's requirements may be best met with Standard Products procured in open market transactions.

We believe TEP has in place the expertise and experience to procure system needs without a comprehensive solicitation, and without continual monitoring. Further, we believe it appropriate for the ACC to revisit TEP's procurement practices at the time the utility undertakes the analysis of whether to build generation to meet future needs. The utility forecasts the need for one 75 MW RMR unit in 2008 and another 75 MW RMR unit in 2017.

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 1

**INDEPENDENT MONITOR'S REPORT
ON
TRACK B PRE-SOLICITATION**

**INDEPENDENT MONITOR'S REPORT
ON
TRACK B PRE-SOLICITATION**

I. Introduction

Decision No. 65743 (Decision) of the Arizona Corporation Commission (Commission) established that an Independent Monitor would be appointed for the Track B Solicitations conducted by Arizona Public Service Company (APS) and Tucson Electric Power Company (TEP). The responsibilities of the Independent Monitor include providing a status report after the pre-solicitation process is completed. This report addresses the activities of APS and TEP between January 15, 2003 and April 4, 2003.

During the pre-solicitation period of the Track B solicitation, the groundwork was laid for a successful bidding process. To ensure that all necessary steps were taken, the Independent Monitor worked with the Staff, APS, and TEP to establish:

1. Base line information for each solicitation
2. Solicitation due dates
3. Affiliate standards for APS
4. Bidder qualification standards
5. Schedules for vetting solicitation drafts with Staff & bidders
6. Evaluation processes
7. Communications protocols
8. Monitoring procedures

II. Summary of Status of the Solicitation

The Monitor has observed that the Track B pre-solicitation activities of each utility provided for the production of information necessary for bidders to participate, developed policies and procedures designed to facilitate open and equitable solicitation, and produced RFP materials that will permit fair and open solicitations. Each utility received multiple bids for a variety of products covering both the short term and longer term. Ample capacity was proposed to meet the projected needs of Arizona's consumers and energy merchants have actively participated in this solicitation. Only after pricing data has been analyzed can it be determined whether consumers will benefit from this process. The ultimate success of the solicitation will, however, be controlled by how each utility applies the solicitation protocols and safeguards designed during the pre-solicitation period.

III. Pre-solicitation Process Overview

A. Draft Documents

During the pre-solicitation period, the Independent Monitor frequently conferred with APS, TEP and the ACC Staff . Additionally, the Monitor met with and had frequent communications with virtually all the parties to Track B, including many of the potential bidders. Cumulatively, through these activities the Independent Monitor has been apprised of all pre-solicitation activities and became aware of many of the parties' concerns. During this period the

Independent Monitor made numerous suggestions to each utility, each of which was given full consideration by TEP and APS. Numerous changes to solicitation materials were made in response to those comments as well as to suggestions offered by prospective bidders. In the end, however, the final decisions related to the RFPs issued and all related documents remained the sole responsibility of each utility.

The pre-solicitation process was structured to facilitate a methodical and thorough preparation of solicitation materials. As an initial step, system information needed by bidders was made available to all prospective bidders on web sites created by each utility, and also at bidders' conferences. The materials provided included necessary system, load and transmission information. In addition, each utility used its web site to answer questions from bidders. All questions and responses were published on the web sites and were available to every bidder.

Draft solicitation materials were made available for review and comment by bidders prior to being issued by each utility. Drafts were posted on the web sites in advance of the first bidders' conferences. Revised draft materials were posted periodically for review and comment prior to the release of final bid materials. This process provided ample opportunity for prospective bidders to comment on the materials and to provide suggestions for improving the materials and the solicitation process. Each comment was considered and many were incorporated into the solicitation materials before final documents were released.

It should be noted that, while the draft review process was helpful, it did not eliminate all issues between the utilities and the bidders.

B. Bidder Conferences

As a part of the pre-solicitation process, APS held two bidders' conferences and TEP held one. Each bidder conference provided a forum for open discussion among solicitation participants. This permitted a free exchange of views that all could hear, without the time consuming process of posting questions on the web sites and then waiting for responses. During these open forums, each utility provided bidders with information that assisted bidders in the preparation of bids. If a bidder chose not to attend a bidder conference, all written materials distributed at the bidders conferences were posted on the respective web sites. Neither utility recorded the bidder conferences nor provided written transcription of questions or answers.

APS held two bidder conferences, in large part because their initial draft documents were significantly criticized by most potential bidders. As a result of those criticisms, APS addressed many of the concerns raised by the bidders and made significant changes to its solicitation documents.

TEP held one bidder conference during which bidders and TEP worked together to amend draft documents. Amendments included refinements to the credit support, requested product definitions and the solicitation schedule. As a result of the cooperative atmosphere created by TEP, only one bidder conference was needed to address and resolve bidder concerns.

C. Bidder Certificate

The Decision required bidders to certify they would permit the ACC Staff to inspect generating facilities that would be used to fulfill bid commitments. The Decision required bidders to certify that the ACC has authority to initiate proceedings and to take remedial action in the event a bidder unlawfully manipulates the Western Interconnection wholesale market. TEP and APS required signed commitments from bidders in furtherance of the ACC Decision.

Several potential bidders noted that such a certification might create the potential for a conflict between the ACC and FERC and questioned the ACC's authority to regulate wholesale electric generators. Several potential bidders refused to execute the required Bidder Certificate prepared by TEP and APS.

APS' and TEP's forms were drafted to reflect the language in the Decision. Several bidders ultimately chose not to bid, in part because of concerns they claimed to have regarding this issue. Several others have not yet executed the Certificate. These concerns were raised shortly before the solicitation was released, which provided insufficient time for resolution of this issue before bids were due. At the urging of the Independent Monitor, APS and TEP agreed to consider bids without an executed Bidder Certificate, with the understanding this matter would be resolved before pricing data and standard products bids are provided by bidders on April 23rd and 24th.

D. Regulatory Out Clause

As originally drafted, APS' RFP incorporated a proposed contract term that would have allowed APS the unilateral right to immediately terminate any contract entered as a result of this Track B solicitation, if any governmental body made any finding or adopted any rule, regulation or law, that adversely affected APS' ability to recover the costs APS incurred pursuant to those contracts. Several potential bidders expressed reservations regarding APS' proposed regulatory-out clause and advised the Monitor that such a clause might prevent them from bidding due to the uncertainty it created. After extensive discussions with the Monitor, APS agreed to modify that term to allow for bilateral rights to terminate deliveries of capacity and energy after 1/1/06, if the ACC does not approve those contracts within 12 months of APS filing for such approval. APS committed to make such filings within 2 months of the completion of the current solicitation. APS also advised bidders that it would consider bids that struck the regulatory-out clause but further advised bidders that that clause was deemed to be a critical term in the evaluation process and ranking of bids.

While the Monitor appreciates the business reasons for including such a term in contracts for long-term power supplies, we are concerned that the clause as drafted could (1) inhibit bidders from proposing long-term offers and (2) might expose ratepayers to additional risks and uncertainty in later years by providing sellers a right to withdraw from favorably priced contracts if the ACC chooses not to act on APS' filings for approval of the contracts it executes. APS was required to carefully balance the risks to both its customers and to its shareholders. The

decision was clearly not an easy one to make. APS exercised reasonable judgment in this area by limiting the risks to all parties to those years after 2005 only, and by assuring itself and all bidders ample time to replace or resell capacity and energy if any contracts are terminated pursuant to the clause.

While several bidders advised the Independent Monitor that they would not bid long-term offers as a result of the inclusion of a regulatory-out clause, several long-term offers were received and are being evaluated at this time.

TEP did not incorporate a regulatory-out clause in its proposed form of contract and we are unaware of any bidder who has proposed one.

E. Web Sites

Both APS and TEP established dedicated web sites for this solicitation.

The APS site is secured and all bidders were required to establish passwords for access. The web sites are used to distribute documents and to provide the primary means of communications between the bid solicitation teams and potential bidders. Both companies use the web sites to answer questions and to provide those answers to all bidders concurrently. Only credit-related questions and answers specific to a bidder are not posted on the web site.

Although APS was slow to get its web site established and its procedures for establishing access were needlessly cumbersome and often ineffective, the site operates effectively and is maintained and updated in a timely fashion. The TEP site has worked well since it was established. Each site provides a valuable benefit to the process.

F. Bid Fees

The Decision authorized each company to assess a bid fee of up to \$10,000 per bidder to offset the cost of conducting the solicitation. Both TEP and APS chose to assess the full amount on each bidder. While several potential bidders complained that the fee was not standard in the industry, only two bidders refused to pay the fee. Those offers have now been rejected and the respective bids will not be evaluated. Several bidders did not include the bid fee with their initial submission. Both TEP and APS allowed all bidders in that position an opportunity to cure that defect and all, except for the bidders discussed above, have now paid the required fee.

While not "standard" in the industry, bid fees are not uncommon and did not impair the ability of bidders to participate in this solicitation.

G. Bid Process

Each company adopted a unique approach to receiving bid information from bidders, tailored to its proposed evaluation process.

TEP bifurcated the submission of bids by product type, requiring the submission of bids for non-standard products on April 4th and the submission of bids for standard products on April 23rd. TEP's evaluation process appears to be consistent with its normal system planning practices and is fairly straightforward.

APS' bid process required all bidders to submit bids on April 4th. Bids for non-standard products had to include pricing information, while bidders for standard fixed-price products will supply pricing information on April 24th. Once

prices are added on April 24th, the fixed-price bids will remain open until April 28th, but bidders may withdraw their bids by 5:00 p.m. on April 25th. This structure was a compromise adopted by APS after bidders complained that they could not hold fixed price bids open for the entire period between April 24th and April 28th. In order to enhance the ability of bidders to "stay in the game," APS also is accepting fixed price bids tied to an index thereby allowing APS to lock-in a fixed price at any time between April 24th and April 28th. This process was adopted to accommodate APS' ability to model and evaluate submitted bids, while meeting the requirement that all bids be evaluated concurrently.

During the period between April 4th and the submission of pricing information, both companies will be in contact with bidders to ascertain additional data and to clarify any ambiguities that exist in the submitted bids. These communications will be conducted only through emails and cover operational questions as well as credit-related issues. Thereafter, the companies may engage in direct negotiations with selected bidders to finalize contracts. The Independent Monitor will monitor all negotiations, either in person or telephonically.

TEP intends to complete its contracting by April 25th. APS intends to short-list bidders by April 28th and to start executing contracts anytime between then and May 22nd, with all contracts finalized by May 22, 2003.

Each company has designed a reasonable approach to managing the collection of bids and data to enable them to concurrently evaluate all bids. The process and timing encourages bidder participation. The Monitor is unaware of

any part of the pre-solicitation that created an unfair advantage or disadvantage for any bidder.

H. Delivery Points

TEP and APS delineated various delivery points on their systems as "preferred," but indicated a willingness to consider offers of delivery at alternative points. Bidders have taken advantage of that flexibility and have bid delivery of products to a variety of delivery points. Both companies are evaluating their ability to, and the economic value of, accepting products at each proposed delivery point.

During APS' second bidders' conference, it distributed information "ranking" its preferred delivery points. The ranking created some confusion among the bidders and with the ACC Staff. Bidders were concerned that the ranking would influence the evaluation, even if there was no economic or operational impact associated with the potential delivery to the alternate points. Staff was unclear on how APS would use the ranking and had questions regarding how the rankings were established.

APS has assured the Monitor that the rankings would not be used to evaluate bids unless a clear operational or economic impact could be demonstrated. According to APS, the information provided at the second bidders' conference was intended to provide bidders with a better understanding of APS' import capability. Staff has also advised the Monitor that its concerns were resolved.

To date, no bids have been rejected by either APS or TEP because a proposed delivery point was unacceptable.

I. Environmental Information

The Decision required that APS and TEP consider the environmental impacts of the contracts they execute, and that all bidders submit environmental data regarding the sources of capacity and energy they propose to supply. Bidders were instructed to provide summaries of environmental information. Winning bidders will be required to provide more extensive information.

Bids received by both companies have all included certain emissions and other data as required by the Decision. To the extent that additional data is needed, the companies will query the bidders.

Neither company is using the environmental data in evaluating the economic value of any bid, nor in determining the operational appropriateness of any bid. How APS or TEP will address the ACC concerns relative to environmental matters has not, to the knowledge of the Monitor, been decided.

J. Blind Bidding

The Decision encouraged the utilities to use "blind bidding," that is, evaluation of bids without identification of the bidder, to the extent practicable. However, because APS and TEP solicited bids for a variety of products, including both standard and non-standard products, a blind bidding structure proved to be too cumbersome. This issue was irrelevant in the TEP solicitation because all

bidders were arms-length participants. Because APS' affiliate, PWEC, submitted a bid, the issue had to be addressed in that solicitation.

In conducting the evaluations each utility must have access to certain information. Some of this information is specific to the source of energy and capacity being bid, making it difficult to mask the identity of the bidder. Each utility must also evaluate the credit-worthiness of each bidder before accepting any offer. Such information is, by definition, bidder-specific and providing it would disclose the identity of bidders. Additionally, proposed contract amendments weigh heavily in the evaluation process and must ultimately be matched to operational and economic criteria to complete the process. Blinding the bids, therefore, was rejected as unworkable in this solicitation. The Independent Monitor and APS explored a variety of ways of creating a blind, or even partially blind, bidding process. Each proved impractical for various reasons. Examples of blind bidding approaches considered by the Independent Monitor and APS included:

1. Removal from each bid of all references to a bidder and generating plant. This was rejected because so many bid components would indicate the bidder's identity.

2. Having the Independent Monitor extract key bid information and then provide APS with a matrix of all bids without the identity of bidders. For example, quantity, term, delivery point, products, could be extracted. This approach presented many significant challenges making it impractical. The most significant problem was bids for unique products would be difficult to disguise.

Also, core information (product, quantity, term, etc.) would need to be matched with bidder-specific credit information in short order, making this approach useful for only a limited period.

3. Accepting blind bids for fixed, standard products (such as, 6x16 energy for summer 2003) and evaluating other products after the standard product needs were met. This was rejected as being in conflict with the Decision requirement that all Track B bids be evaluated concurrently.

APS and the Independent Monitor considered a number of variations of these approaches without identifying an appropriate blind bidding method. The major barriers to the Track B solicitation being conducted as a blind bid were the need for a concurrent evaluation of bids and the potential liability of APS or the Monitor if bid information was omitted, erroneously redacted, or inaccurately transcribed.

Absent an ability to fashion a workable blind bid process, APS and the Independent Monitor focused on the goal of preventing any PWEC bid from receiving a preference. To address this it was agreed that the Monitor would hold the unopened PWEC bid until all other bids were evaluated. With regard to pricing information to be submitted on April 24th, PWEC's pricing information will be held by the Monitor until pricing data from PWEC is evaluated and a preliminary short list is prepared. PWEC data will then be evaluated using the same tools and assumptions and, if required, a revised short list will be prepared.

While not a perfect solution, this approach will allow APS to conduct its evaluation in a reasonable manner and not provide PWEC any opportunity, or

the appearance of any opportunity, to price or structure its bids based on information submitted by other bidders.

K. Review Process

APS and TEP are using similar review processes. The differences reflect the need to limit APS' access to PWEC bid information for a significant period.

THE APS PROCESS:

1. On Friday, April 4, 2003, all bids were received by APS. Bidders were sent emails confirming receipt by the 5:00 p.m. submission deadline. At 6:00 p.m., the Independent Monitor opened each bid, except the bid from PWEC. The only persons present were the Independent Monitor, a member of the ACC Staff, and a delegate from the Pinnacle West Treasurer who attended to receive the checks for bid fees. The Monitor logged in all bids and the materials provided in the opened bids.

2. At approximately 7:30 p.m. on April 4, 2003, the Independent Monitor delivered all opened bids to the APS bid solicitation team. That team reviewed each bid and notified bidders by email of any missing or incomplete documents or bid requirements that same evening. Rather than reject an incomplete bid, bidders were given until noon on Monday, April 7, 2003, to cure defects.

3. The Independent Monitor retained possession of the submission by PWEC, in its original, sealed package until APS advised the Monitor that it completed its non-price evaluation of all offer bids on April 16th.

4. Between April 4, 2003, and April 24, 2003, APS will evaluate and rank bids for all non-price criteria.

5. On April 24, 2003, bidders will provide prices for standard product and other fixed-price bids submitted on April 4, 2003. Bidders may withdraw their bid before close of business on Friday, April 25, 2003. APS will provide the Independent Monitor with all prices. The Independent Monitor will verify that only prices received by 5:00 p.m. MST on April 24, 2003 are evaluated. After that, all fixed price bids are firm until April 28th and others until May 22nd.

6. By Monday, April 28th, APS will prepare a short-list of bids it wishes to accept.

7. Concurrently, on Monday, April 28, 2003, APS will begin negotiations with bidders on credit terms, contract provisions, and other bid terms. The Independent Monitor will monitor all negotiations, either in person or telephonically.

While the approach in use is not a blind bidding process, it limits the likelihood of the APS evaluation being crafted to favor PWEC. Therefore, we accepted this approach as a reasonable substitute for a blind bidding process.

THE TEP PROCESS:

TEP has no affiliate bidding in the Track B solicitation. Accordingly, the safeguards constructed for the TEP solicitation are not as stringent. TEP is, however, using a process similar to the APS process.

1. On Friday, April 4, 2003, all bids were received and bidders were sent emails confirming receipt of their bids. Starting at 5:30 pm, TEP personnel opened the bids. The Independent Monitor and a member of the ACC Staff were present, but no bidders were present.
2. On April 24, 2003, bidders will provide prices for consideration by TEP, thus completing their bids.
3. Like APS, TEP will evaluate bids once completed with prices. The bids will be ranked and negotiations with individual bidders regarding contract terms and the specifics of bids will be conducted. The Independent Monitor will monitor all negotiations, either in person or telephonically.
4. TEP will notify winning bidders on April 25, 2003.

It should be noted that both TEP and APS instituted a series of "cure" opportunities for bidders, even though this was a step not included in the solicitation process adopted by the Decision, and was not discussed during the Track B workshops. The "cure" process afforded bidders the opportunity to provide missing information or documents after the date for the submission of bids.

We believe this additional step was both appropriate and a demonstration that TEP and APS are willing to demonstrate flexibility in order to keep a wide array of bids available for evaluation. While this had the effect of providing some additional time to a few bidders, it did not disadvantage other bidders because the opportunity to cure was provided to all incomplete bids, and because the

period for cure was within a few days of the initial submission date and well before evaluation of bids was completed.

L. Credit Requirements

Credit requirements were, and remain, the areas of greatest concern for bidders and utilities alike. The volatility of the energy market and the potential exposure in the event of default combine to make this a critical element of the evaluation process.

APS initially required significant credit assurances from all bidders, but was unwilling to provide any credit assurances to potential bidders. In response to this position, a number of bidders claimed that they would not participate in the solicitation unless appropriate credit assurances were provided by APS. Ultimately, the company agreed to extend bilateral credit to bidders with better credit ratings than APS. APS has claimed that it lacks the financial capacity to provide credit assurances to support all the capacity and energy purchases it may make as a result of this solicitation. The inability of APS to provide bilateral credit assurances to all bidders, especially all investment grade bidders, may impact the prices APS is offered and may limit the number of bidders willing to contract with APS. A number of bidders indicated they will attempt to address the APS credit restrictions through contract terms. Review of the terms of any contracts entered into by APS and bidders, along with how credit terms are negotiated during the solicitation process, will likely determine whether the APS

restrictions adversely affected the solicitation. This area will continue to receive close monitoring.

TEP is in a different situation than APS, both because its credit rating is not investment grade and because the volumes likely to be acquired through the solicitation would create less exposure in the event of default. Even with these considerations, TEP proved to be far more amenable to working with bidders to fashion credit requirements that encouraged participation. TEP provided bilateral credit assurances for all bidders with credit ratings equal to or greater than TEP's. The company also expressed a willingness to consider alternative forms of credit assurance based on the bid and the terms offered by a bidder. While the TEP solicitation will be monitored to assure that credit assurance is not used as a barrier to evaluation of bids, we do not anticipate a problem to occur with that utility.

M. Standards of Conduct

During the pre-solicitation phase of this Track B process, APS was required to establish protocols to assure the ACC and potential bidders that the evaluation of bids would be conducted in an equitable and auditable fashion. In order to accomplish this, APS set up a team of personnel who would conduct the process and would refrain from any communication with any other Pinnacle West personnel, including and especially, personnel from PWEC, on any matter relating to this solicitation. Concurrently, PWEC also established a team to prepare any bid it chose to submit to APS. APS also prepared a written set of

Standards of Conduct for this solicitation which were reviewed by the Monitor and by the ACC Staff. APS provided training with regard to those Standards of Conduct to the APS team, the PWEC team, and to other APS personnel notably those "shared services" personnel who might directly or indirectly assist either team.

These efforts were generally successful but several notable situations arose that required intervention by the Monitor.

In establishing its team, PWEC proposed assigning an officer of PWEC to its team who also held an executive position at APS. This arrangement provided the PWEC bid team with operating knowledge and data relative to the APS system that was not available to other bidders. The Monitor advised PWEC that the assignment presented a potential conflict and a clear appearance of conflict and should be rectified. Initially, PWEC failed to resolve the problem and the Monitor advised APS that if the situation was not corrected, we would advise the Commission of our concerns and would ask to have PWEC's bids disqualified. PWEC subsequently removed that officer from its bid team prior to the date on which bids were due.

More difficult to resolve was the potential for conflict created by Pinnacle West's corporate structure and its use of shared services. Although fairly common in today's utility industry, APS' shared services structure is still in the process of development. Today, the Pinnacle West structure does not provide complete separation of its regulated and unregulated business units. This is

problematic because of the need to avoid even the appearance that PWEC will have an unfair advantage in the Track B solicitation.

The specific problem, in this case, is that both APS and PWEC will require Risk Management authorizations to both buy and sell capacity and energy. Corporate risk tolerance is determined by Pinnacle West Capital's board of directors and dictates each business unit's risk level. Today at Pinnacle West, individual units do not have set risk limits. Therefore, in order to accept bids, APS requires advice provided by the APS risk management group which also provides that service to all other Pinnacle West units, including PWEC.

PWEC also requires risk management advice in order to prepare its bids. The advice would also come from APS' risk management group. However, virtually every member of the APS risk management group has directly or indirectly assisted the APS bid team and may, therefore, be ineligible to provide PWEC with assistance pursuant to the APS Standards of Conduct.

In order to allow PWEC to participate, it was agreed that PWEC would independently prepare its risk assessment as required by Pinnacle West's Board and could consult with Pinnacle West's CFO who has ultimate responsibility for corporate risk management but has had and will have no direct contact with the APS team.

While not optimal, this solution is both reasonable and equitable. It allows PWEC to participate, which may benefit ratepayers, and provides no undue advantage to PWEC.

We are continuing to monitor this situation closely.

CONCLUSION

The Pre-Solicitation Process has been completed and the Independent Monitor found that it is appropriate to move to the next phase of the Solicitation.

Dated: April 22, 2003

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 2

**INDEPENDENT MONITOR'S
PRELIMINARY FINAL REPORT
ON
ARIZONA PUBLIC SERVICE COMPANY**

INDEPENDENT MONITOR'S
PRELIMINARY FINAL REPORT
ON
ARIZONA PUBLIC SERVICE COMPANY

In Decision No. 65743, the Arizona Corporation Commission (ACC) directed that within three days of Arizona Public Service Company (APS) selecting winning bids, the Independent Monitor must submit a status report on the solicitation process employed. On May 12, 2003, APS completed the Track B Solicitation. APS executed contracts with:

- Pinnacle West Energy for 1,700 MW during July through September 2003, and during June through September 2004, 2005, and 2006.
- PPL Energy Plus, LLC for 112 MW during July through September 2003, and for 150 MW during June through September 2004 and 2005.
- Panda Gila River LP for 450 MW during October 2003 and 2004, and during May 2004 and 2005; and 225 MW during November 2003 through April 2004; and 225 MW during November 2004 through April 2005.

The Independent Monitor believes the solicitation process employed by APS provided an open and fair solicitation, and the solicitation was conducted according to the solicitation process. From the Monitor's observations, APS conducted the solicitation, including the evaluation of bids, without bias towards or against any bidder.

The detailed Final Report of the Independent Monitor on the APS Track B Solicitation will be filed within two weeks, as required by Decision No. 65743.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harold T. Galt".

Accion Group, Inc.
Independent Monitor to the ACC

May 15, 2003

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 3

**INDEPENDENT MONITOR'S
PRELIMINARY FINAL REPORT
ON
TUCSON ELECTRIC POWER COMPANY**

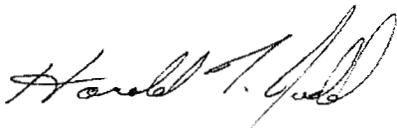
INDEPENDENT MONITOR'S
PRELIMINARY FINAL REPORT
ON
TUCSON ELECTRIC POWER COMPANY

In Decision No. 65743, the Arizona Corporation Commission (ACC) directed that within three days of Tucson Electric Power (TEP) selecting winning bids, the Independent Monitor must submit a status report on the solicitation process employed. On May 7, 2003 TEP executed a contract with PPL EnergyPlus, LLC and on May 8, 2003, TEP executed two contracts with Panda Gila River L.C. as a result of the Track B Solicitation.

The Independent Monitor believes the solicitation process employed by TEP was well designed, provided an open and fair solicitation, and the solicitation was conducted according to the solicitation process. From the Monitor's observations, TEP demonstrated a willingness to make the solicitation a success to the extent of providing opportunities for bidders to cure defects in their bids, and by fully evaluating all bids, including those for products TEP did not solicit.

The detailed final report of the Independent Monitor on the TEP Track B Solicitation will be filed within two weeks, as required by Decision No. 65743.

Respectfully submitted,



Accion Group, Inc.
Independent Monitor to the ACC

May 12, 2003

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 4

**TEP UNIVERSE OF POTENTIAL TRACK BIDDERS
PRE-SOLICITATION**

TEP UNIVERSE OF POTENTIAL TRACK BIDDERS
PRE-SOLICITATION

Company	Abb.
Allegheny Energy Supply Co, LLC	AETS
American Electric Power Service	AEPC
Arizona Portland Cement Co.	
Asarco Mining, Mission Complex	
Avista Energy Inc. (Power-WA)	AVST
Black Hills Power BHP	
Bonneville Power Adm.	BPA
BP Energy Company (Power)	BPEC
California Department of Water Resources	CDWR
Calpine Energy Services	CPSC
City of Anaheim	ANHM
CONOCO INC. CONC	
Constellation Power Source	CPS
Coral Power, L.L.C.	CORP
Deseret Generation and Transmission Cooperative	DGT
Duke Energy Trading & Marketing	DETM
Dynegy Power Marketing, Inc.	DYPM
Edison Mission Marketing & Trading	SCE
El Paso Electric	EPE
El Paso Merchant Energy, L.P.	EPME
Entergy-Koch Trading, LP	EKT
FPL Energy Power Marketing Inc.	FPL
Idaho Power Company	IPC
Imperial Irrigation District	IID
Los Angeles Dept. of Water & Power	LDWP
MIECO, Inc.	MECO
Mirant Americas Energy Marketing, LP	MAEM
Morgan Stanley Capital Group, Inc.	MSCG
Nevada Power Co.	NEVP
PacifiCorp	PAC
PacifiCorp Power Marketing, Inc.	PPM
PG&E National Energy Group	PGET
Phelps Dodge	PDES
Portland General Electric Co.	PGE
Powerex	PWX
PPL EnergyPlus, LLC	PPLE
Public Service Company of New Mexico	PNM
Reliant Energy Services Inc. (Power)	RESW
RWE Trading Americas Inc.Americas	RWE
Salt River Project	SRP
Seattle City Light	
Sempra Energy Trading Corp.	SETC
Sierra Pacific Power Co.	SPP
TECO EnergySource, Inc.	TECO
Texaco Energy Services	TX
TransAlta Energy Marketing, Inc.	TEMU
Tri-State Generation and Transmission Association	TSGT

Tucson Electric Power	TEP
TXU Energy Trading Company LP	TXU
TXU Energy Trading Company LP	TXU
UBS Warburg Energy	UBSW
WAPA - Colorado River Storage Project Management Center	WACR
WAPA - Desert Southwest Region	WALC
Williams Energy Marketing & Trading Company (P)	WESC
Xcel Energy	PSC

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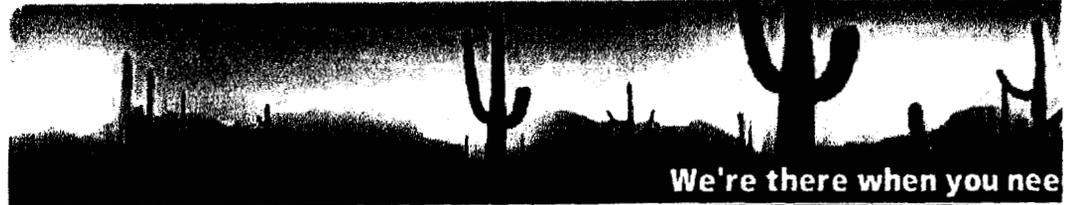
**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 5

TEP WEB SITE SAMPLE PAGES



A UniSource Energy Company



Wholesale Services

- RESIDENTIAL
- COMMERCIAL
- CONSTRUCTION
- COMMUNITY
- COMPANY

TEP 2003 Wholesale Solicitation

Welcome to the Tucson Electric Power Request For Proposal (RFP) Web site.

Questions regarding the RFP process and material must be placed on the RFP Web site Bulletin Board.

All items regarding this RFP and process are subject to change based on the ACC final order. TEP reserves the right to change this RFP and accompanying documents without notice.

Updated Timeline

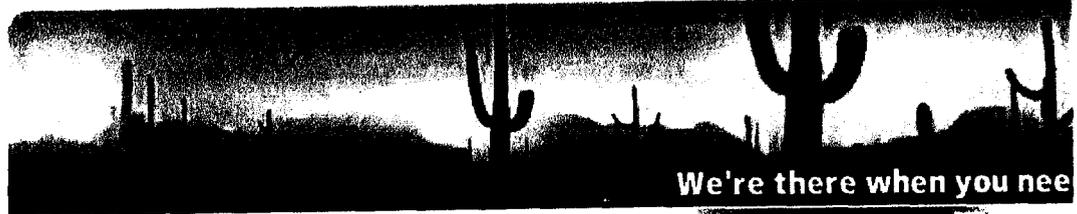
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 - Bidder List
 - Master Agreement
 - Confidential Agreement
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- System Information
 - System Modeling
 - Resource Modeling
 - Transmission Modeling
 - TEP OATT
- Bidder Contact Information
- Communication Bulletin Board
- Contacts
- Wholesale Home Page
- TEP Credit

* .PDF documents
Acrobat Reader



A UniSource Energy Company



Wholesale Services

- RESIDENTIAL
- COMMERCIAL
- CONSTRUCTION
- COMMUNITY
- COMPANY

TEP 2003 Wholesale Solicitation

Draft Contracts

.PDF* format:

- [WSPP Agreement Effective 09/01/2002](#)
- [WSPP Collateral Annex Cover Sheet](#)
- [WSPP Collateral Annex](#)
- [WSPP Security Agreement](#)
- [WSPP Caveat](#)
- [EEI Master Contract \(Updated 3/6/03\)](#)

Microsoft Word format:

- [WSPP Agreement Effective 09/01/2002](#)
- [WSPP Collateral Annex Cover Sheet](#)
- [WSPP Collateral Annex](#)
- [WSPP Security Agreement](#)
- [WSPP Caveat](#)
- [EEI Master Contract \(Updated 3/6/03\)](#)

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 6

**WESTERN SYSTEMS POWER POOL
AGREEMENT**

ATTACHMENT A

**WESTERN SYSTEMS POWER POOL
AGREEMENT**

NONREDLINED VERSION

Western Systems Power Pool .
Rate Schedule FERC No. 6

Western Systems Power Pool Agreement

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool
Issued on: December 3, 2002

Effective: February 1, 2003

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Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos.
ER00-3338, et al., issued September 15, 2000.

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1. PARTIES:

The Parties to this Western Systems Power Pool Agreement (hereinafter referred to as "Agreement") are those entities that have executed this Agreement, hereinafter sometimes referred to individually as "Party" and collectively as "Parties," but excluding any such entity that withdraws its participation in the Agreement.

2. RECITALS:

2.1 The WSPP experiment has been successfully concluded. Its main purpose was to determine the feasibility of a marketing arrangement which would increase the efficiency of interconnected power system operations above that already being accomplished with existing agreements through increased market knowledge and market pricing of commodities.

2.2 The Parties now desire to proceed with a similar marketing arrangement on a long term basis for prescheduled and real-time coordinated power transactions, such as economy energy transactions, unit commitment service, firm system capacity/energy sales or exchanges. Accordingly, this Agreement, together with any applicable Confirmation Agreement, sets forth the terms and conditions to implement these services within any applicable rate ceilings set forth in the Service Schedules in conformance with FERC orders where applicable.

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

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2.3 Each Party meets the membership requirements set out in Section 16.

2.4 The Parties are willing to utilize their respective electric generation and transmission systems or contractual rights thereto to the extent of their respective obligations which are set forth in this Agreement.

3. AGREEMENT:

In consideration of the mutual covenants and promises herein set forth, the Parties agree as follows:

4. DEFINITIONS:

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified:

4.1 Agreement: This Western Systems Power Pool Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation Agreements are not included within this definition.

4.1a Broker: An entity or person that arranges trades or brings together Purchasers and Sellers without taking title to the power.

4.1b Business Day(s): Any day other than a Saturday or Sunday or a national (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where both the Seller and the Purchaser have

their principal place of business in the United States, Canadian holidays shall not apply. Similarly, where both the

Seller and the Purchaser have their principal place of business in Canada, United States holidays shall not apply. In situations where one Party has its principal place of business within the United States and the other Party's principal place of business is within Canada, both United States and Canadian holidays shall be observed.

4.1c California ISO: The California Independent System Operator Corporation or any successor organization.

4.1d Confirmation Agreement(s): Any oral agreement or written documentation for transactions under the Service Schedules which sets forth terms and conditions for transactions that are in addition to, substitute, or modify those set forth in the Agreement. A sample written confirmation document is included as Exhibit C. Section 32 of this Agreement provides for such Confirmation Agreements. The Parties may agree to modify terms of this Agreement for more than one transaction pursuant to a separate written agreement. The changes to the Agreement agreed to through such written agreements shall be considered part of the Confirmation Agreement and shall apply to all transactions entered into between the two Parties under the Agreement unless the Parties specifically agree to override such changes for a particular transaction consistent with § 32 of this Agreement.

4.1e Contract Price: The price agreed to between the Seller and the Purchaser for a transaction under the Agreement and any Confirmation Agreement.

- 4.1f Contract Quantity: The amount of electric energy and/or capacity to be supplied for a transaction under a Service Schedule as agreed to through any Confirmation Agreement.
- 4.2 Control Area: Shall mean an electric system capable of regulating its generation in order to maintain its interchange schedule with other electric systems and to contribute its frequency bias obligation to the interconnection as specified in the North American Electric Reliability Council (NERC) Operating Guidelines.
- 4.2a Costs: As defined in Section 22.3 of this Agreement.
- 4.2b Dealer: An entity or person that buys or sells power and takes title to the power at some point.
- 4.2c Defaulting Party: As defined in Section 22.1 of this Agreement.
- 4.2d Determination Period: As defined in Section 38.2 of this Agreement.
- 4.3 Economy Energy Service: Non-firm energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange energy that is subject to immediate interruption upon notification, in accordance with the Agreement, including Service Schedule A, and any applicable Confirmation Agreement.

- 4.4 Electric Utility: An entity or lawful association which (i) is a public utility, Independent Power Producer, or Power Marketer regulated under applicable state law or the Federal Power Act, or (ii) is exempted from such regulation under the Federal Power Act because it is the United States, a State or any political subdivision thereof or an agency of any of the foregoing, or a Rural Utilities Service cooperative, or (iii) is a public utility, Independent Power Producer, or Power Marketer located in Canada or Mexico that is similarly regulated.
- 4.4a ERCOT: Electric Reliability Council of Texas, Inc., the corporation that administers Texas's power grid and is a regional reliability council.
- 4.4b Event of Default: As defined in Section 22.1 of this Agreement.
- 4.5 Executive Committee: That committee established pursuant to Section 8 of this Agreement.
- 4.6 FERC: The Federal Energy Regulatory Commission or its regulatory successor.
- 4.7 Firm Capacity/Energy Sale or Exchange Service: Firm capacity and/or energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange for a specified period available capacity with or without associated energy which may include a Physically-Settled Option and a capacity transaction in accordance with the Agreement, including Service Schedule C, and any applicable Confirmation Agreement.

- 4.7a First Party: As defined in Section 27 of this Agreement.
- 4.7b Floating Price: As defined in Section 38.1 of this Agreement.
- 4.7c Gains: As defined in Section 22.3 of this Agreement.
- 4.7d Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for specific obligations for transactions under this Agreement and Confirmation Agreements. A sample form of guarantee is provided in Exhibit B.
- 4.7e Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

- 4.8 Hub: An electronic communication center that functions as a central point to electronically receive and assemble data for offers to buy or sell power or transmission service from each Party and make that data electronically available concurrently to all Parties.
- 4.9 Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.
- 4.10 Independent Power Producer: An entity which is a non-traditional public utility that produces and sells electricity but which does not have a retail service franchise.
- 4.11 Interconnected Transmission System: The total of all transmission facilities owned or operated by the Parties, including transmission facilities over which Parties have scheduling rights.
- 4.11a Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.
- 4.11b Losses: As defined in Section 22.3 of this Agreement.
- 4.11c Market Disruption Event: As defined in Section 38.2 of this Agreement.
- 4.11d NERC: North American Electric Reliability Council or any successor organization.
- 4.11e Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.
- 4.11f Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

- 4.11g Non-Standard Confirmation Provisions: As defined in Section 32.5 of this Agreement.
- 4.11h NYMEX: New York Mercantile Exchange, the physical commodity futures exchange and a trading forum for energy and precious metals.
- 4.12 Operating Agent: Arizona Public Service Company, or its successor as may be designated by the Executive Committee.
- 4.13 Operating Committee: That committee established pursuant to Section 8 of this Agreement.
- 4.13a Party or Parties: As defined in Section 1 of this Agreement.
- 4.13b Performing Party: As defined in Section 21.3(a) of this Agreement.

- 4.14 Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.
- 4.14a Physically-Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation Agreement; and (ii) a put option which is the right, but not the obligation, to sell an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation Agreement.
- 4.14b Premium: The amount paid by the Purchaser of a Physically-Settled Option to the Seller of such Option by the date agreed to by the Parties in the Confirmation Agreement.
- 4.14c Present Value Rate: As defined in Section 22.3(b) of this Agreement.
- 4.15 Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement under any Service Schedule and any applicable Confirmation Agreement.
- 4.16 Qualifying Facility: A facility which is a qualifying small power production facility or a qualifying cogeneration facility as these terms are defined in Federal Power Act Sections 3(17)(A), 3(17)(C), 3(18)(A), and 3(18)(B); which meets the requirements set forth in 18 C.F.R. §§ 292.203-292.209; or a facility in Canada or Mexico that complies with similar requirements.

- 4.16a Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute electric energy in place of the electric energy not delivered by the Seller or, absent such a purchase, the market price for such quantity of electric energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point (agreed upon by the Seller and the Purchaser for the transaction).
- 4.16b Retail Entity: A retail aggregator or supplier or retail customer; provided, however, only those Retail Entities eligible for transmission service under the FERC's pro forma open access transmission tariff are eligible to become members of the WSPP.
- 4.16c Sales Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the electric energy not received by the Purchaser or, absent such a resale, the market price for such quantity of electric energy at the delivery point (agreed upon by the Seller and the Purchaser), as determined by the Seller in a commercially reasonable manner.
- 4.16d Second Party: As defined in Section 27 of this Agreement.
- 4.17 Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement under any Service Schedule and any applicable Confirmation Agreement.

4.18 Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement.

- 4.18a Successor in Operation: The successor entity which takes over the wholesale electric trading operations of the first entity either through a merger or restructuring. A Successor in Operation shall not include an entity which merely acquires power sales contracts from the first entity either through a purchase or other means without taking over the wholesale electric trading operations of the first entity.
- 4.18b Terminated Transaction: As defined in Section 22.2 of this Agreement.
- 4.18c Termination Payment: As defined in Section 22.2 of this Agreement.
- 4.18d Trading Day: As defined in Section 38.2 of this Agreement.
- 4.19 Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation Agreement.
- 4.20 Unit Commitment Service: A capacity and associated scheduled energy transaction or a Physically-Settled Option which the Seller has agreed to sell and the Purchaser has agreed to buy from a specified unit(s) for a specified period, in

accordance with the Agreement, including Service Schedule B, and any applicable Confirmation Agreement.

4.20a WSPP: The Western Systems Power Pool.

4.20b WSPP Default Transmission Tariff: The transmission tariff filed on behalf of WSPP Members with FERC as it may be amended from time to time.

4.20c WSPP Homepage: WSPP's internet web site, www.wspp.org.

5. TERM AND TERMINATION:

5.1 This Agreement shall become effective as of July 27, 1991 when acceptance or approvals required under Section 13.2 of this Agreement with respect to those Parties that are subject to FERC jurisdiction have been obtained; provided, however, that this Agreement shall not become effective as to any Party in the event the pre-grant of termination requested under Section 13.3 is not allowed by FERC, absent that Party's consent; and provided, further, that this Agreement shall not become effective as to any Party if any terms, conditions or requirements imposed by FERC are found unacceptable by that Party. This Agreement shall continue in effect for a period of ten (10) years from said effective date and thereafter on a year to year basis until terminated by the Parties; provided, however, that any Party may withdraw its participation at any time after the effective date of this Agreement on thirty (30) days prior written notice to all other Parties.

- 5.2 As of the effective date of any withdrawal, the withdrawing Party shall have no further rights or obligations under this Agreement except the right to collect

money or receive service owed to it for transactions under any Service Schedule and the obligation to pay such amounts due to another Party and to complete any transactions agreed to under any Service Schedule as of said date. No Party shall oppose, before any court or regulatory agencies having jurisdiction, any other Party's withdrawal as provided in this Section.

- 5.3 Except as provided for in Section 5.2, after termination, or withdrawal with respect to the withdrawing Party, all rights to services provided under this Agreement or any tariff or rate schedule which results from or incorporates this Agreement shall cease, and no Party shall claim or assert any continuing right to such services under this Agreement. Except as provided for in Section 5.2, no Party shall be required to provide services based in whole or in part on the existence of this Agreement or on the provision of services under this Agreement beyond the termination date, or date of withdrawal with respect to the withdrawing Party.

6. SERVICE SCHEDULES AND WSPP DEFAULT TRANSMISSION TARIFF:

- 6.1 The Parties contemplate that they may, from time to time, add or remove Service Schedules under this Agreement. The attached Service Schedules A through C for Economy Energy Service, Unit Commitment Service, and Firm Capacity/Energy Sale or Exchange Service are hereby approved and made a part of this Agreement. Nothing contained herein shall be construed as affecting in any way the right of the Parties to jointly make application to FERC for a change

in the rates and charges, classification, service, terms, or conditions affecting WSPP transactions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. Subject to the provisions of Section 13, future Service Schedules, if any, shall be adopted only by amendment of this Agreement and shall be attached hereto and become a part of this Agreement.

6.2 **[RESERVED]**

6.3 When the WSPP Default Transmission Tariff applies as specified in the preamble to such Default Transmission Tariff, Transmission Service under it shall be available both to Parties and nonParties under this Agreement; provided, however, each Party or nonParty must be an eligible customer under the WSPP Default Transmission Tariff in order to receive service.

7. HUB AND OPERATING AGENT:

7.1 The Operating Agent shall act for itself and as agent for the Parties to carry out its designated responsibilities under this Agreement.

7.2 The Operating Agent shall, as directed by the Operating Committee pursuant to Section 8.2.4, and on behalf of the Parties, either (i) purchase or lease, and install or have installed, operate and maintain the necessary equipment to operate the Hub or (ii) contract for Hub services.

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER00-3338, et al., issued September 15, 2000.

- 7.3 The Operating Agent's estimated total costs to be incurred under Section 7.2 shall be subject to review by the Operating Committee and approval by the Executive Committee.
- 7.4 At least sixty (60) days prior to each calendar year that this Agreement is in effect, the Operating Agent shall prepare a budget for said year of operation under this Agreement and shall submit same to the Operating Committee for review, and to the Executive Committee for approval. Subsequent budget revisions shall be submitted to the Operating Committee for review and to the Executive Committee for approval.
- 7.5 The Operating Agent shall perform other administrative tasks necessary to implement this Agreement as directed by the Executive Committee.
- 7.6 Except as provided in Section 7.7, all Parties shall share equally in all costs of the Operating Agent incurred under this Agreement, including but not limited to initial FERC filing fees and any reasonable legal fees.
- 7.7 Each Party, in coordination with the Operating Agent, shall at its own expense acquire, install, operate, and maintain all necessary software and hardware on its system and the necessary communications link to the Hub to conduct transactions under this Agreement.
- 7.8 The Operating Agent shall bill the Parties for costs incurred under this Agreement on an estimated basis reasonably in advance of when due,

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and such billings shall be paid by the Parties when due. Such billings shall be adjusted in the following

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month(s) to reflect recorded costs. Billing and payment of the Operating Agent's costs shall otherwise be implemented in accordance with the provisions of Section 9.

- 7.9 The Operating Agent, at reasonable times and places, shall make available its records and documentation supporting costs for bills rendered under this Agreement for the inspection of any Party for a period of time not to exceed two (2) years from the time such bills were rendered.
- 7.9.1 A Party requesting review of the Operating Agent's records shall give the Operating Agent sufficient notice of its intent, but in no event less than thirty (30) days.
- 7.9.2 The requesting Party may perform this review using personnel from its own staff or designate a certified public accounting firm for the purpose of this review.
- 7.9.3 All costs incurred to perform this review shall be at the requesting Party's own expense.
- 7.9.4 The Party performing the review shall not voluntarily release the Operating Agent's records or disclose any information contained therein to any third party unless the written consent of the Operating Agent and the Executive Committee has been obtained.
- 7.10 Upon the termination of this Agreement, unless otherwise directed by the Executive Committee, the Operating Agent shall either dispose of any Hub

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Western Systems Power Pool

Effective: July 1, 2000

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equipment which it has purchased, or have the right of first refusal to purchase such equipment at original cost less depreciation, and shall apply any net proceeds from the sale of the Hub equipment against its costs incurred under this Agreement. The Operating Agent shall refund any excess proceeds equally to the Parties.

8. ORGANIZATION AND ADMINISTRATION:

As a means of securing effective and timely cooperation within the activities hereunder and as a means of dealing on a prompt and orderly basis with various problems which may arise in connection with system coordination and operation under changing conditions, the Parties hereby establish an Executive Committee and an Operating Committee.

8.1 Executive Committee:

The Executive Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5 herein.

The responsibilities of the Executive Committee are as follows:

8.1.1 To establish sub-committees as it may from time to time deem necessary.

8.1.2 To review at least annually the service activities hereunder to ensure that such activities are consistent with the spirit and intent of this Agreement.

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER00-3338, et al., issued September 15, 2000.

8.1.3 To review any unresolved issues which may arise hereunder and
endeavor to resolve the issues.

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos.
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- 8.1.4 To review and approve the Operating Agent's annual budget under this Agreement, and any revision thereto, within thirty (30) days of recommendation by the Operating Committee.
- 8.1.5 To establish and approve any additional budgets under this Agreement as may be deemed necessary.
- 8.1.6 To review and recommend to the Parties for approval any additions or amendments to this Agreement, including Service Schedules.
- 8.1.7 To review and act on the application of an entity to become a Party to this Agreement.
- 8.1.8 To designate a successor to the Operating Agent, if necessary.
- 8.1.9 To do such other things and carry out such duties as specifically required or authorized by this Agreement; provided, however, that the Executive Committee shall have no authority to amend this Agreement.
- 8.1.10 To notify any Party of the rescission of its interest in this Agreement due to its failure to continue to meet the requirements of Section 16.1.
- 8.1.11 To arrange for legal representation for filing this Agreement (and any subsequent amendments) with FERC and supporting the Agreement (or amendments) in any FERC proceeding, and for other purposes as required.

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER00-3338, et al., issued September 15, 2000.

8.2 Operating Committee:

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos.
ER00-3338, et al., issued September 15, 2000.

The Operating Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5. The responsibilities of the Operating Committee are as follows:

- 8.2.1 To establish, review, approve, or modify procedures and standard practices, consistent with the provisions hereof, for the guidance of load dispatchers and other operating employees in the Parties' electric systems as to matters affecting transactions under this Agreement.
- 8.2.2 To submit to the Executive Committee any proposed new or revised Service Schedules.
- 8.2.3 To establish, review, approve, or modify any scheduling or operating procedures required in connection with transactions under this Agreement.
- 8.2.4 To direct the Operating Agent in matters governed by this Agreement.
- 8.2.5 To review and make recommendations to the Executive Committee for approval of the Operating Agent's annual budget under this Agreement, including any proposed revisions thereto, within thirty (30) days of receipt from the Operating Agent.

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- 8.2.6 To review and recommend as necessary the types and arrangement of equipment for intersystem communication facilities to enhance transactions and benefits under this Agreement.
- 8.2.7 To review the Operating Agent's estimated total costs of providing, having provided or contracting for a Hub.

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- 8.2.8 To review new member applications for membership to this Agreement and make recommendations on said applications to the Executive Committee.
- 8.2.9 To do such other things and carry out such duties as specifically required or authorized by this Agreement or as directed by the Executive Committee; provided, however, that the Operating Committee shall have no authority to amend this Agreement.
- 8.3 All matters which require Operating Committee or Executive Committee approval as provided in this Agreement shall be by no less than ninety percent (90%) affirmative agreement of the committee members present.
- 8.4 Unless otherwise agreed by all committee members, the chairperson of each committee shall provide the other Parties at least ten (10) Business Days advance notification of all committee meetings, including an agenda of matters to be discussed and voted on at the meeting. All material issues to be submitted to a vote of the committee shall appear on the agenda. Prior to the selection of a chairperson the Operating Agent shall provide such advance notice for the initial meeting of each committee.
- 8.5 Each Party shall give written notice to the other Parties of the name of its designated representative and alternate representative (to act in the absence of the designated representative) on each committee within thirty

(30) days after the execution of this Agreement. Notice of any change of
representative or alternate

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representative shall be given by written notice to the other Parties. Each Party's designated representative shall be authorized to act on its behalf with respect to those committee responsibilities provided herein.

8.6 Each committee shall meet as necessary or at the request of any Party.

8.7 Each committee shall elect a chairperson and other officers at its first meeting.

9. PAYMENTS:

9.1 The accounting and billing period for transactions under Service Schedules to this Agreement shall be one (1) calendar month, unless otherwise specified in a Service Schedule agreed to through a Confirmation Agreement. Bills sent to any Party shall be sent to the appropriate billing address as set forth on the WSPP homepage or as otherwise specified by such Party.

9.2 Payments for amounts billed under Service Schedules hereto shall be paid so that such payments are received by the Party to be paid on the 20th day of the invoicing month or the tenth (10) day after receipt of the bill, whichever is later. Notwithstanding the foregoing, Premiums shall be paid within three (3) Business Days of receipt of the invoice therefor. Payment shall be made at the location designated by the Party to which payment is due. Payment shall be considered received when payment is received by the Party to which Payment is due at the location designated by that Party. If the due date falls on a non-Business Day of either Party, then the payment shall be due on the next following Business Day.

- 9.3 Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) per month, or the maximum interest rate permitted

by law, if any, whichever is less, prorated by days from the due date to the date of payment unless and until the Executive Committee shall determine another rate.

- 9.4 In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, may have been overpaid shall be returned by the owing Party upon determination of the correct amount, with interest accrued at the rate of one percent (1%) per month, or the maximum interest rate permitted by law, if any, whichever is less, prorated by days from the date of overpayment to the date of refund unless and until the Executive Committee shall determine another rate. The Parties shall have no rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered for a specific transaction.
- 9.5 If a Party's records reveal that a bill was not delivered for a specific transaction, then the Party may deliver to the appropriate Party a bill within two (2) years from the date on which the bill would have been delivered under Section 9.1 of this Agreement. The right to payment is waived with respect to transactions, or portions thereof, not billed within such two (2) year period.
- 9.6 Each Party, or any third party representative of a Party, shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements

of charges submitted hereunder for a period of two (2) years from the date the first bill was delivered for a specific transaction completed under this Agreement.

Within a two (2) year period from the date the first bill was delivered under this Agreement, any Party to that transaction may request in writing copies of the records of the other Party for that transaction to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

10. UNCONTROLLABLE FORCES:

No Party shall be considered to be in breach of this Agreement or any applicable Confirmation Agreement to the extent that a failure to perform its obligations under this Agreement or any such Confirmation Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of the claiming Party, and which by the exercise of due diligence, the claiming Party is unable to avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, "Uncontrollable Forces" may include and are not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority.

The following shall not be considered "Uncontrollable Forces": (i) the price of electricity faced by Seller; or (ii) Purchaser's inability due to price to use or resell the power purchased hereunder. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a

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Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence, as provided above, to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice.

Notwithstanding the "due diligence" obligations or obligations to remove or remedy the causes set forth in the foregoing paragraph (which do not apply to this paragraph except as specified below), where the entity providing transmission services for transactions under any Service Schedule interrupts such transmission service, the interruption in transmission service shall be considered an Uncontrollable Force under this Section 10 only in the following two sets of circumstances:

- (1) An interruption in transmission service shall be considered an Uncontrollable Force if (a) the Parties agreed on a transmission path for that transaction at the time the transaction under this Agreement was entered into by the Parties' thereto, (b) firm transmission involving that transmission path was obtained pursuant to a transmission tariff or contract to effectuate the transaction under the applicable Service Schedule, and (c) the entity providing transmission service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract;

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- (2) if the Parties did not agree on the transmission path for a transaction at the time the transaction was entered into, an interruption in transmission service shall be

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considered an Uncontrollable Force only if (a) the Party contracting for transmission services shall have made arrangements with the entity providing transmission service for firm transmission to effectuate the transaction under the applicable Service Schedule, (b) the entity providing transmission service curtailed or interrupted such transmission service due to an event of Uncontrollable Forces or provision of like effect, and (c) the Party which contracted for such firm transmission services could not obtain alternate energy at the delivery point, alternate transmission services, or alternate means of delivering energy after exercising due diligence.

No Party shall be relieved by operation of this Section 10 of any liability to pay for power delivered to the Purchaser or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

11. WAIVERS:

Any waiver at any time by any Party of its rights with respect to a default under this Agreement or any Confirmation Agreements, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

12. NOTICES:

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12.1 Except for the oral notice provided for in Section 10 of this Agreement, any formal notice, demand or request provided for in this Agreement shall be in

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writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail (postage prepaid), prepaid telegram, fax, overnight delivery (with record of receipt), or other means agreed to by the Parties.

12.2 RESERVED

12.3 Notices and requests of a routine nature applicable to delivery or receipt of power or energy or operation of facilities shall be given in such manner as the committees from time to time or the Parties to a transaction shall prescribe.

13. APPROVALS:

13.1 This Agreement is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. Nothing contained in this Agreement shall give FERC jurisdiction over those Parties not otherwise subject to such jurisdiction or be construed as a grant of jurisdiction over any Party by any state or federal agency not otherwise having jurisdiction by law.

13.2 This Agreement, including any Service Schedule hereto, shall become effective as to any Party when it is accepted for filing by FERC, without changes or conditions unacceptable to such Party, for application to the Parties subject to FERC jurisdiction under the Federal Power Act; provided, however, that nothing in this Agreement is intended to restrict

the authority of the Bonneville Power Administration (BPA) pursuant to
applicable statutory authority to use its existing

wholesale power and transmission rates or to adopt new rates, rate
schedules, or general rate schedule provisions for application under this
Agreement and obtain

interim or final approval of those rates from FERC pursuant to Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. Sec. 839e, provided such rates do not exceed the maximum rates in the applicable Service Schedule and are consistent with the terms and conditions of said Service Schedule. If, upon filing of this Agreement by Parties subject to FERC jurisdiction under the Federal Power Act, FERC orders a hearing to determine whether this Agreement or a Service Schedule under this Agreement is just and reasonable under the Federal Power Act, the Agreement or Service Schedule shall not become effective until the date when an order issued by FERC, determining this Agreement or the Service Schedule to be just and reasonable without changes or new conditions unacceptable to the Parties, is no longer subject to judicial review. Any changes or conditions imposed by any agency or court, including FERC ordering a hearing, shall be cause for immediate withdrawal by any nonconsenting Party.

- 13.3 The Parties subject to FERC jurisdiction under the Federal Power Act shall have the right to terminate their participation in this Agreement, and any rate schedule or services included herein, pursuant to the terms of Section 5 of this Agreement and without the necessity of further filing with or approval by FERC.

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13.4 Any amendment or change in maximum rates specified in the Service Schedules shall not become effective with regard to any Party that is subject to FERC jurisdiction under the Federal Power Act until it is accepted for filing or

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confirmed and approved by FERC as specified in and subject to the conditions of Section 13.2.

13.5 Nothing contained in this Agreement shall be construed to establish any precedent for any other agreement or to grant any rights to or impose any obligations on any Party beyond the scope and term of this Agreement.

14. TRANSFER OF INTEREST IN AGREEMENT:

No Party shall voluntarily transfer its membership under this Agreement without the written consent and approval of all other Parties except to a Successor in Operation of such Party. With regard to the transfer of the rights and obligations of any Party associated with transactions under the Service Schedules, neither Party may assign such rights or obligations unless (a) the other Party provides its prior written consent which shall not be unreasonably withheld; or (b) the assignment is to a Successor in Operation which provides reasonable creditworthiness assurances (see Section 27 for examples of such assurances) if required by the non-assigning Party based upon its reasonably exercised discretion. Any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement and Confirmation Agreements (where applicable) to the same extent as though such successor or assignee were the original Party under this Agreement or the Confirmation Agreements, and no assignment or transfer of any rights under this Agreement or any Confirmation

Agreement shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and

conditions of this Agreement and any Confirmation Agreement (where applicable). The execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 14.

15. SEVERABILITY:

In the event that any of the terms, covenants or conditions of this Agreement or any Confirmation Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and the Confirmation Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement or such Confirmation Agreement.

16. MEMBERSHIP:

16.1 Any Electric Utility, Retail Entity or Qualifying Facility may become a Party to this Agreement. The Executive Committee shall notify such Electric Utility, Retail Entity or Qualifying Facility of its decision within sixty (60) days of a request to become a Party to this Agreement, and any acceptable entity shall become a Party hereto by the execution of this Agreement or a counterpart hereof, payment of costs pursuant to Section 16.4, and concluding any necessary acceptance or approval referred to in Section 13. Any such Party, if it is subject to the ratemaking jurisdiction of FERC,

shall be responsible for any FERC filing necessary for it to implement its performance under this Agreement.

16.2 Each Party shall continue to meet the requirements of Section 16.1 in order to remain a Party to this Agreement

16.3 Being a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Party which operates a Control Area and any other Party which operates within that Control Area.

16.4 Any entity that becomes a Party to this Agreement which was not a party to the experimental Western Systems Power Pool Agreement shall pay a one time fee of \$25,000 under this Agreement in recognition of prior efforts and costs incurred by the parties to the experimental Western Systems Power Pool Agreement, which efforts greatly facilitated development of this Agreement. Such fee shall be credited to future costs of the Operating Agent incurred hereunder.

17. RELATIONSHIP OF PARTIES:

17.1 Nothing contained herein or in any Confirmation Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually

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responsible for its own covenants, obligations, and liabilities under this Agreement and under any applicable Confirmation Agreement.

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17.2 All rights of the Parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

18. NO DEDICATION OF FACILITIES:

Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

19. NO RETAIL SERVICES:

Nothing contained in this Agreement shall grant any rights to or obligate any Party to provide any services hereunder directly to or for retail customers of any Party.

20. THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create rights, in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 14.

21. LIABILITY AND DAMAGES:

21.1a This Agreement contains express remedies or measures of damages in Sections 21.3 and 22 for non-performance or default.

ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED.

Therefore, except as provided in Sections 21.3 and 22, no Party or its directors, members of its governing bodies, officers or employees shall be liable to any other Party or Parties for any loss or damage to property, loss of earnings, or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement (including any applicable Confirmation Agreement), including any negligence arising hereunder. Any liability or damages faced by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

21.2 Notwithstanding any other provision in this Agreement, any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding such amounts, (i) shall have the right to seek payment of such monies in any forum having competent jurisdiction and (ii) shall possess the right to seek relief directly from that forum without first utilizing the mediation or arbitration provisions of this Agreement and without exercising termination and liquidation rights under Section 22.

21.3 The following damages provision shall apply to transactions under Service Schedules B and C. For transactions under Service Schedule A, this damages provision or some other damages provision will apply only if such a damages provision is agreed to through a Confirmation Agreement. The damages under this Section 21.3 apply to a Party's failure to deliver or receive electric power or energy in violation of the terms of the Agreement and any Confirmation Agreement. The Contract Quantity and Contract Price referred to in this Section

21.3 are part of the agreement between the Parties for which damages are being calculated under this Section.

- (a) If either Party fails to deliver or receive, as the case may be, the quantities of electric power or energy due under the Agreement and any Confirmation Agreement (thereby becoming a "Non-Performing Party" for the purposes of this Section 21.3), the other party (the "Performing

Party") shall be entitled to receive from the Non-Performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces as provided in Section 10, the applicable Service Schedule, or by the Performing Party):

- (1) If the amount the Purchaser scheduled or received in any hour is less than the applicable hourly Contract Quantity, then the Purchaser shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Contract Price differed from the Sales Price (Contract Price - Sales Price) and the amount by which the quantity received by the Purchaser was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which the Seller incurred to achieve the Sales Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Purchaser's schedule or receipt of electric energy (based on Seller's reasonable commercial efforts to achieve such reduction). If the total amounts for all hours calculated under this paragraph (1) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(1).

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- (2) If the amount the Seller scheduled or delivered in any hour is less than the applicable hourly Contract Quantity, then the Seller shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Replacement Price differed from the Contract Price (Replacement Price - Contract Price) and the amount by which the quantity delivered by the Seller was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which the Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Seller's schedule or delivery (based on Purchaser's reasonable commercial effort to achieve such reduction). If the total amounts for all hours calculated under this paragraph (2) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(2).
- (3) The Non-Performing Party also shall reimburse the Performing Party for any charges imposed on the Performing Party under open access transmission tariffs due to the non-performance.

- (4) The Non-Performing Party shall pay any amount due from it under this section within the billing period as specified in Section 9 of this Agreement or agreed to in the applicable Confirmation Agreement if the Parties agreed to revise the billing period in Section 9.

- (b) The Parties agree that the amounts recoverable under this Section 21.3 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the Performing Party. Such amounts are payable for the loss of bargain and the loss of protection against future risks.
- (c) Each Party agrees that it has a duty to mitigate damages in a commercially reasonable manner to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.
- (d) In the event the Non-Performing Party disputes the calculation of the damages under this Section 21.3, the Non-Performing Party shall pay the full amount of the damages as required by Section 9 of this Agreement to the Performing Party. After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement. If resolution or agreement results in refunds or the need for refunds to the Non-Performing Party, such refunds shall be calculated in accordance with Section 9.4 of this Agreement.

22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND
CONFIRMATION AGREEMENTS:

22.1 EVENTS OF DEFAULT

An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

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- (a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement or Confirmation Agreement if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("the Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) the failure by the Defaulting Party to provide clear and good title as required by Section 33.3, or to have made accurate representations and warranties as required by Section 37 and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to

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the Non-Defaulting Party under the Agreement or Confirmation
Agreement

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pursuant to Section 27 of this Agreement or any substitute or modified provision in the Confirmation Agreement.

- (e) With respect to its Guarantor, if any:
 - (i) if a material representation or warranty made by a Guarantor in connection with this Agreement, or any transaction entered into hereunder, is false or misleading in any material respect when made or when deemed made or repeated; or
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement, including any transaction entered into hereunder, and such failure shall not be remedied within three (3) Business Days after written notice; or
 - (iii) the institution, with respect to the Guarantor, by the Guarantor or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
 - (iv) the failure, without written consent of the other Party, of a Guarantor's guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to

the satisfaction of all obligations of such Party under each transaction to which such guarantee shall relate; or

- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, any guarantee.

22.2 REMEDIES FOR EVENTS OF DEFAULT

If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate all transactions between the Parties under this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. If the Non-Defaulting Party fails to exercise this right of termination within thirty (30) days following the time when the Event of Default becomes known (or more than thirty days if the Non-Defaulting and Defaulting Parties agree to an extension), then such right of termination shall no longer be available to the Non-Defaulting Party as a remedy for the Event(s) of Default; provided, however, this thirty day requirement for exercising termination rights shall not apply to defaults pursuant to Sections 22.1(c) and 22.1(e)(iii). The Non-Defaulting Party terminating transaction(s) under this Section 22.2 may do so without making a filing at FERC.

Upon termination, the Non-Defaulting Party shall liquidate all transactions as soon as practicable, provided that in no event will the Non-Defaulting Party be allowed to liquidate Service Schedule A transactions.

The payment associated with termination ("Termination Payment") shall
be calculated in accordance with

this Section 22.2 and Section 22.3. The Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for each terminated transaction ("Terminated Transaction") for the time period beginning at the time notice of termination under this Section 22 is received. Prior to receipt

of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it under Section 21.3 of this Agreement or Confirmation Agreement(s), and any other remedies available to it at law or otherwise.

Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement or Confirmation Agreement(s) until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party. The Non-Defaulting Party shall possess the right to set-off the amount due it under this Section 22 by any such payments due the Defaulting Party as provided in Section 22.3(d).

22.3 LIQUIDATION CALCULATION OPTIONS

The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) The Gains and Losses shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each Terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each Terminated Transaction. To

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ascertain the market prices of a replacement contract, the Non-
Defaulting Party may consider, among other valuations, quotations

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from Dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts (or NYMEX power options contracts in the case of Physically-Settled Options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.

- (b) The Gains and Losses calculated under paragraph (a) shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of the Terminated Transactions; and

- (c) The Non-Defaulting Party shall set off or aggregate, as appropriate, the Gains and Losses (as calculated in Section 22.3(a)) and Costs and notify

the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, which amount shall bear interest at the Present Value rate from the time notice of termination was received until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party, after any set-off as provided in paragraph (d), shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received including interest at the Present Value from the time notice of termination was received until the Defaulting Party receives payment.

- (d) The Non-Defaulting Party shall aggregate or set off, as appropriate, at its election, any or all other amounts owing between the Parties (discounted at the Present Value Rate) under this Agreement and any Confirmation Agreements against the Termination Payment so that all such amounts are aggregated and/or netted to a single liquidated amount. The net amount due from any such liquidation shall be paid within three (3) Business Days following the date notice of termination is received.
- (e) (i) If the Non-Defaulting Party owes the Defaulting Party monies

under this Section 22.3, then notwithstanding the three Business
Day payment requirement detailed above, the Non-Defaulting

Party may elect to pay the Defaulting Party the monies owed under this Section 22.3 over the remaining life of the contract(s) being terminated. The Non-Defaulting Party may make this election by providing written notice to the Defaulting Party within three Business Days of the notice being provided to terminate and liquidate under this Section 22.3. The Non-Defaulting Party shall provide the Defaulting Party with the details on the method for recovering the monies owed over the remaining life of the contract(s). That method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each contract which allows it to receive the monies which would have been due it under Sections 22.3(c) and (d) in total (to be recovered over the term of the contract(s) to replicate as closely as possible the payment streams under such contract(s)) provided that the discounting using the Present Value Rate referenced in Section 22.3 (b) shall not be reflected in determining the amounts to be recovered under this provision. Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful.

- (ii) This Section 22.3(e) and the rights and obligations under it shall survive termination of any applicable transactions or agreements.
- (iii) The Party owed monies under this Section 22.3(e) shall have the right to request credit assurances consistent with Section 27 even after termination of any contract or transaction.
- (iv) If the Party owing money defaults on its payment obligations consistent with Section 22.1(a) or defaults with regard to providing credit assurances consistent with Section 22.1(d), then the other Party shall have the right (by written notice) at any time after the Party owing money defaults to require that Party to pay all monies owed under all of the contracts subject to this Section 22.3(e) within three Business Days of receipt of the written notice. The monies to be paid under this accelerated payment provision shall be the remaining amounts to be paid under the contract(s) reflecting a discount using the Present Value Rate from the date of the written notice.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal dispute resolution as provided in Section 34.1

of this Agreement and thereafter binding dispute resolution pursuant to Section 34.2 if the informal dispute resolution does not succeed in resolving the dispute. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within three (3) Business Days of receipt of notice as set forth in Sections 22.3(c) and (d) subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 9.4, any amounts determined to have been overpaid.

For purposes of this Section 22.3:

- (i) "Gains" means the economic benefit (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (ii) "Losses" means the economic loss (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (iii) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements which replace a Terminated Transaction, transmission and ancillary service costs associated

with Terminated Transactions, and reasonable attorneys' fees, if
any, incurred in connection

with the Non-Defaulting Party enforcing its rights with regard to the Terminated Transactions. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

- (iv) In no event, however, shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

22A. DEFAULT IN PAYMENT OF WSPP OPERATING COSTS:

22A.1 A Party shall be deemed to be in default in payment of its share of WSPP operating costs pursuant to Section 7 of this Agreement, if any, when payment is not received within ten (10) days after receipt of written notice. A default by any Party in such payment obligations shall be cured by payment of all overdue amounts together with interest accrued at the rate of one percent (1%) per month, or the maximum interest rate permitted by law, if any, whichever is less, prorated by days from the due date to the date the payment curing the default is made unless and until the Executive Committee shall determine another rate.

22A.2 A defaulting Party, which is in default under Section 22.A1, shall be liable for all costs, including costs of collection and reasonable attorney fees, plus interest as provided in Section 22.A1 hereof.

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22A.3 The rights under this Agreement of a Party which is in default of its obligation to pay operating costs under this Agreement for a period of three (3) months or more may be revoked by a vote of the non-defaulting

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Parties' representatives on the Executive Committee consistent with Section 8.3. The defaulting Party's rights shall not be revoked, however, unless said Party has received at least thirty (30) days written notice of the non-defaulting Parties' intent to revoke such rights. Said notice shall state the date on which the revocation of rights shall become effective if the default is not cured and shall state all actions which must be taken or amounts which must be paid to cure the default. This provision allowing the non-defaulting Parties to revoke such rights is in addition to any other remedies provided in this Agreement or at law and shall in no way limit the non-defaulting Parties' ability to seek judicial enforcement of the defaulting Party's obligations to pay its share of the operating costs under this Agreement. Upon the effective date of such revocation of rights, the defaulting party shall not be allowed to enter into any new transactions under this Agreement. The defaulting party under the Agreement or any Confirmation Agreements shall be required to carry out all obligations that existed prior to the effective date of such revocation. If a defaulting Party's rights under this Agreement have been revoked, the Executive Committee may restore that Party's rights upon the defaulting Party paying all amounts due and owing under this Agreement.

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22A.4 Upon revocation of the rights of a defaulting Party under this Agreement, Operating Agent costs hereunder shall be equally shared among the

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remaining Parties. Cost allocation adjustments shall be retroactive to the date of the default.

23. OTHER AGREEMENTS:

No provision of this Agreement shall preclude any Party from entering into other agreements or conducting transactions under existing agreements with other Parties or third parties. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Parties.

24. GOVERNING LAW:

This Agreement and any Confirmation Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to the conflicts of laws rules thereof. The foregoing notwithstanding, (1) if both the Seller and Purchaser are organized under the laws of Canada, then the laws of the province of the Seller shall govern, or (2) if the Seller or Purchaser is an agency of or part of the United States Government, then the laws of the United States of America shall govern.

25. JUDGMENTS AND DETERMINATIONS:

Whenever it is provided in this Agreement that a Party shall be the sole judge of whether, to what extent, or under what conditions it will provide a given service, its exercise of its judgment shall be final and not subject to challenge. Whenever it is provided that (i) a service under a given transaction may be curtailed under certain conditions or circumstances, the existence of which are determined by or in the judgment of a Party, or (ii) the existence of qualifications for membership shall be determined by

the Executive Committee pursuant to Section 16, that Party's or the Executive Committee's determination or exercise of judgment shall be final and not subject to challenge if it is made in good faith and not made arbitrarily or capriciously.

26. COMPLETE AGREEMENT:

This Agreement and any subsequent amendments, including the Service Schedules and Exhibits incorporated herein, and any Confirmation Agreement, shall constitute the full and complete agreement of the Parties with respect to the subject matter hereof, and all prior or contemporaneous representations, statements, negotiations, understandings and inducements are fully merged and incorporated in this Agreement.

27. CREDITWORTHINESS:

Should a Party's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the other Party in such other Party's reasonably exercised discretion with regard to any transaction pursuant to this Agreement and any Confirmation Agreement (after the transaction is agreed to or begins), the dissatisfied Party (the "First Party") may require the other Party (the "Second Party") to provide, at the Second Party's option (but subject to the First Party's acceptance based upon reasonably exercised discretion), either (1) the posting of a Letter of Credit, (2) a cash prepayment, (3) the posting of other acceptable collateral or security by the Second Party, (4) a Guarantee Agreement executed by a creditworthy entity; or (5) some other mutually agreeable method of satisfying the First Party. The Second Party's obligations under this Section 27 shall be limited to a reasonable estimate of the damages to the First Party

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(consistent with Section 21.3 of this Agreement) if the Second Party were to fail to perform its obligations. Events which may trigger the First Party questioning the Second Party's creditworthiness, financial responsibility, or performance viability include, but are not limited to, the following:

- (1) The First Party has knowledge that the Second Party (or its Guarantor if applicable) are failing to perform or defaulting under other contracts.
- (2) The Second Party has exceeded any credit or trading limit set out in the Confirmation Agreement or other agreement between the Parties.
- (3) The Second Party or its Guarantor has debt which is rated as investment grade and that debt falls below the investment grade rating by at least one rating agency or is below investment grade and the rating of that debt is downgraded further by at least one rating agency.
- (4) Other material adverse changes in the Second Party's financial condition occur.
- (5) Substantial changes in market prices which materially and adversely impact the Second Party's ability to perform under this Agreement or any Confirmation Agreement occur.

If the Second Party fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within three (3) Business Days of demand therefore, that will be considered an Event of Default under Section 22 of this Agreement and the First Party shall have the right to exercise any of the remedies provided for under

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that Section 22. Nothing contained in this Section 27 shall affect any credit agreement or arrangement, if any, between the Parties.

28. NETTING:

28.1 If the Purchaser and the Seller are each required to pay an amount to each other in the same calendar month for transactions under this Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting of the respective amounts due, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, set-offs, counterclaims, and other remedies and defenses (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement and any applicable Confirmation Agreements.

28.2 Parties shall net payments (associated with transactions under this Agreement and Confirmation Agreement) in accordance with Exhibit A, if such Parties have executed the form attached as Exhibit A. The Parties obligation to net shall include the netting of all payments received by the Parties in the same calendar month. Parties that have executed Exhibit A shall provide a signed copy of

Exhibit A to a representative of the WSPP and to any Party that requests a copy and indicate on the WSPP Homepage that they have so executed Exhibit A (once the WSPP Homepage possesses the necessary capability). If a Party indicated its election to net payments on the WSPP Homepage and that Party desires to withdraw its agreement to net, that Party shall provide at least 30 days notice on the WSPP Homepage of the change in its election to net and also shall provide, concurrent with its withdrawal notice, written notice to all Parties with which it has ongoing transactions or with which it has committed to future transactions under the Agreement at the time of the notice. Any such changes in netting status shall apply beginning at least 30 days after notice required by this Section 28.2 is provided and only shall apply to transactions agreed to beginning on or after the date the change in netting status becomes effective.

- 28.3 The Parties may by separate agreement either through a Confirmation Agreement or some other agreement set out specific terms relating to the implementation of the netting in addition to or in lieu of Exhibit A.

29. TAXES:

The Contract Price for all transactions under the Service Schedules shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Purchaser for if the Purchaser has paid, all taxes applicable to a transaction that arise prior to the delivery point. If the Purchaser is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Seller shall indemnify,

defend, and hold harmless the Purchaser from any claims for such taxes. The Contract Price does not include reimbursement for, and the Purchaser is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to a transaction arising at and from the delivery point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Purchaser. The Purchaser shall indemnify, defend, and hold harmless the Seller from any claims for such taxes. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority associated with the transaction.

30. CONFIDENTIALITY:

The terms of any transaction under the Service Schedules or any other information exchanged by the Purchaser and Seller relating to the transaction shall not be disclosed to any person not employed or retained by the Purchaser or the Seller or their affiliates, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other

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federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, regional reliability council, or successor organization requirements; or (6) necessary to obtain transmission service. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

31. TRANSMISSION TARIFF:

Pursuant to FERC Order No. 888, issued on April 24, 1996, and FERC orders where applicable, the WSPP Default Transmission Tariff has been filed and has become effective. The Parties agree to be bound by the terms of that Tariff for so long as they are Western Systems Power Pool members.

32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS:

32.1 The Parties' agreement to transaction specific terms which constitute the Confirmation Agreement shall be made by one of the following methods:
(1) provision of pertinent information through written Confirmation Agreements (see Exhibit C for a sample); or (2) oral conversation, provided that such oral conversation is recorded electronically. By mutual

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agreement and consistent with and pursuant to the provisions of this
Section 32, the Parties to a transaction under

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this Agreement may agree to modify any term of this Agreement which applies to such transaction (but not to provisions regarding the operation of the WSPP as an organization including Sections 7 and 8), such agreement to be reflected in a Confirmation Agreement. Written confirmation shall be required for all transactions of one week or more. Upon request of the Purchaser or at the election of the Seller, the Seller shall provide written confirmation which must be received by the Purchaser within five Business Days of the date of the agreement or request. The Purchaser shall have five Business Days from date of receipt to respond to the confirmation. If the Purchaser does not respond within that time period, the Seller's written confirmation shall be considered as accepted and final except as provided in Section 32.5. If the Seller fails to provide any required written confirmation within five Business Days, as described above, then the Purchaser may submit a written confirmation to the Seller. The Purchaser shall submit such written confirmation within five Business Days after the deadline for submitting a written confirmation applicable to the Seller as set forth above has expired. If the Seller fails to respond to Purchaser's confirmation within five Business Days, then the Purchaser's written confirmation shall be considered as accepted and final except as provided in Section 32.5. Notwithstanding the foregoing, any failure of the Seller or the Purchaser to provide written confirmation of the transaction shall not invalidate any oral

agreement of the Parties except for oral agreements prohibited by Section
32.5. Nor shall any oral agreement of the Parties be considered
invalidated

before and during the time period the confirmation process is ongoing and no final Confirmation Agreement under these procedures or through mutual agreement has been reached.

32.2 The Parties agree not to contest, or assert any defense with respect to, the validity or enforceability of any agreement to the terms concerning a specific transaction(s), on the basis that documentation of such terms fails to comply with the requirements of any statute that agreements be written or signed. Each Party consents to the recording by the other Party, without any further notice, of telephone conversations between representatives of the Parties, which contain agreements to or discussion concerning the terms of a specific transaction(s). All such recordings may be introduced and admitted into evidence for the purpose of proving agreements to terms, and any objection to such introduction or admission for such purpose is hereby expressly waived. The terms documented hereunder, whether stated in a written document or a recording, are intended by the Parties as a final expression of their agreement with respect to such terms as are included therein and may not be contradicted by evidence of any prior agreement, but may be supplemented by course of dealing, performance, usage of trade and evidence of consistent additional mutually agreed-upon terms.

32.3 For individual transactions under the Service Schedules, the Agreement as it may be modified or supplemented by a Confirmation Agreement shall bind the Parties and govern the transactions; provided, however, if the Parties to a transaction do not reach agreement on such modification or

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change to a term of the Agreement, or the Confirmation Agreement is not considered accepted and final pursuant to Section 32.1, then the term or terms of the Agreement, which the Parties could not

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reach agreement to modify or change or which are not considered modified pursuant to Section 32.1, shall apply to that transaction. In the event of a conflict between a binding and effective Confirmation Agreement and this Agreement, the Confirmation Agreement shall govern.

- 32.4 The Seller shall not be required to file written confirmations with FERC except as provided in the Service Schedules.
- 32.5 When a Confirmation Agreement contains Non-Standard Confirmation Provisions which are provisions other than those set forth in paragraphs (a) – (l) of Exhibit C, those Non-Standard Confirmation Provisions shall not be deemed to be accepted pursuant to Section 32.1 unless agreed to: (i) orally, with that oral agreement recorded (provided that such oral agreement option only shall be available for transactions of less than one week); or (ii) in a writing executed by both Parties.
- 32.6 Other Products and Service Levels: The Parties may agree to use a product/service level defined by a different agreement (e.g., the California ISO tariff, the ERCOT agreement or the EEI agreement) for a particular transaction under this Agreement. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such transaction, the transaction shall be subject to all the terms of this Agreement, except that (1) all service level/product definitions, (2)

force majeure/uncontrollable force definitions, and (3) other terms as
mutually agreed shall have the meaning

ascribed to them in the different agreement or in the applicable confirmation notice or agreement.

32.7 Written confirmation pursuant to this Section 32 may be provided in electronic format so long as the Parties to the affected transaction or transactions have agreed on the procedures and format for doing so.

33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES:

33.1 Performance

33.1.1 The Seller shall deliver to the delivery point(s) as agreed to in the applicable Confirmation Agreement and sell to the Purchaser in accordance with the terms of the Agreement and such Confirmation Agreement.

33.1.2 The Purchaser shall receive and purchase the Contract Quantity, as agreed to by the Parties in the applicable Confirmation Agreement, at the delivery point(s) and purchase from the Seller in accordance with the terms of the Agreement and such Confirmation Agreement.

33.2 Title and Risk of Loss

Title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser at the delivery point agreed to in the Confirmation Agreement; provided, however, with regard to federal agencies or parts of the United States

Government, title to and risk of loss shall pass to Purchaser to the extent permitted by and consistent with applicable law.

33.3 Warranties

The Seller warrants that it will transfer to the Purchaser good title to the electric energy sold under the Agreement and any Confirmation Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the delivery point and that Seller's sale is in compliance with all applicable laws and regulations. **THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

34. DISPUTE RESOLUTION:

34.1 INFORMAL DISPUTE RESOLUTION

Before binding dispute resolution or any other form of litigation may proceed, any dispute between the Parties to a transaction under this Agreement first shall be referred to nonbinding mediation. The Parties shall attempt to agree upon a mediator from a list of ten (10) candidates provided by the Chairman of the WSPP Operating Committee or his or her designee. If the Parties are unable to agree, then the Chairman or the designee shall appoint a mediator for the dispute. Neither the mediator nor the person involved on behalf of the WSPP in developing a list of mediators for the Parties to choose from or in selecting the

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mediator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the mediation. The WSPP shall establish procedures for the appointment of mediators and the conduct of mediation and those procedures shall apply to the mediation.

34.2 BINDING DISPUTE RESOLUTION

The Parties to a dispute may elect binding dispute resolution using the following process unless binding arbitration of certain disputes is required under this Agreement in which event the Parties shall use the process set forth in this Section 34.2 to resolve such disputes, unless the Parties otherwise agree:

- (a) **WSPP Dispute Resolution:** A Party to a dispute (if binding dispute resolution is required) or all Parties to a dispute (if agreement of the Parties is required for binding dispute resolution) may initiate binding dispute resolution under WSPP procedures by notifying the Chairman of the WSPP Operating Committee or his or her designee. The Chairman or his or her designee shall provide the Parties with a list of ten (10) eligible arbitrators. Within ten (10) days of receiving the list, the Parties shall agree on a single arbitrator from the list to conduct the arbitration, or notify the Chairman of the Operating Committee or the designee of their inability to reach agreement. If notified of the Parties inability to reach agreement, then the Chairman or the designee shall choose the arbitrator from the list within five (5) days. Neither the arbitrator nor the person

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involved on behalf of the WSPP in developing a list of arbitrators for the Parties to choose from or in selecting the arbitrator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the arbitration. The Procedures to be used for this arbitration shall follow the arbitration procedures which shall be developed and maintained by the WSPP and the procedures will be generally consistent with the commercial arbitration rules of the American Arbitration Association though not involving the Association.

If the Parties agree to binding dispute resolution under this Section 34.2, each Party understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by this arbitration provision. Notwithstanding the foregoing, nothing herein is intended to waive any provision of the Federal Arbitration Act, 9 U.S.C. § 1, et. seq., or any right under state statute or common law to challenge an arbitration award or to prevent any action to enforce any arbitration award.

A Party's liability and damages under any arbitration award resulting from the process set forth in this Section 34.2 shall be limited as provided in this Agreement or in any Confirmation Agreement.

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34.3 COSTS

Each Party shall be responsible for its own costs and those of its counsel and representatives. The Parties shall equally divide the costs of the arbitrator or mediator and the hearing.

34.4 CONFIDENTIALITY

Any arbitration or mediation under this Section 34 shall be conducted on a confidential basis and not disclosed, including any documents or results which shall be considered confidential, unless the Parties otherwise agree or such disclosure is required by law.

35. FORWARD CONTRACTS:

The Parties acknowledge and agree that all transactions under the Agreement and Confirmation Agreement(s) are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The Parties acknowledge and agree that all of their transactions, together with this Agreement and the related Confirmation Agreement(s) form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

36. TRADE OPTION EXCEPTION

The Parties intend that any Physically Settled Option under this Agreement shall qualify under the trade option exception, 17 C.F.R. § 32.4. Accordingly, each Party buying or selling a Physically Settled Option agrees and warrants that any such option

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shall be offered only to a provider, user, or merchant and that the entities entering into the options are doing so solely for purposes related to their business.

37. **ADDITIONAL REPRESENTATIONS AND WARRANTIES:**

Each Party warrants and represents to the other(s) that it possesses the necessary corporate, governmental and legal authority, right and power to enter into and agree to the applicable Confirmation Agreement for a transaction or transactions and to perform each and every duty imposed, and that the Parties' agreement to buy and sell power under this Agreement and the Confirmation Agreement represents a contract. Each Party also warrants and represents to the other(s) that each of its representatives executing or agreeing through a Confirmation Agreement to a transaction under this Agreement is authorized to act on its behalf.

Each Party further warrants and represents that entering into and performing this Agreement and any applicable Confirmation Agreement does not violate or conflict with its Charter, By-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and applicable Confirmation Agreement(s), constitute a legal, valid and binding obligation enforceable against such Party in accordance with the terms of such agreements.

Each Party also represents that it is solvent and that on each delivery this representation shall be deemed renewed unless notice to the contrary is given in writing by the Purchaser to the Seller before delivery.

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38. FLOATING PRICES:

38.1 In the event the Parties intend that the price for a transaction is to be based on an index, exchange or any other kind of variable reference price (such price being a "Floating Price"), the Parties shall specify the "Floating Price" to be used to calculate the amounts in a Confirmation Agreement due Seller for that transaction.

38.2 Market Disruption. If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined as follows. The Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price) for the affected Trading Day. If the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by the Parties based upon (1) quotes from Dealers in energy contracts; and/or (2) quotes from Brokers in energy contracts. Each Party may obtain up to a maximum of four quotes which must be provided to the other Party no later than twenty-two Business Days following the first Business Day on which the Market Disruption Event occurred or existed. These quotes shall reflect transacted prices. The Floating Price for the affected Trading Day shall equal a simple average of the quotes obtained and provided by

the Parties consistent with the provisions of this Section 38. Each Party providing quote(s) to the other Party also shall

identify to that other Party the Dealer(s) and/or the Broker(s) who provided each of the quotes to allow verification.

"Determination Period" means each calendar month during the term of the relevant transaction; provided that if the term of the transaction is less than one calendar month the Determination Period shall be the term of the transaction.

"Market Disruption Event" means, with respect to an index, any of the following events (the existence of which shall be determined in good faith by the Parties): (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

"Trading Day" means a day in respect of which the relevant price source published the relevant price or would have published the relevant price but for the Market Disruption Event.

38.3 Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If

the fourth (4th) decimal number is five (5) or greater, then the third (3rd)
decimal number shall be

increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

38.4 Corrections. For the purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine the relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will pay such amount consistent with the provisions of this Section 38.4. The amount that is payable as a result of the correction shall be included in the billing cycle in which the notice of the correction is provided.

39. AMENDMENT:

39.1 This Agreement may be amended upon the submission to FERC and acceptance by FERC of that amendment. The Parties through the Executive Committee shall direct the filing of any amendments. The Parties to this Agreement agree to be bound by this Agreement as it may be amended, provided that the Parties possess the right to challenge any amendments at FERC and to exercise any applicable withdrawal rights under this Agreement.

39.2 Unless otherwise stated in the amendment, all amendments shall apply only to new transactions entered into or agreed to on or after the effective

date of the amendment. Preexisting agreements and transactions shall
operate under the

version of the WSPP Agreement effective at the time of the agreement for the transaction unless the Parties to a transaction or transactions mutually agree otherwise.

39.3 An agreement modifying this Agreement or a Confirmation Agreement for a transaction needs no consideration to be binding.

40. EXECUTION BY COUNTERPARTS:

This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as

an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

41. WITNESS:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the 27th day of July, 1991 (or as of the date of execution of this Agreement by each Party's duly authorized representation, in the case of any Party that becomes a signatory to this Agreement subsequent to July 27, 1991).

By: _____
Name:
Title:

wssp\WSPP Agreement 07-01-02 edits nonredlined version.doc

EXHIBIT A

NETTING

Each Party that executes this Exhibit A to the Agreement agrees to net payments for transactions under WSPP Service Schedule A, B, and C with any other Party or Parties which also have agreed to net payments by executing a copy of this Exhibit A. The Party executing this Exhibit A shall indicate below when it desires that its agreement to net becomes effective. A Party agreeing to net under this Exhibit A shall comply with the provisions of Section 28.2 of the Agreement. Defined terms used herein are as defined in the WSPP Agreement. Netting shall be done in accordance with the following provision:

If the Purchaser and Seller are each required to pay an amount on the payment due date in the same month for transactions under the Agreement or Confirmation Agreement, then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other party the difference between the amounts owed consistent with the payment times in Section 9.2 of the Agreement, unless the Parties have otherwise agreed to a different payment time as allowed by the Agreement. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the Agreement. All outstanding payments between the Parties which are to be netted pursuant to this Exhibit A for transactions under WSPP Service Schedule A, B, and C shall be offset against each other or set off or recouped therefrom.

Name of Authorized Representative

Effective Date for Netting

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER00-3338, et al., issued September 15, 2000.

Name of WSPP Member

Signature of Authorized
Representative

Date of Execution

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Issued on: September 29, 2000

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ER00-3338, et al., issued September 15, 2000.

Effective: July 1, 2000

[WSPP SAMPLE FORM – PARTIES ARE FREE TO USE THIS OR DISREGARD IT.]

EXHIBIT B

FORM OF COUNTERPARTY GUARANTEE AGREEMENT

This Guarantee Agreement (this "Guarantee"), dated, as of [____], 199[___], is made and entered into by [____], a [____] corporation ("Guarantor").

WITNESSETH:

WHEREAS, [____] (the "Company") may enter into transactions involving power sales under the Western Systems Power Pool ("WSPP Agreement") and related confirmation agreements¹ (collectively "Agreements") with [Company Name] ("Guaranteed Party"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreements.

NOW THEREFORE, in consideration of the Guaranteed Party agreeing to conduct business with Company, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company (the "Obligations") to the Guaranteed Party in accordance with the Agreements. If Company fails to pay any Obligations, Guarantor shall promptly pay to the Guaranteed Party no later than the next Business Day (as defined in the WSPP Agreement), after notification, the amount due in the same currency and manner provided for in the Agreements. This Guarantee shall constitute a guarantee of payment and not of collection. Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Company to the Guaranteed Party are paid in full. The liability of Guarantor under the Guarantee shall be subject to the following:

(a) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreements (even if such payments are deemed to be damages) and, except to the extent specifically

1

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provided in the Agreements, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort, or any other even if such fees together with the payments

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exceed the cap in Section 1(b), damages, costs, except that Guarantor shall be required to pay reasonable attorney fees.

(b) The aggregate liability of the Guarantor shall not exceed [] Million U.S. Dollars [].

2. DEMANDS AND NOTICE. If Company fails or refuses to pay any Obligations, the Guaranteed Party may make a demand upon Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Company has failed to pay and an explanation of why such payment is due, with a specific statement that the Guaranteed Party is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until Company or Guarantor has cured such default, and additional Payment Demands concerning such default shall not be required until such default is cured.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of [] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guarantee; and

(c) this Guarantee constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. EFFECT OF BANKRUPTCY BY COMPANY. The Guarantor's obligation to pay under this Guarantee shall not be affected in any way by the institution with respect to the Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition for the Company's winding-up or liquidation.

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5. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and Guaranteed Party hereto.

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6. WAIVERS. Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that the Guaranteed Party seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of the Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreements.

Guarantor may terminate this Guarantee by providing written notice of such termination to the Guaranteed Party and upon the effectiveness of such termination, Guarantor shall have no further liability hereunder, except as provided in the last sentence of this paragraph. No such termination shall be effective until fifteen (15) Business Days after receipt by the Guaranteed Party of such termination notice. No such termination shall affect Guarantor's liability with respect to any obligations arising under any transaction entered into prior to the time the termination is effective, which transaction shall remain guaranteed pursuant to the terms of this Guarantee.

7. ASSIGNMENT. The Guarantor shall not assign this Guarantee without the express written consent of the Guaranteed Party. The Guaranteed Party shall be entitled to assign its rights under this Agreement in its sole discretion.

8. NOTICE. Any Payment Demand, to the Guaranteed Party or the Guarantor notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

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Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. ER00-3338, et al., issued September 15, 2000.

To [Name of Guaranteed Party] _____

Attn: _____
Fax No.: (____) _____

To Guarantor: _____

Attn: _____
Fax No.: (____) _____

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF [State], WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. This Guarantee shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by the Guaranteed Party, its successors and assigns. The Guarantee embodies the entire agreement and understanding between Guarantor and the Guaranteed Party and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

By: _____
Name: _____
Title: _____

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

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EXHIBIT C
SAMPLE FORM FOR CONFIRMATION

1. Transaction Specific Agreements

The undersigned Parties agree to sell and purchase electric energy, or a Physically-Settled Option, pursuant to the WSPP Agreement as it is supplemented and modified below:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Period of Delivery: From _________ To _________
- (d) Schedule (Days and Hours): _____
- (e) Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Service (Check as Applicable)
 - Service Schedule A _____
 - Service Schedule B _____
 - Service Schedule C _____
 - Physically-Settled Option Service Schedule B _____
 - Physically-Settled Option Service Schedule C _____
 - Other products per Section 32.6 _____ **[Describe**

Product]

- (h) Contract Quantity: _____ Total MWhrs.
- (i) Contract or Strike Price: _____
- (j) Transmission Path for the Transaction (If Applicable): _____
- (k) Date of Agreement if different: _____
- (l) Additional Information for Physically-Settled Options
 - (i) Option Type: Put _____ Call _____
 - (ii) Option Style: _____
 - (iii) Exercise Date or Period: _____
 - (iv) Premium: _____
 - (v) Premium Payment Date: _____
 - (vi) Method for providing notice of exercise _____

- (m) Special Terms and Exceptions:
See Attachment A

[Special Terms and Exceptions shall be shown on an Attachment to this Confirmation.]

Name of Trader for Purchaser

Name of Trader for Seller

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool
Issued on: December 21, 2001

Effective: March 1, 2002

Authorized Signature
for Purchaser

Authorized Signature
for Seller

Date

Date

Issued by: Michael E. Small, General Counsel to
Western Systems Power Pool

Effective: July 1, 2000

Issued on: September 29, 2000

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EXHIBIT D

WSPP MEDIATION AND ARBITRATION PROCEDURES

I. MEDIATION

- A. **Informal Mediation.** WSPP members with a dispute or a potential dispute involving transactions under the WSPP Agreement may request non-binding, informal mediation by contacting the WSPP's General Counsel and by providing a brief explanation in writing of the dispute and the remedy being sought. All parties to the dispute must request this Informal Mediation for it to become effective. After this contact, a telephonic conference call will be arranged among the affected WSPP members and the WSPP's General Counsel, the Chairman of the Operating Committee, and/or some other independent and knowledgeable person requested by the Chairman of the Operating Committee to participate. The purpose of the conference call will be to discuss the issues and to have an independent person or persons state their views. Best efforts will be made to set up this conference call within five Business Days after the WSPP's General Counsel is contacted subject to accommodating the schedules of all involved. This Informal Mediation shall be considered as satisfying the Mediation requirements of Section 34.1 of the WSPP Agreement.

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- B. Initiating Formal Mediation.** A WSPP member which believes that it possesses a claim against another WSPP member relating to a WSPP transaction, which is unable to resolve the dispute through agreement with the other member to the transaction, and which desires to pursue that claim shall initiate non-binding formal mediation pursuant to Section 34.1 of the WSPP Agreement. The member initiating such mediation shall do so by Serving written notice to the Chairman of the WSPP Operating Committee, the WSPP's General Counsel, and the other members against which the claim is directed. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.
- C. Response to Document Initiating Formal Mediation.** Within eight days, the member or members against which the claim is directed may provide a response to the notice which shall be Served on the member which initiated the Mediation, the Chairman of the WSPP's Operating Committee, and the WSPP's General Counsel.
- D. Choosing the Mediator.** The Mediator shall be chosen in accordance with the procedures set forth in Section 34.1 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Mediators to be presented to the Parties provided that these suggested persons shall

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be provided to the WSPP Representative together with relevant personal histories within two Business Days

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of the date by which time the list of Mediators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of Mediators. A brief personal history of each person on the list of potential mediators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Mediators within five days of receipt of notice of the dispute. The Parties then shall have five days in which to reach agreement on a Mediator or inform the WSPP Representative that they were unable to reach agreement in which event the WSPP Representative shall appoint the Mediator consistent with Section 34.1 of the WSPP Agreement. Upon request of the Parties for expedition, the WSPP Representative shall use best efforts to expedite this process.

- E. **Location for the Formal Mediation.** The Parties shall agree on a location for the Mediation. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Mediator.
- F. **Time for the Formal Mediation.** The Parties shall agree on the time for the Mediation after consultation with the Mediator if one has been

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appointed. If the Parties fail to reach agreement, then the WSPP
Representative shall set the time

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which shall not be more than twenty-one days after the notice initiating the Mediation is received after consultation with the Parties and any Mediator.

G. **Conduct of the Formal Mediation.** The Mediator shall have the ability to conduct the Mediation in any manner which the Mediator believes is appropriate to facilitate resolution of the dispute. Each Party shall have at least one representative with the authority to settle the dispute present at the Mediation. The Mediation shall be private and confidential and the Mediator shall have the authority to exclude any person not directly involved unless the Parties agree otherwise in writing. At the Mediation, each Party shall have the right to make a brief presentation of its case and to question the other Party. Each Party also may be represented by counsel.

H. **Replacement of the Mediator.** If the Mediator resigns, withdraws or is no longer able to serve, then the Parties shall have two Business Days in which to agree on a new Mediator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Mediator from the list used to select the first Mediator within two Business Days after being notified that the Parties are unable to agree. The dates

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and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

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II. **ARBITRATION**

- A. **Initiating Arbitration.** A WSPP member which initiates Arbitration pursuant to Section 34.2 of the WSPP Agreement shall do so by Serving the Chairman of the WSPP Operating Committee, the WSPP General Counsel and the members against which the claim is directed with written notice of its demand for arbitration. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.
- B. **Response.** Within ten days of receipt of the notice, any member or members against which the claim is directed may provide a response to the notice. Such response must include any counterclaims which the member believes are appropriate. If a counterclaim is submitted, then the member which submitted the notice may respond to the counterclaim within ten days of receipt. All such responses shall be Served on the Parties, the Chairman of the WSPP Operating Committee, and the WSPP General Counsel.
- C. **Choosing the Arbitrator.** The Arbitrator shall be chosen in accordance with the procedures set forth in Section 34.2 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Arbitrators to be presented to the Parties provided that these suggested persons are

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provided to the WSPP Representative together with relevant personal
histories within two business days

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of the date by which time the list of Arbitrators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of potential Arbitrators. A brief personal history of each person on the list of potential Arbitrators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Arbitrators within seven days of receipt of notice of the request for Arbitration. The Parties then shall have ten days in which to reach agreement on the Arbitrator or to inform the WSPP Representative that they were unable to reach agreement in which event the WSPP Representative shall appoint the Arbitrator consistent with Section 34.2 of the Agreement. Upon request of the Parties for expedition, the WSPP Representative shall use best efforts to cause this process to be expedited.

- D. **Location for the Arbitration.** The Parties shall agree on a location for the Arbitration. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Arbitrator.

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- E. **Time for the Arbitration.** The Parties shall agree on the time for the Arbitration and coordinate that time with the Arbitrator if one has been agreed to or appointed. If the Parties fail to reach agreement, then the WSPP Representative

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shall set the time which shall not be more than 60 days after the notice is received. The WSPP Representative shall set a time after consultation with the Parties and the Arbitrator to check their schedules.

- F. **Discovery.** After appointment of the Arbitrator, each Party shall be entitled to obtain relevant documents from the other Parties and to take depositions. Each Party shall respond to such a document request within seven days of receipt of the request and make its employees or consultants available for depositions to the extent that the employee or consultant possesses knowledge and information relevant to the dispute. Each Party shall disclose documents that are confidential or commercially sensitive subject to a reasonable protective order. Any disputes concerning discovery shall be promptly referred to the Arbitrator who shall have authority to resolve such disputes, including the authority to require attendance of witnesses at depositions. The Federal Rules of Civil Procedure shall apply to discovery under these procedures.

- G. **Conduct of Arbitration if the Parties Agree to Waive an Oral Hearing.** If the Parties agree to waive an oral hearing, then the Parties shall Serve Initial Briefs no later than 35 days after the notice is received or notify the Arbitrator that they do not wish to submit any additional documents.

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Parties shall Serve any Reply Briefs no later than ten days after the date
for Service of Initial Briefs.

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- H. **Conduct of the Arbitration Hearing.** No later than fifteen days before any hearing, any Party may Serve an Initial Brief or notify the Arbitrator that they do not wish to submit any additional documents. A Party shall Serve any Reply Brief no later than five Business Days before any hearing. The Arbitrator shall preside over any hearing and rule on all objections including objections as to the admissibility of evidence or whether the questioning is proper. All testimony shall be submitted under oath. The Arbitrator is not bound to follow any particular rules governing the conduct of the proceeding. The Arbitrator may rely on legal advice provided through the WSPP. The Arbitrator may require any person employed by a Party to attend and testify at the hearing. Each Party shall possess the right to present evidence, including witnesses, and to cross-examine other Parties' witnesses. The Arbitration shall be private and the Arbitrator shall have the authority to exclude any person not directly involved unless the Parties otherwise agree. Each Party may be represented by counsel. A stenographic record of the Arbitration shall be kept.
- I. **Decision.** Within ten Business Days after the end of the Arbitration hearing, the Arbitrator shall issue his award in writing. If the Parties

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waived the right to an oral hearing, then the Arbitrator shall issue the award within ten Business Days of the last date Briefs were to be submitted. The Arbitrator is not limited in the

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remedies he may order so long as any arbitration award is consistent with the provisions and limitations of the WSPP Agreement and any applicable Confirmation Agreement with respect to the liability and damages of any Party; provided, however, upon agreement of the Parties to the dispute, the Arbitrator's choice of remedies may be limited.

- J. **Replacement of the Arbitrator.** If the Arbitrator resigns, withdraws, or is no longer able to serve then the Parties shall have two Business Days in which to agree on a new Arbitrator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Arbitrator from the list used to select the first Arbitrator within two Business Days after being notified that the Parties are unable to agree. The dates and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

III. MISCELLANEOUS

- A. **Confidentiality.** Any Arbitration or Mediation shall be confidential as provided in Section 34.4 of the WSPP Agreement.
- B. **Costs.** Costs shall be borne by Parties as provided in Section 34.3 of the WSPP Agreement.

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- C. **Restrictions on Lawsuits.** Each Party shall be subject to the restrictions provided in Section 34.2 of the WSPP Agreement.
- D. **Attorney-Client/Attorney Workproduct.** The Arbitrator or Mediator shall not take any action which would result in disclosure of information in violation of the attorney-client privilege or attorney workproduct doctrine.

IV. DEFINITIONS

- A. **Arbitrator or Arbitration.** The Arbitrator appointed pursuant to these procedures and Section 34.2 of the WSPP Agreement and the Arbitration pursuant to these procedures and the WSPP Agreement.
- B. **Initial or Reply Briefs.** Written documents submitted by the Parties to support their positions and respond to each others positions. Such documents shall be limited to 25 pages.
- C. **Business Days.** Defined as in the WSPP Agreement.
- D. **Mediator or Mediation.** The Mediator appointed pursuant to these procedures and Section 34.1 of the WSPP Agreement and the Mediation pursuant to these procedures and the WSPP Agreement.
- E. **Parties.** The WSPP members involved in the Mediation or Arbitration which have a direct interest in the dispute.

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- F. **Service, Serving, or Served.** The method of service shall be by fax, unless impracticable because of the size of the document. In all events, the document should be delivered to the Party by overnight mail. Parties also should attempt to send the document out by email if possible. Service will be accomplished to a Party if sent to the Party's contact person for the disputed transaction. If there are multiple contact persons for one Party, service to one such person shall suffice. Service shall be to those individuals or entities specified in this procedures, but must include service to the Parties, the Mediator or Arbitrator (if either has been appointed), and to the WSPP General Counsel.
- G. **WSPP Representative.** The Chairman of the WSPP Operating Committee or his or her designee for the purposes of the Arbitration or Mediation.

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SERVICE SCHEDULE A
ECONOMY ENERGY SERVICE

A-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

A-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms and conditions for requesting and providing Economy Energy Service.

A-3 TERMS:

A-3.1 A Party may schedule Economy Energy Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation Agreement.

A-3.2 Scheduling of Economy Energy Service hereunder shall be a responsibility of the Parties involved.

A-3.3 Each Seller/Purchaser may prepare a daily estimate of the amount of Economy Energy Service that it is willing and able to sell/buy each hour and

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the associated hourly sale/purchase price for the next Business Day, plus
the weekend and

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holidays, and communicate this information to all other Parties via the Hub.

A-3.4 Purchasers shall arrange purchases directly with Sellers, and shall be responsible for transmission arrangements.

A-3.5 Unless otherwise mutually agreed between the Purchaser and the Seller, all Economy Energy Service transactions shall be pre-scheduled, and billings shall be based on amounts and prices agreed to in advance by schedulers, subject to Paragraphs A-3.6 and 3.7 and subject to change by mutual agreement between dispatchers or schedulers due to system changes.

A-3.6 The price for Economy Energy Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section A-3.7 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

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A-3.7 Except as provided for in Section A-3.6, the price shall not exceed the
Seller's forecasted Incremental Cost plus up to: \$7.32/kW/ month;
\$1.68/kW/week;

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33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/ day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. In lieu of payment, such Parties may mutually agree to exchange economy energy at a ratio not to exceed that ratio provided for in Section C-3.7 of Service Schedule C. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary services charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including the exchange of economy energy. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. Any such transmission services (and ancillary service provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement.

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A-3.8 Unless otherwise agreed, the Purchaser shall be responsible for maintaining

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operating reserve requirements as back-up for Economy Energy Service purchased and the Seller shall not be required to maintain such operating reserve.

A-3.9 Each Party that is a FERC regulated public utility as defined in A-3.6 shall file the Confirmation Agreement with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation Agreements or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

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SERVICE SCHEDULE B

UNIT COMMITMENT SERVICE

B-1 PARTIES:

This Service Schedule is agreed upon as part of this Agreement by the Parties.

B-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Unit Commitment Service.

B-3 TERMS:

B-3.1 A Party may schedule Unit Commitment Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation Agreement. Once an agreement is reached, then the obligation for Unit Commitment Service becomes a firm commitment, for both Parties, for the agreed capacity and terms.

B-3.2 Unless otherwise mutually agreed by the Parties involved in a Unit Commitment Service transaction, the terms set forth in this Service Schedule B shall govern such transaction.

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B-3.3 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers, for a specified unit for a specified period of time.

B-3.4 Purchasers shall arrange purchases directly with Sellers.

B-3.5 The price for Unit Commitment Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section B-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

B-3.6 Except as provided for in Section B-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total

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demand charge revenues in any consecutive seven-day period shall not
exceed the product of the weekly rate and the

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highest demand experienced on any day in the seven-day period. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage.

B-3.7 Start-up costs and no-load costs if included by the Seller shall be stated separately in the price.

B-3.8 Energy schedules for the Purchaser's share of a unit may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the change is to take place, unless otherwise mutually agreed or unforeseen system operating conditions occur.

B-3.9 Unit Commitment Service is intended to have assured availability; however, scheduled energy deliveries may be interrupted or curtailed as follows:

- (a) By the Seller by giving proper recall notice to the Purchaser if the Seller and the Purchaser have mutually agreed to recall provisions,

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- (b) By the Seller when all or a portion of the output of the unit is unavailable, by an amount in proportion to the amount of the reduction in the output of the

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unit, unless otherwise agreed by the schedulers,

- (c) By the Seller to prevent system separation during an emergency, provided the Seller has exercised all prudent operating alternatives prior to the interruption or curtailment,
- (d) Where applicable, by the Seller to meet its public utility or statutory obligations to its customers, or
- (e) By either the Seller or the Purchaser due to the unavailability of transmission capacity necessary for the delivery of scheduled energy.

B-3.10 Each Party that is a FERC regulated public utility as defined above in B-3.5 shall file the Confirmation Agreement with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation Agreements or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

B-4 BILLING AND PAYMENT PROVISIONS:

B-4.1 Except as provided in Sections B-4.2 and B-5, billing for Unit Commitment Service shall be computed based upon the agreed upon prices.

B-4.2 In the event the Seller requests recall of Unit Commitment Service in a shorter time frame than was mutually agreed pursuant to Section B-3.9(a) and the

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Purchaser agrees to allow such recall, the Purchaser shall be relieved of any obligation to pay start-up costs.

B-5 TERMINATION PROVISION:

In the event Unit Commitment Service is curtailed or interrupted except as provided in Section B-3.9(a), the Purchaser shall have the option to cancel the Unit Commitment Service at any time by paying the Seller for (i) all energy deliveries scheduled up to the notice of termination and (ii) all separately stated start-up and no-load costs.

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SERVICE SCHEDULE C

FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE

C-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

C-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Firm Capacity/Energy Sale or Exchange Service.

C-3 TERMS:

C-3.1 A Party may schedule Firm Capacity/Energy Sale or Exchange Service for itself or another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation Agreement. Once an agreement is reached, then the obligation for Firm Capacity/Energy Sale or Exchange Service becomes a firm commitment, for both Parties, for the agreed service and terms.

C-3.2 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers.

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C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. Firm capacity is deemed a capacity sale from the Seller's resources and backed by the Seller's

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capacity reserves.

C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy between Parties. Subject to mutual agreement, firm energy is deemed a quantity of energy the Seller has agreed to sell and deliver and the Purchaser has agreed to buy within a specified time period.

C-3.5 Purchaser shall arrange purchases directly with Sellers.

C-3.6 The price for Firm Capacity/Energy Sale or Exchange Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section C-3.7 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

C-3.7 Except as provided for in Section C-3.6, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total

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demand charge revenues in any consecutive seven-day period shall not
exceed the product of the weekly rate and the

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highest demand experienced on any day in the seven-day period.

Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0.

The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement.

C-3.8 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within the recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule mutually agreed to by the Seller and the Purchaser, (b) due to an Uncontrollable Force as provided in Section 10 of this Agreement; or (c) where applicable, to meet Seller's public utility or statutory obligations to its customers. If service under this Service Schedule is interrupted under Section C-3.8(a) or (b), neither Seller nor Purchaser shall be obligated to

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pay any damages under this Agreement or Confirmation Agreement. If service under this Service Schedule is interrupted for any reason other than pursuant to Section C-3.8(a) or (b), the Non-Performing Party shall be responsible for payment of damages as provided in Section 21.3 of this Agreement or in any Confirmation.

C-3.9 Each Party that is a FERC regulated public utility as defined in Section C-3.6 shall file the Confirmation Agreement with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation Agreements or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.10 Seller shall be responsible for ensuring that Service Schedule C transactions are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council.

Wssp/WSPP Agreement Effective 2-1-03 edits redlined version

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LIST OF MEMBERS

ACN Power, Inc.
AES NewEnergy, Inc.
Allegheny Energy Supply Co., LLC
Amerada Hess Corporation
Ameren Energy Generating Company
American Electric Power Service Corporation as agent for Ohio Power Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
APS Energy Services Company, Inc.
Aquila Energy Marketing Corporation
Arizona Electric Power Co.
Arizona Public Service Co.
Arkansas Electric Coop. Corp.
Associated Electric Cooperative, Inc.
Astra Oil Company, Inc.
Avista Corporation
Avista Energy, Inc.
Basin Electric Power Cooperative
Benton Public Utility District No. 1 of Benton County
Blackhills Power & Light Company
Bonneville Power Adm.
BP Energy Company
Burbank, City of
Calif. Dept. of Water Resources
Calpine Energy Services, L.P.
Candela Energy Corporation
Cargill-Alliant, LLC
Carolina Power & Light Company
Cheyenne Light, Fuel and Power Co.
Cinergy Capital & Trading, Inc.
Cinergy Operating Companies
City of Anaheim, Public Utilities Dept.
City of Azusa
City of Banning
City of Glendale Water & Power Dept.
City of Independence
City of Klamath Falls
City of Palo Alto
City of Riverside, California
City of Santa Clara Electric Department

City of Sikeston, Board of Municipal Utilities
City Utilities of Springfield, Missouri
City Water & Light (Jonesboro, AR)
Clatskanie PUD
Cleco Marketing & Trading LLC
Cleco Power LLC
CMS Marketing, Services and Trading Company
CNG Power Services Corp.
Colorado River Commission of Nevada
Colorado Springs Utilities
Colton, City of
Columbia Energy Power Marketing
Columbia Power Corporation
Cominco, Ltd.
Commonwealth Energy Corporation
ConAgra Energy Services, Inc.
Conectiv Energy Supply, Inc.
Conoco Gas & Power Marketing – a division of Conoco Inc.
Constellation Power Source
Cook Inlet Energy Supply
Coral Power, L.L.C.
Deseret G&T
DTE Energy Trading, Inc.
Duke Energy Trading & Marketing, LLC
Duke Power
Duke Solutions, Inc.
Duke/Louis Dreyfuss, LLC
Dynergy Power Marketing, Inc.
Dynergy Power Services, Inc.
E prime
Edison Mission Marketing & Trading, Inc.
Edison Source
Edmonton Power Authority, Alberta
El Paso Electric
El Paso Merchant Energy, L.P.
Empire District Electric Co.
Energy Transfer Group, LLC
EnerZ Corporation

Engage Energy America LLC
Engelhard Power Marketing, Inc.
ENMAX Energy Corporation
ENMAX Energy Marketing Inc.
Enron Power Marketing, Inc.
Enserco Energy Inc.
Entergy Arkansas, Inc.
Entergy Gulf States, Inc.
Entergy Louisiana, Inc.
Entergy Mississippi, Inc.
Entergy New Orleans, Inc.
Entergy Power, Inc.
Entergy Services, Inc. as agent for the
Entergy Operating Companies
Entergy-Koch Trading, LP
Equitable Power Services Co.
Eugene Water & Electric Board
Exelon Generation Company, LLC
Farmington, City of
Federal Energy Sales, Inc.
FPL Energy Power Marketing Inc.
Golden Spread Electric Cooperative
Grand River Dam Authority
Hafslund Energy Trading, LLC
Hetch-Hetchy Water & Power
Hinson Power Co., LLC
Howard Energy Co., Inc.
IDACORP Energy L.P.
Idaho Power Company
IGI Resources, Inc.
Illinova Energy Partners, Inc.
Imperial Irrigation District
Industrial Energy Applications, Inc.
InterCoast Power Marketing
J. Aron & Company
KAMO Electric Cooperative, Inc.
Kansas City Board of Public Utilities
Kansas City Power & Light
KN Energy Marketing
Lafayette Utilities System
LG&E Energy Marketing Inc.
Lincoln Electric System
Los Alamos County
Los Angeles Dept. of Water & Power
Louisiana Generating LLC

Louisville Gas & Electric Company
Maclaren Energy Inc.
Mason County PUD No. 3
McMinnville Water & Light
Merchant Energy Group of the
Americas, Inc.
Merrill Lynch Capital Services, Inc.
Metropolitan Water District
MidAmerican Energy Company
MidCon Power Services Corp.
MIECO, Inc.
Minnesota Power, Inc.
Mirant Americas Energy Marketing, LP
Missouri Joint Municipal Electric Utility
Comm.
Modesto Irrigation District
Morgan Stanley Capital Group, Inc.
M-S-R Public Power Agency
Municipal Energy Agency of Mississippi
Municipal Energy Agency of Nebraska
Nebraska Public Power District
Nevada Power Co.
New West Energy
NorthPoint Energy Solutions Inc.
Northern California Power Agency
Northern States Power Company
NP Energy Inc.
NRG Power Marketing Inc.
OGE Energy Resources, Inc.
Oklahoma Gas & Electric
Oklahoma Municipal Power Authority
Omaha Public Power District
ONEOK Power Marketing Company
Otter Tail Power Company
Pacific Gas & Electric Co.
Pacific Northwest Generating Coop.
PacifiCorp
PacifiCorp Power Marketing, Inc.
PanCanadian Energy Services
Pasadena, City of
PG&E Energy Services
PG&E Energy Trading - Power, L.P.
PG&E Power Services Company

Phibro Inc.
Pinnacle West Capital Corporation
Plains Elec. Gen. & Trans. Coop. Inc.
Platte River Power Authority
Portland General Electric Co.
Power Exchange Corporation
Powerex
PPL Electric Utilities Corporation
PPL EnergyPlus, LLC
PPL Montana, LLC
Public Service Co. of NM
Public Service Co. of Colorado
Public Util. Dist. No. 1 of Douglas Cty.
Public Util. Dist. No. 1 of Franklin Cty.
PUD No. 1 of Chelan County
PUD No. 1 of Grays Harbor County
PUD No. 1 of Snohomish County
PUD No. 2 of Grant County
Puget Sound Energy
QST Energy Trading Inc.
Questar Energy Trading
Rainbow Energy Marketing Corporation
Redding, City of
Reliant Energy Services, Inc.
Rocky Mountain Generation Coop., Inc.
Roseville Electric
Sacramento Municipal Utility District
Salt River Project
San Diego Gas & Electric Co.
Seattle City Light
Sempra Energy Resources
Sempra Energy Solutions
Sempra Energy Trading Corp.
Sierra Pacific Power Co.
Southern Calif. Edison Co.
Southern California Water Company
Southern Company Services, Inc.
Southern Illinois Power Cooperative
Southwest Power Administration
Southwestern Public Service
Split Rock Energy LLC
Statoil Energy Trading, Inc.
Strategic Energy LLC
Sunflower Electric Power Corp.
Tacoma Power
Tenaska Power Services Co.
Tennessee Valley Authority
Texaco Energy Services
Texas-New Mexico Power Company
The Detroit Edison Co.
The Energy Authority
The Montana Power Company
The Power Company of America, LP
Tractebel Energy Marketing, Inc.
TransAlta Energy Marketing (US) Inc.
TransCanada Power, div. of TransCanada
Energy Ltd.
Tri-State Generation and Transmission
Assoc.
Tucson Electric Power
Turlock Irrigation District
TXU Energy Trading Company
Union Electric Company
Utah Associated Municipal Power
Systems
UtiliCorp United
Vastar Power Marketing, Inc.
Vernon, City of
VIASYN, Inc.
Virginia Electric and Power Company
Vitol Gas & Electric LLC
WAPA-Colorado River Storage Project
Management Center
WAPA-Desert Southwest Region
WAPA-Rocky Mountain Region
WAPA-Upper Great Plains Region
WAPA-Sierra Nevada Region
West Kootenay Power Ltd.
Western Farmers Electric Co-op
Western Power Services, Inc.
Western Resources, Inc.
Williams Energy Marketing & Trading Co.
WPS Energy Services, Inc.
XCEL Energy Services, Inc.

DRAFT

AMENDMENT

THIS AMENDMENT dated _____, 2003 by and between PPL EnergyPlus, LLC ("PPL") and Tucson Electric Power ("TEP"), (each individually a "Party" and collectively the "Parties").

WHEREAS, the Parties have entered into one or more Master Power Purchase and Sale Agreement Confirmation Letters (collectively, the "Confirmations"); and

WHEREAS, the Confirmations are governed by the terms of the Western Systems Power Pool Agreement ("WSPP Agreement"); and

WHEREAS, the Parties desire to amend the terms of the WSPP Agreement as set forth in this Amendment.

NOW, THEREFORE, for good and valuable consideration the receipt, sufficiency and adequacy of which are acknowledged by each Party, the Parties agree to amend the WSPP Agreement as follows:

- A. Article 34.1 is deleted in its entirety and replaced with the following:

"34.1 DISPUTE RESOLUTION

The Parties intend to make a good faith effort to resolve, without resort to litigation, any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") according to the procedures set forth in this Article 34.1. To that end, the Parties' representatives shall attempt initially to resolve all Disputes by negotiation. In the event a Dispute cannot be resolved promptly by the Parties' representatives, either Party may demand in writing that the Dispute be submitted to senior executives of the Parties for resolution. Upon receipt of such demand, each Party shall immediately designate a senior executive with authority to resolve the Dispute. The designated senior executives shall promptly begin discussion in an effort to agree upon a resolution of the Dispute. If the senior executives do not agree upon a resolution of the Dispute within 30 days of the date that such demand was made, any Party may elect to abandon negotiations

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and pursue whatever rights it may have at law or in equity. ”

- B. Article 34.2 is deleted in its entirety and replaced with the following:

“WAIVER OF JURY TRIAL

Following unsuccessful dispute resolution as described in Article 34.1, either Party may pursue any form of litigation to resolve a dispute under this Agreement. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT. ACTION OR PROCEEDING RELATING TO THIS AGREEMENT EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.”

- C. Article 34.3 is deleted in its entirety.

- D. Article 34.4 is revised to read as follows:

“34.4 CONFIDENTIALITY

Any dispute resolution discussions conducted by the Parties' representative or senior executives pursuant to Article 34.1 shall be

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conducted on a confidential basis and not disclosed, including any documents or results which shall be considered confidential, unless the Parties otherwise agree or such disclosure is required by law."

- E. Article 24 is amended by deleting the word "Utah" and replacing it with "New York".
- F. Article 4.20 is revised to add the following paragraphs:

"Unit Firm with Replacement Service" – means that the Product will be supplied from the owned or controlled sources of generation, or from purchased power assets of Seller or its affiliates. Seller's failure to deliver shall be excused: (I) by Buyer's failure to perform; (II) to the extent a system, control area, reliability council, or other reliability authority within which the Facility operates declares an emergency condition which impacts a Transaction under this Agreement as determined in the system's or control area's or reliability council's or reliability authority's reasonable judgment, (III) interruption or curtailment of transmission from the generation source to the Delivery Point(s), (IV) by Seller's inability to obtain non-firm transmission service from the generation source to the Delivery Point(s); (V) if the Capacity Source or Facility are unavailable as a result of a Forced Outage (as defined in the NERC Generation Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (VI) by Uncontrollable Force. Seller shall coordinate with the owner of the Facility so as not to schedule Annual Maintenance during the Summer Period of June through October. Buyer's failure to receive shall be excused (I) by Uncontrollable Force; (II) by Seller's failure to perform; or (III) by the interruption or curtailment of transmission from the Delivery Point. Interruptions or curtailments of Buyer's transmission other than the transmission immediately from the Delivery Point shall not excuse performance. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Section 21.3.

"Replacement Energy" - Seller may, at its sole discretion, deliver energy from another source to meet Seller's obligations to deliver Energy under this Transaction. Replacement Energy may be provided for any hour during which Seller might otherwise be excused from performance. Replacement Energy, when delivered, shall satisfy Seller's obligation to deliver Energy.

"Availability Factor" – for each incremental unit of the Contract Capacity shall, for each month, be equal to the quotient of (1) the positive difference, if any, obtained by subtracting (A) the total number of Seller's Forced Outage Hours during such month from (B) the total number of hours in such month and (2) the total number of hours in such month. The

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Availability Factor for each month for the Contract Capacity is the average of the "Availability Factors" for each unit of the Capacity Source.

"Forced Outage Hours" - for any month, means all hours (or partial hours for Forced Outages during the hour expressed in decimal form) in such month, other than Excusable Event Hours, in which Seller fails to deliver Energy that has been requested and prescheduled by Buyer.

"Excusable Event Hours," - for any month, means those hours (or partial hours expressed in decimal form), during which Energy is prescheduled by Buyer and during which hours Seller fails to deliver Energy in such month on account of the occurrence of any Excusable Event except for Seller's V.

"Excusable Events" means (i) an Uncontrollable Force or other force majeure (including force majeure events in Seller's gas transportation or supply agreements) affecting Seller, to the extent it adversely affects Seller's ability to perform its obligations under this Agreement or otherwise causes all or a portion of the Capacity Source to be removed from service, (ii) an Event of Default by Buyer, (iii) all Annual Maintenance hours, and (iv), all other events excusing Seller's performance as specified in the Sundance Unit Firm with Replacement Service definition above, except for Seller's V.

"Annual Maintenance" means an outage that is scheduled more than 8 weeks ahead of time for a predetermined duration, expected to last at least more than two days, and to occur no more often than twice a year.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date and year first written above.

TUCSON ELECTRIC POWER

PPL ENERGYPLUS, LLC

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____

7

**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 7

**Master Power
Purchase & Sale
Agreement**

Version 2.1 (modified 4/25/00)

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Master Power Purchase & Sale Agreement



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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement (Version 2.1; modified 04 25 00) ("Master Agreement") is made as of the following date: _____ ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name TUCSON ELECTRIC POWER COMPANY, a Corporation organized under the laws of the State of Arizona ("TEP" or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: 3950 E. Irvington Road, SC115

Street: _____

City: Tucson, Arizona Zip: 85747

City: _____ Zip: _____

Attn: Michael Bowling
Phone: 520-745-7124
Facsimile: 520-571-4065
Duns: 960628097
Federal Tax ID Number: _____

Attn: Contact Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: Kevin Battaglia
Phone: 520-745-7170
Facsimile: 520-571-4032

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

Scheduling:

Attn: Joy Barton
Phone: 520-745-7107
Facsimile: 520-571-4065

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Payments:

Attn: Kevin Battaglia
Phone: 520-745-7170
Facsimile: 520-571-4032

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: Barbara McCormick
Phone: 520-884-3620
Facsimile: 520-884-3602

Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Barbara McCormick
Phone: 520-884-3620
Facsimile: 520-884-3602

Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff N/A Dated N/A Docket Number N/A
Party B Tariff Tariff FERC Dated _____ Docket Number ER

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

Cross Default for Party A:

Party A: _____ Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B:

Party B: _____ Cross Default Amount means an amount equal to three percent (3%) of shareholders' equity (howsoever described) of Party B as shown on the most recent annual audited financial statements of Party B.

Other Entity: Party B's Guarantor, if any Cross Default Amount means an amount equal to three percent (3%) of shareholders' equity (howsoever described) of Party B's Guarantor as shown on the most recent annual audited financial statements of Party B's Guarantor.

5.6 Closeout Setoff

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

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

Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A: Unless guaranteed, in which case Option B is applicable with the Guarantor specified.

Option B Specify: _____

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

Party B Collateral Threshold:

Credit Rating*	Collateral Threshold
AA- or better	\$25 Million
A- to A+	\$15 Million
BBB+	\$10 Million
BBB	\$ 5 Million
BBB- (or below)	Zero

*Credit Rating as determined by TEP, at the time of Party B, or Party B's Guarantor, contract acceptance. In determining the Credit Rating, TEP shall take into consideration the combination of the credit ratings issued by S&P, Moody's and Fitch, Inc. TEP will each independently make Party B's current Credit Rating available to Party B upon written request.

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

Party B Independent Amount:

Credit Rating*	Independent Amount Needed
AA- or better	NONE
A- to A+	\$ 1.20 / Mwh
BBB+	\$ 1.50 / Mwh
BBB	\$ 2.40 / Mwh
BBB-	\$ 3.00 / Mwh

*Credit Rating as determined by TEP, at the time of Party B, or Party B's Guarantor, contract acceptance. In determining the Credit Rating, TEP shall take into consideration the combination of the credit ratings issued by S&P, Moody's and Fitch, Inc. TEP will each independently make Party B's current Credit Rating available to Party B upon written request.

For capacity and energy contracts with variable MWh's, the number of MWh's in the term of the agreement will be calculated using the

maximum capacity in MW of the contract awarded and any estimated capacity factor.

Party B Rounding Amount: \$1,000,000

(d) Downgrade Event:

- Not Applicable
 Applicable

If applicable, complete the following:

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

Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount:

Credit Rating*	Collateral Threshold
AA- or better	\$ 25 Million
A- to A+	\$ 15 Million
BBB+	\$ 10 Million
BBB	\$ 5 Million
BBB-	Zero

*Credit Rating as determined by TEP, at the time of Party B, or Party B's Guarantor, of contract acceptance. In determining the Credit Rating, TEP shall take into consideration the combination of the credit ratings issued by S&P, Moody's and Fitch, Inc. TEP will each independently make Party B's current Credit Rating available to Party B upon written request.

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

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
 Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ N A

Party A Rounding Amount: \$ N A

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:
Specify: _____

(e) Guarantor for Party A: NOT APPLICABLE

Guarantee Amount: NOT APPLICABLE

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

The following changes shall be applicable

Article One - General Definitions

Section 1.3: is amended in its entirety to read as follows:

"Bankrupt" means, with respect to a Party, that such Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts. "

Section 1.11: is amended by adding the following after "Party" in the third line:
"after using commercially reasonable efforts to mitigate costs."

Section 1.12: is amended by deleting in the fourth line the word "issues" and replacing it with the word "issuer".

Section 1.27: is amended by inserting the phrase "and in an amount" in the third line after the word "form" and before the word "acceptable".

Section 1.46: is amended by adding before the period at the end thereof the following:

"provided that the failure to comply with any requirement of this Agreement or a Transaction, including the requirements of Article 8, before the expiration of the time period expressly specified for such compliance in this Agreement or the Transaction, if any, shall not be considered a Potential Event of Default unless and until the applicable time period has expired without compliance".

Section 1.50: is amended by deleting the reference to "Section 2.4" and replacing it with "Section 2.5".

Section 1.51: is amended by inserting the phrase "for delivery" in the second line after the word "purchases" and before the phrase "at the Delivery Point".

Section 1.53: is amended by (i) deleting the phrase "at the Delivery Point" in the second line, and (ii) deleting the phrase "at Seller's option" in the fifth line and inserting in its place the following: "absent a sale, assuming a sale could not have been made in a commercially reasonable manner".

Section 1.60: is amended by inserting the words "in writing" immediately following the words "agreed to".

Section 1.62: The following definition is added as **Section 1.62:** "'Merger Event' means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's creditworthiness is Materially Weaker than that of such Party immediately prior to such action." As used herein, Materially Weaker shall mean the senior, long-term, unsecured debt rating of such resulting entity is below an investment grade rating by either Standard & Poor's Ratings Services ("S&P") BBB- or Moody's Investors Services, Inc. ("Moody's"), Baa3.

Article Two - Transaction Terms and Conditions

Section 2.3: is hereby amended by deleting the text in its entirety and substituting the following:

"Seller shall confirm a Transaction by forwarding to Buyer by facsimile within five (5) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within five (5) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within five (5) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within five (5) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within five (5) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than five (5) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties."

Section 2.6: A new **Section 2.6** is added to Article Two, worded as follows:

“2.6 No Oral Agreements or Modifications. Notwithstanding any thing to the contrary in this Agreement, including in this Article Two, no Transaction or other binding Commitment between the Parties shall be entered into unless such Transaction or Commitment is in writing, including through electronic communication, and signed by both Parties, and this Agreement and any and all Transactions may not be orally amended or modified, including by Recording pursuant to Section 2.5.”

Article Four - Remedies for Failure to Deliver or Receive

Section 4.3: A new **Section 4.3** is added to Article Four, worded as follows:

“4.3 Suspension of Performance. Notwithstanding, and in addition to the remedies provided pursuant to Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days, and such failure is not excused under the terms of this Agreement, by the other Party’s failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of 31 days or less, the performing Party may resume performance at the end of the term of such replacement contract. Remedies available under this provision to the performing Party are in addition to, not in replacement for, other remedies specified in this Agreement.”

Article Five - Events of Default; Remedies

Section 5.1(f) is amended in its entirety as follows: “a Merger Event occurs with respect to such Party;”

Section 5.1 is amended by adding a new subsection “(i)” which reads as follows:

(i) “if, during any consecutive ninety (90) day period under any Transaction, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, regarding which the Seller shall be deemed to be the Defaulting Party and regarding which Buyer shall also be entitled to its remedies under Section 4.1;

Section 5.2 is amended by adding the following sentence to the end of that provision:

“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision of this Agreement to the contrary.”

Section 5.3 is amended by inserting the phrase:

“plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight,” between the words “that are due to the Non-Defaulting Party,” and “plus any and all other amounts” in the sixth line thereof.

Article Ten - Miscellaneous

Section 10.2 shall be amended by inserting immediately following the words “other Party” in the second line the following: “(except in connection with the representations in clause (ix), which is made only by Party B).

Section 10.4 shall be amended by inserting the phrase "To the extent permitted by law" at the beginning of each of the first two sentences.

Section 10.8 shall be further amended by deleting its penultimate sentence in its entirety and replacing it with the following sentences: “The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months.”

Section 10.12: New **Section 10.12** shall be added to Article 10 as follows:

10.12 Venue. Each party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the State of Arizona and the county therein of Party A’s choosing; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum.

Section 10.13: New **Section 10.13** shall be added to Article 10 as follows:

10.13 FERC Standard of Review; Certain Covenants and Waivers.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, 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 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)(the "Mobile-Sierra" doctrine).

(b) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

(c) The Parties agree that in the event that any portion of this Section 10.13 is determined to be invalid, illegal or unenforceable for any reason, the provisions of Section 10.13(a) shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law."

Schedule M - Governmental Entity or Public Power System

N/A Party A is NOT a Governmental Entity or Public Power System

____ Party B is a Governmental Entity, Schedule M Applicable. In the event Party B is a Governmental Entity, the provisions of Schedule shall apply in their entirety.

Schedule P - Products and Related Definitions

Schedule P: The paragraph relating to "Into _____ (the "Receiving Transmission Provider"), of Schedule P (8th paragraph of definitions beginning on Page 1) and all relating provisions thereto are deleted in their entirety:

Schedule P: The following definitions are hereby added to Schedule P:

"WSPP Schedule C" means with respect to a Transaction, a Product that is or will be scheduled as firm energy consistent with the most recent rules adopted by the WECC for which the only excuses for failure to deliver or receive are if an interruption is (i) due to an Uncontrollable Force as provided in Section 10 of the WSPP Agreement; or (ii) where applicable, to meet Seller's public utility or statutory obligations to its customers. Notwithstanding any other provision in this Agreement, if Seller exercises its right to interrupt to meet its public utility or statutory obligations, Seller shall be responsible for payment of damages for failure to deliver firm energy as provided in Article 4 of this Agreement.

"WECC" means the Western Energy Coordinating Council.

"WSPP Agreement" means the Western Systems Power Pool Agreement as amended from time to time.

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

**ARIZONA PUBLIC SERVICE COMPANY/
TUCSON ELECTRIC POWER COMPANY**

COUNTERPARTY NAME

Party A

Party B

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

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

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

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

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

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

1.9 "Confirmation" has the meaning set forth in Section 2.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is

due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

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

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

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

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

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

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

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

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

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

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

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

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g.,

price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its

obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the

resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;
 - (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
 - (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-

Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

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

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

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

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting

Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the

Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

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

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

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

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

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

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

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction

occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any

such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

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

survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

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

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

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

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

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

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

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If

requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

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

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

- A. The Parties agree to add the following definitions in Article One.

“Act” means _____¹.

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and/or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 -
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS
OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

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

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

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

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

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

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface

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

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

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

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

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of

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

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

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

4. Transmission.

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

Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

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

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

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

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

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

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

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

provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

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

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

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

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent

Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

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

Seller: _____

Buyer: _____

Product:

Into _____, Seller's Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

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

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

[Party A]

[Party B]

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____

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8

**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 8

**ELECTRIC PROCUREMENT - REQUEST FOR PROPOSAL
Tucson Electric Power Company**

ELECTRIC PROCUREMENT - REQUEST FOR PROPOSAL

Tucson Electric Power Company

Dated: 05/25/03

Tucson Electric Power Company ("TEP") hereby issues this Request For Proposal ("RFP") for the energy and capacity products listed below. Initial responses to this RFP are to be delivered to TEP per the schedule listed in Appendix A. Proposals must be submitted to TEP in hard-copy form, such that the Proposals are received at the location specified in Section X no later than the time specified in Appendix A.

The schedule specified in Appendix A is subject to change without notice. Changes to Appendix A will be posted on the RFP website bulletin board as soon as practicable. TEP makes no representation by this schedule or RFP that it will enter into any agreement(s) as a result of this process and retains the exclusive right to reject any and/or all proposals submitted.

TEP is seeking Proposals from prospective Sellers for the purchase of electrical generating capacity and associated energy. **Questions regarding either the solicitation process or products specified should be directed to the RFP website at: <http://tucsonelectric.com/Commercial/wholesale/index.html> or by contacting Mr. Michael Bowling at 520-745-7124.**

By submitting a Proposal in response to this RFP for any or all of the Products specified herein, the Seller acknowledges and agrees that: (1) it has or will obtain the transmission necessary to effect delivery of the power to the delivery points as set forth in this Proposal (other points will be considered in the process with the Bidder responsible for establishing that an alternative delivery point will serve TEP's needs), (2) its bid or bids constitute a "Proposal" that shall remain irrevocable until the conclusion of TEP's evaluation and negotiation process for each product at which time TEP shall select Proposals and the Seller and TEP shall execute a Master Agreement and confirmations for the purchase of Product(s), (3) Every Proposal must include the source of the product (i.e. market, plant, system, etc...) and the associated environmental information (including air emissions and water usage/source data) if available, and (4) Bidder must agree to permit Arizona Corporation Commission (ACC) staff to inspect any generating facility the bidder owns or controls from which it proposes to provide capacity or energy to any Arizona utility pursuant to any contract awarded as a result of this solicitation and provide written assurances that serve as guarantees against a bidder's engaging in unlawful market manipulation as outlined in the ACC Final Track B Order.

Definitions of all terms used herein are provided in Appendix B.

Description of Products: If applicable, Seller should specify the location of the generating facility. A Standard Price and Term Sheet is appended to this RFP and must be completed and included with the Proposal. For all Products, 10 MW will be the minimum bid allowed. The eight Products listed are the preferred Products but other Products may be considered.

Delivery

TEP will entertain Proposals at the following delivery points: Vail 345 kV switchyard and Saguaro 500 kV switchyard. Sellers shall specify the proposed point(s) of delivery. TEP prefers to take delivery at the aforementioned locations but will consider deliveries at other reasonably local delivery points, such as: Palo Verde 500 kV, San Juan 345 kV, Four Corners 345 kV switchyards. Other points will be considered in the process with the Bidder responsible for establishing that an alternative delivery point will serve TEP's needs.

Product 1 – Firm Energy (6x16)

TEP will accept proposals for a **Firm Energy standard 6x16 product**, hours ending 0700 - 2200 PPT Monday through Saturday excluding North American Electric Reliability Council (NERC) holidays. In addition TEP will also consider a **Firm Energy 7x16 product**, hours ending 0700 - 2200 PPT Monday through Sunday.

Firm Energy as is defined in the attached EEI Master Power Purchase & Sale Agreement (“EEI”), and Western Systems Power Pool Agreement (“WSPP”), listed on the RFP Website (referred to as “Master Agreements”).

• **Price**

Price should be structured as \$/MWh, or alternatively bid as a heat rate (Btu/kW) based on San Juan Gas Daily Index.

Product 2 – Firm Energy (“super peak”)

TEP will accept proposals for a **Firm Energy “super peak” 6x8 product**, hours ending 1300 - 2000 PPT Monday through Saturday excluding NERC holidays. In addition TEP will also consider a **Firm Energy “super peak” 6x10 product**, hours ending 1200 - 2100 PPT Monday through Saturday.

Firm Energy as is defined in the attached EEI Master Power Purchase & Sale Agreement (“EEI”), and Western Systems Power Pool Agreement (“WSPP”), listed on the RFP Website (referred to as “Master Agreements”).

• **Price**

Price should be structured as \$/MWh, , or alternatively bid as a heat rate (Btu/kW) based on San Juan Gas Daily Index.

Product 3 – Firm Energy (7x24)

TEP will accept proposals for a **Firm Energy standard 7x24 product**, all hours, PPT Monday through Sunday.

Firm Energy as is defined in the attached EEI Master Power Purchase & Sale Agreement (“EEI”), and Western Systems Power Pool Agreement (“WSPP”), listed on the RFP Website (referred to as “Master Agreements”).

- **Price**

Price should be structured as \$/MWh, or alternatively bid as a heat rate (Btu/kW) based on San Juan Gas Daily Index.

Product 4 – Firm Energy Call Option (standard)

TEP will accept proposals for a **Day Ahead Call Option** for a **Firm Energy standard 6x16 product**, hours ending 0700 - 2200 PPT Monday through Saturday excluding NERC holidays. In addition TEP will consider a **Day Ahead Call Option** for a **Firm Energy “super peak” 6x8 product**, hours ending 1300 - 2000 PPT Monday through Saturday excluding NERC holidays. TEP must pre-schedule the called energy prior to 6:30 a.m. Pacific Prevailing Time on the day before delivery.

Firm Energy as is defined in the attached EEI Master Power Purchase & Sale Agreement (“EEI”), and Western Systems Power Pool Agreement (“WSPP”), listed on the RFP Website (referred to as “Master Agreements”).

- **Price**

Energy Cost will be based on a heat rate of 10,000 BTU/kWh, the Gas Daily San Juan Daily Index and be structured as \$/MWh.

Capacity Cost will be bid as \$/ kW*month for the term proposed.

Product 5 – Firm Energy Call Option (shaped)

TEP will accept proposals for a **Day Ahead Call Option** for a **Firm Energy shaped 6x16 product**, hours ending 0700 - 2200 PPT Monday through Saturday. To be entitled to receive capacity and associated energy for any day under this agreement, TEP must schedule a 50% capacity factor for such day. TEP must pre-schedule the called energy prior to 6:30 a.m. Pacific Prevailing Time on the day before delivery.

Firm Energy as is defined in the attached EEI Master Power Purchase & Sale Agreement (“EEI”), and Western Systems Power Pool Agreement (“WSPP”), listed on the RFP Website (referred to as “Master Agreements”).

- **Price**

Energy Cost will be based on a heat rate of 10,000 BTU/kWh, the Gas Daily San Juan Daily Index and be structured as \$/MWh.

Capacity Cost will be bid as \$/ kW*month for the term proposed.

Product 6 – Firm Capacity with Dispatchable Firm Energy

This product provides firm capacity with dispatchable **Firm Energy** to be delivered within 10 minutes as specified by TEP pursuant to the Agreement (EEI/WSPP).

- **Price**

Energy Cost will be based on a heat rate of 8,000 BTU/kWh, the Gas Daily San Juan Daily Index and be structured as \$/MWh.

Capacity Cost will be bid as \$/ kW*month for the term proposed.

Product 7 – Unit Contingent Capacity with Dispatchable Unit Contingent Energy

This product provides unit contingent capacity with dispatchable **Unit Contingent Energy** to be delivered within 10 minutes as specified by TEP pursuant to the Agreement (EEI/WSPP).

Unit Contingent Energy as is defined in the attached EEI Master Power Purchase & Sale Agreement (“EEI”), and Western Systems Power Pool Agreement (“WSPP”), listed on the RFP Website (referred to as “Master Agreements”).

TEP will require an **Availability** of 97% for Summer Periods (June-Oct) and 92% for Winter Periods (Nov-May). Availability will be defined as the period hours the full contracted MW’s are available to TEP divided by the contracted period hours. For each 1% lower than Guaranteed Availability during the Summer period, the Capacity payment will be reduced by 2.0%. For each 1% lower than Guaranteed Availability during the Winter period, the Capacity payment will be reduced by 1.0%. No maintenance may be scheduled during the Summer Period. Winter Period maintenance hours will be subtracted from the contracted period hours in calculating winter Availability. Hours supplied from alternate sources by Bidder during unit outages will be counted as available hours provided that the alternate energy supplied is unit contingent or firm.

• **Price**

Energy Cost will be based on a heat rate of 8,000 BTU/kWh, the Gas Daily San Juan Daily Index and be structured as \$/MWh.

Capacity Cost will be bid as \$/kW*month for the term proposed.

Product 8 – RMR Capacity within TEP service area

This product provides Unit Contingent Capacity with dispatchable unit contingent energy to be delivered as specified by TEP. This capacity will be dispatched during times that local generation is needed in accordance with TEP operating criteria.

The physical location of RMR Capacity would be on TEP’s 138 kV or 46 kV system. This system is within the electrical boundary of Vail 345 kV substation, South Loop 345 kV substation and the Tortolita 500 kV substation.

• **Price**

Energy Cost will be based on a heat rate of 8,000 BTU/kWh, the Gas Daily San Juan Daily Index and be structured as \$/MWh.

Capacity Cost will be bid as \$/kW*month for the term proposed.

II. Scheduling and Dispatching

Each of the products must have the ability to be scheduled in accordance with the requirements of the Western Electric Coordination Council (WECC).

III. Credit Terms and Conditions

TEP has the unilateral right to evaluate and determine the ability of the Seller to perform. Please refer to the Master Agreements on the TEP Wholesale RFP website for credit requirements.

For questions regarding credit terms please contact Ms. Barbara McCormick at (520) 884-3620.

IV. Proposal Terms and Conditions

TEP will consider Proposals for the products described herein that have a term up to six (6) years beginning June 1, 2003 and ending December 31, 2008. Proposals may be tendered for any of the following: (a) individual year, entire six (6) year period, or any combination of calendar yearly periods; and (b) quarterly periods. Proposals of a longer term may be considered.

Bids will be evaluated based on price, terms, conditions, products proposal and the creditworthiness of the Seller. The quantity of capacity and/or energy will be finalized during negotiations with each Seller.

TEP is under no obligation to accept any Proposal by any Seller, and shall make a determination of which Proposal (or Proposals) meet its need for energy and capacity based solely upon its judgment of the value of the Proposals received in response to this RFP.

V. Master Agreement Evaluation and Negotiation

TEP will evaluate Proposals and enter into separate negotiations with selected Sellers. Upon successful negotiation and mutual agreement, TEP and Seller(s) will enter into an agreement. TEP may require certain agreements be subject to ACC review and approval (as described in Section VI). Either the EEI or WSPP Agreement may be used as the underlying Master Agreement (the underlying EEI and WSPP Agreements may be viewed or downloaded from TEP's website). TEP's Master Agreements are attached as Attachment 1 (EEI Cover Sheet terms and conditions) and Attachment 2 (WSPP Agreement special terms and conditions). Seller must use TEP's Master Agreement(s) templates and Seller must include any proposed revisions to TEP's Master Agreement(s) (shown in red-line) as part of its Proposal package. TEP will evaluate all proposed revisions but is under no obligation to accept any revisions.

VI. ACC Review and Approval:

TEP may require purchase agreements entered into by TEP and Seller to be subject to and contingent upon ACC approval and authorization. TEP will notify seller of any such contingency prior to the signing of Master Agreements. Pursuant to the procedure established in the ACC Track B Final Order TEP may submit transactions and related purchase agreements entered into as result of Proposal(s) received in response to this RFP for review, assessment, and recommendation to the ACC for final review and approval.

VII. Solicitation Cost

The cost of conducting each solicitation is a business expense to be borne by all bidders in a fair and equitable manner. To that end, a bid fee of \$10,000 per bidder will be required. Bidders may submit multiple proposals and the bid fee covers all proposals made by that bidder. To the extent that bid fees collected exceed the incremental expenses incurred by TEP to conduct the solicitation, such excess is to be refunded to all non-winning bidders pro rata up to the amount of the bid fee actually paid by the bidder. A company check must included with any bidder package sent to TEP.

VIII. Additional Information and Confidentiality

Until Proposals are accepted and a Master Agreement is executed, TEP and Sellers agree that the content of their Proposal(s) and the Master Agreement Cover Sheet(s) terms and conditions shall remain confidential. A Confidentiality Agreement is on the TEP Wholesale RFP website and must be signed and included with proposal(s). Neither Seller nor TEP will disclose the content of that Proposal without the consent of the other; provided, however, notwithstanding the forgoing, Sellers agree that TEP may submit the Seller's Proposal(s) to the ACC staff and Independent Monitor provided that TEP requests confidential treatment for such proposal. If either Party is compelled by court order, the ACC, the FERC, or other regulatory agency or regulatory requirement or other legal process, binding on such Party, to disclose such confidential information, such Party shall provide advance written notice to the other Party and, at the expense of the other Party, shall cooperate fully in allowing such Party to obtain a protective order or other means of protecting its interests.

IX. TEP's Reservation of Rights

TEP RESERVES THE RIGHT AT ANY TIME, IN ITS SOLE DISCRETION, TO ABANDON THIS RFP PROCESS, TO CHANGE THE BASIS FOR EVALUATION OF PROPOSALS, TO TERMINATE FURTHER PARTICIPATION IN THIS PROCESS BY ANY PARTY, TO ACCEPT ANY PROPOSAL OR TO ENTER INTO ANY DEFINITIVE AGREEMENT, TO EVALUATE THE QUALIFICATIONS OF ANY SELLER OR THE TERMS AND CONDITIONS OF ANY PROPOSAL, AND TO REJECT ANY OR ALL PROPOSALS, ALL WITHOUT NOTICE AND WITHOUT ASSIGNING ANY REASONS AND WITHOUT LIABILITY OF TEP OR ANY OF THEIR SUBSIDIARIES, AFFILIATES OR REPRESENTATIVES TO ANY SELLER. TEP SHALL HAVE NO OBLIGATION TO CONSIDER ANY PROPOSAL. TEP WILL NOT REIMBURSE SELLERS FOR THEIR EXPENSES UNDER ANY CIRCUMSTANCES, REGARDLESS OF WHETHER THE RFP PROCESS PROCEEDS TO A SUCCESSFUL CONCLUSION OR IS ABANDONED.

X. **Proposal Submission**

All Proposals will be sent as a hard copy with an electronic version (CD) enclosed.

Proposals should be addressed to:

**Tucson Electric Power Company
Attn: Michael Bowling
3950 E. Irvington Road, SC115
Tucson, Arizona 85714**

Please verify that you have included all necessary information and forms as part of your Proposal.
Have you included the following in your Proposal package?

- Signed Confidentiality Agreement
- Bidder fee
- Standard Pricing and Term Sheet
- Product type
- Quantity
- Term
- Delivery point
- Whether product is provided from existing or new facility
- Environmental information

ELECTRIC PROCUREMENT - REQUEST FOR PROPOSAL

Tucson Electric Power Company

Dated: 05/25/03

APPENDIX A

SCHEDULE FOR RFP PROCESS

Products 1 - 3

3/17	TEP Issues RFP
4/23	Proposal Receipt Deadline
4/24	TEP completes Proposal evaluation
4/25	TEP notifies winners
5/2	TEP and Sellers(s) sign Master Agreements

Products 4 - 8

3/17	TEP Issues RFP
4/4	Proposal Receipt Deadline
4/24	TEP evaluates Proposals
4/25	TEP notifies winners
5/2	TEP and Sellers(s) sign Master Agreements

APPENDIX B

DEFINITIONS:

ACC: The Arizona Corporation Commission.

TEP Service Area: The system of transmission lines and associated facilities that have been placed under the Operational Control of the TEP.

EEI Agreement: The TEP standard Cover Sheet to the Edison Electric Institute Master Power Purchase and Sale Agreement along with the underlying Edison Electric Institute Master Power Purchase and Sale Agreement.

FERC: The Federal Energy Regulatory Commission.

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

Independent Monitor: Person selected by ACC Staff to oversee the conduct of the Solicitation.

NERC: North American Electric Reliability Council.

On-Peak: On-Peak hours are defined as hours ending 0700 to 2200 Monday through Saturday, Pacific Prevailing Time.

Off-Peak: Off-Peak hours are defined as all hours on Sunday, all hours on a NERC (North American Reliability Council or any successor organization) holiday, and hours ending 0100 to 0600 and hours ending 2300 to 2400 for Monday through Saturday.

TEP OATT: The FERC-approved and effective TEP Open Access Transmission Tariff as modified or superseded from time to time.

Seller: An entity, which submits one or more, Proposals in response to this RFP.

WSPP Agreement: TEP's Special Terms and Conditions to the Western System Power Pool Agreement along with the underlying Western Systems Power Pool Agreement.

WECC: The Western Electric Coordination Council.

ELECTRIC PROCUREMENT - REQUEST FOR PROPOSAL

Tucson Electric Power Company

Dated: 05/25/03

Product Tables

TEP may request that Seller reduce the amount(s) in a particular capacity block in its Proposal. Seller should indicate in its Proposal whether it would accept such a reduction and whether any price change would apply. TEP will interpret a Seller's failure to indicate their willingness to accept a reduction as an indication that the Seller will accept such reduction at the original Price Proposed. The Product tables below should be reproduced for variations of the same product.

The table below profiles **Product 1 - Firm Energy 6x16**. The table may be filled partially.

	June		July		August		September		October	
2003	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2004	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2005	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2006	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2007	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2008	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW

Please check box if monthly offers above are part of a "all or nothing" strip.

Delivery point:

Saguaro 500 kV Switchyard
 Four Corners 345 kV Switchyard
 San Juan 345 kV Switchyard
 Vail 345 kV Switchyard
 Palo Verde 500 kV Switchyard
 other :

The table below profiles **Product 2 - Firm Energy "super peak"**. The table may be filled partially.

	June		July		August		September		October	
2003	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2004	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2005	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2006	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2007	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2008	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW

Please check box if monthly offers above are part of a "all or nothing" strip.

Delivery point:

Saguaro 500 kV Switchyard
 Four Corners 345 kV Switchyard
 San Juan 345 kV Switchyard
 Vail 345 kV Switchyard
 Palo Verde 500 kV Switchyard
 other :

The table below profiles **Product 3 - Firm Energy 7x24**. The table may be filled partially.

	June		July		August		September		October	
2003	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2004	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2005	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2006	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2007	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW
2008	\$	MW	\$	MW	\$	MW	\$	MW	\$	MW

Please check box if monthly offers above are part of a "all or nothing" strip.

Delivery point:

Saguaro 500 kV Switchyard
 Vail 345 kV Switchyard

Four Corners 345 kV Switchyard
 Palo Verde 500 kV Switchyard

San Juan 345 kV Switchyard
 other :

The table below profiles **Product 4 - Firm Energy call option**. The table may be filled partially.

	June		July		August		September		October	
	\$/kW month	MW								
2003										
2004										
2005										
2006										
2007										
2008										

Please check box if monthly offers above are part of a "all or nothing" strip.

Delivery point:

Saguaro 500 kV Switchyard
 Vail 345 kV Switchyard

Four Corners 345 kV Switchyard
 Palo Verde 500 kV Switchyard

San Juan 345 kV Switchyard
 other :

The table below profiles **Product 5 - Firm Energy call option (shaped)**. The table may be filled partially.

	June		July		August		September		October	
	\$/kW month	MW								
2003										
2004										
2005										
2006										
2007										
2008										

Please check box if monthly offers above are part of a "all or nothing" strip.

Delivery point:

Saguaro 500 kV Switchyard
 Vail 345 kV Switchyard

Four Corners 345 kV Switchyard
 Palo Verde 500 kV Switchyard

San Juan 345 kV Switchyard
 other :

The table below profiles **Product 6 - Firm Capacity with Dispatchable Firm Energy**. The table may be filled partially.

	June - October		Calendar year	
	\$/kW month	MW	\$/kW month	MW
2003				
2004				
2005				
2006				
2007				
2008				

Delivery point:

Saguaro 500 kV Switchyard
 Vail 345 kV Switchyard

Four Corners 345 kV Switchyard
 Palo Verde 500 kV Switchyard

San Juan 345 kV Switchyard
 other :

The table below profiles **Product 7 – Unit Contingent Capacity with Dispatchable Unit Contingent Energy**. The table may be filled partially.

	June - October		Calendar year	
	\$/kW month	MW	\$/kW month	MW
2003				
2004				
2005				
2006				
2007				
2008				

Delivery point:

Saguaro 500 kV Switchyard
 Vail 345 kV Switchyard

Four Corners 345 kV Switchyard
 Palo Verde 500 kV Switchyard

San Juan 345 kV Switchyard
 other :

The table below profiles **Product 8 – RMR Capacity within TEP service area**. The table may be filled partially.

	June - October		Calendar year	
	\$/kW month	MW	\$/kW month	MW
2003				
2004				
2005				
2006				
2007				
2008				

Delivery point:

Saguaro 500 kV Switchyard
 Vail 345 kV Switchyard

Four Corners 345 kV Switchyard
 Palo Verde 500 kV Switchyard

San Juan 345 kV Switchyard
 other :

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 9

**APS UNIVERSE OF POTENTIAL TRACK B BIDDERS
PRE-SOLICITATION**

APS UNIVERSE OF POTENTIAL TRACK B BIDDERS
PRE-SOLICITATION

Abitibi Consolidated Inc.
Allegheny Energy Supply Company
Arizona Electric Power Co.
Avista Energy, Inc.
Black Hills Power, Inc.
Bonneville Power Adm.
BP Energy Company
California Department of Water Resources
Calpine Energy Services
City of Anaheim
City of Burbank Water and Power
City of Vernon
ConocoPhillips Company
Constellation Power Source
Coral Power, L.L.C.
City of Los Angeles Department of Water & Power
Deseret Generation and Transmission Cooperative
Duke Energy Trading & Marketing
Dynegy Power Marketing, Inc.
Edison Mission Marketing & Trading
El Paso Electric
El Paso Merchant Energy, L.P.
Entergy-Koch Trading, LP
FPL Energy Power Marketing Inc.
Idaho Power Company
Imperial Irrigation District
J. Aron & Company
MIECO, Inc.
Mirant Americas Energy Marketing, LP
Morgan Stanley Capital Group, Inc.
Pace Global Energy Services
PacifiCorp
PPM Energy, Inc.
PG&E National Energy Group/Harquahala Generating Company
Phelps Dodge Energy Services, LLC
Pinnacle West Energy Corporation
Portland General Electric Co.
Powerex Corp.
PPL EnergyPlus, LLC
Public Service Company of New Mexico
Reliant Energy Sources
RWE Trading Americas Inc.

Salt River Project
Seattle City Light
Sempra Energy Trading Corp./San Diego Gas & Electric Co.
Sierra Pacific Power Co./ Nevada Power Co.
Silicon Valley Power - City of Santa Clara
SouthWestern Power Group II LLC
TECO Energy Source, Inc.
Texaco Energy Services
TransAlta Energy Marketing, Inc.
Tri-State Generating and Transmission Association
Tucson Electric Power
TXU Energy Trading Company LP
UBS AG
WAPA - Colorado River Storage Project Management Center
WAPA - Desert Southwest Region
Wellton-Mohawk Generating Facility
Williams Energy Marketing & Trading Company
Xcel Energy Services, Inc.

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 10

APS WEB SITE SAMPLE PAGES



Competitive Power Procurement

ABOUT APS LINKS

Welcome Harold Judd

BIDDER INFO ENERGY NEEDS CALENDAR Q&A

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Bidder Information

Welcome to the APS Track B Bidder Information Page. Below is a list of important documents we believe should provide y information about the bid solicitation and evaluation process. Please remember that APS may periodically update these documents as required, but in doing so, we'll make certain you're provided an email message advising you of those chan

Simply double click on the attached Icon in order to access each page. For quick reference, you will find the following info on each page:

-  [03/18/03 ACC Track B Order](#) - link to Arizona Corporation Commission Website.

-  [Bidders List](#)

-  [Final Request for Proposal](#) - March 21, 2003
-  [Final Request for Proposal](#) - March 21, 2003

-  [Final EEI Master Agreement](#) - March 21, 2003
-  [Final EEI Master Agreement](#) - March 21, 2003

-  [Confidentiality Agreement](#)
-  [Confidentiality Agreement](#)

-  [Respondent Certification](#)
-  [Alternative Respondent Certification](#)
-  [Respondent Certification](#)
-  [Alternative Respondent Certification](#)

-  [APS Standards of Conduct for the Track B Competitive Procurement Process](#)

-  [Code of Conduct](#)

-  [Credit - Independent Amount Matrixes](#)

-  [Credit - Guaranty Format](#)

-  [03/05/03 Bidder Conference Presentation](#)

If you have any questions regarding the attached documents, or have problems viewing them, please [contact us](#).

Contact the ACC's Independent Monitors: [Harry Judd](#) or [Alan Kessler](#)

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Auction Calendar

The attached Calendar depicts important dates in conjunction with the APS Track B bid solicitation and evaluation process

It should be noted this Calendar is subject to change and APS recommends each qualified bidder check this page daily for changes and/or additions. APS is not liable for any real or perceived harm realized by a potential or qualified bidder as a result of changes to the Calendar.

RFP Schedule		
Phase I - Calendar 2003	Day of Week	Date (except as noted, close business - 5:00 p.m. M)
Website Rollout/Draft RFP and EEI	Friday	February 28, 2003
First RFP Bidder Conference	Wednesday	March 5, 2003
Final Date for Written Comments and/or Questions on RFP and EEI Master Agreement	Wednesday	March 19, 2003
Second Bidders Conference	Wednesday	March 19, 2003
Final RFP and EEI Master Agreement Issued	Friday	March 21 2003
Notice of Intent to Respond to RFP Due	Friday	March 28, 2003
Sealed Proposal(s) Due Date for Group A Bids and Group B Bids (excluding <u>only</u> pricing for fixed price Proposals)	Friday	April 4, 2003
Due Date for Submitting Pricing for Fixed Price Proposals for Group A Bids and Group B Bids	Thursday	April 24, 2003
Withdraw Deadline for Fixed Price Group A and Group B Proposals	Friday	April 25, 2003
Begin to Notify Respondents of Short List (includes both Group A and Group B Bids)	Monday	April 28, 2003 (on or b Noon, 12:00 p.m. MST)
Notification of Initial Successful Respondent(s) for Fixed Price Group A Bids and Group B Bids	Monday	April 28, 2003 (on or b Noon, 12:00 p.m. MST)
Final Evaluation Complete/Successful Respondent(s) Notification for All Group A and Group B Bids		April 28, 2003 through 22, 2003
Estimated Commencement of Service Under Contract	Tuesday	July 1, 2003

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Energy Needs

In compliance with the Arizona Corporation Commission, APS will acquire a certain level of capacity and energy through the Track B competitive bid process effective July 1, 2003.

Our goal in Track B is to open up the market place up to as many qualified bidders as possible as we seek specific products from our customers. The attached documents provide data on key issues in the RFP that will assist you in developing a usable proposal for APS and competitive bid for Track B.

 [OASIS](#) - APS document list

 [Network Transmission Assessment](#) - provides delivery point location for energy into APS.

 [Attachment A](#) - 500 KV Line Rating Study Report

 [Attachment B](#) - EHV System

 [APS Reliability Must Run Analysis](#)

 [APS Load and Resource Plan](#)

 [Staff Revised Contestable Loads Estimate Generic Electric Restructuring - TRACK B](#)

 [APS Market Rate Tariff](#)

Specific information provided by APS in each of these documents is subject to change as market conditions warrant. APS reserves the right to modify this information as required. Qualified bidders involved in the Track B competitive bid process will be notified of changes as they occur.

If you have any questions regarding the attached documents, or have problems viewing them, please [contact us](#).

Contact the ACC's Independent Monitors: [Harry Judd](#) or [Alan Kessler](#)

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Competitive Power Procurement

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BIDDER INFO ENERGY NEEDS CALENDAR Q&A

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Q&A

NOTICE: Thank you for your questions and comments. Non-confidential questions and comments submitted to date by Respondents (without the submitter's name) are posted below. The APS Procurement Team is in the process of reviewing questions and comments submitted by various Respondents and will post any responses to those questions and comment page as soon as they are developed. Any responses posted by APS may be updated, supplemented or revised by APS.

March 20, 2003

We appreciate your questions and comments yesterday at the Second Bidders Conference. Although we are thorough reviewing and processing all of your questions, due to the volume of questions raised at the Conference and the corresponding number of questions we have received recently on the website, we will not be able to specifically re your questions. Similarly, we are in the process of revising the draft RFP and draft EEI to include some of your cor both from yesterday and from the website. We anticipate posting another draft of the RFP and EEI by mid-day Fri March 21, 2003. If after our final posting you still have technical or substantive questions about the documents, w encourage you to post those questions on the website thereafter. Once again we appreciate your input and contril this process.

 [**Initial Response to Inquiries Regarding Credit and Other RFP and EEI Master Agreement Issues**](#)

 [**Questions Regarding Draft EEI Master Agreement and Draft RFP**](#)

 [**Questions Regarding March 21, 2003 EEI Master Agreement and RFP**](#)

Contact the ACC's Independent Monitors: [Harry Judd](#) or [Alan Kessler](#)

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PRELIMINARY DRAFT – SUBJECT TO FURTHER REVISIONS

**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 11

APS

**Master Power
Purchase & Sale
Agreement**

Master Power Purchase & Sale Agreement



PRELIMINARY DRAFT – SUBJECT TO FURTHER REVISIONS
MASTER POWER PURCHASE AND SALES AGREEMENT

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**PRELIMINARY DRAFT – SUBJECT TO FURTHER REVISIONS
MASTER POWER PURCHASE AND SALE AGREEMENT**

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 04/25/00) ("*Master Agreement*") is made as of the following date: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." This *Master Agreement* shall cover only the sales and purchases of energy executed in furtherance of the competitive bidding process dated ----- by and through which APS may acquire energy and/or capacity and which has been developed by and through the Arizona Corporation Commission. The terms herein shall not replace, supercede or amend any prior or subsequent agreements for the purchase or sale of energy and/or any other commodity between the parties hereto. The Parties to this *Master Agreement* are the following:

Name **ARIZONA PUBLIC SERVICE COMPANY**, a
Corporation organized under the laws of the State of
Arizona ("APS" or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: 400 North 5th Street

Street: _____

City: Phoenix,

Zip: 85004

City: _____ Zip: _____

Attn: Contracts Department

Attn: Contract Administration

Phone: (602) 250-2780

Phone: _____

Facsimile: (602) 250-3199

Facsimile: _____

Duns: 00-690-1995

Duns: _____

Federal Tax ID Number: 86-0011170

Federal Tax ID Number: _____

Invoices:

Attn: Energy Settlement

Invoices:

Attn: _____

Phone: (602) 250-3150

Phone: _____

Facsimile: (602) 250-2325

Facsimile: _____

Scheduling:

Attn: N/A

Scheduling:

Attn: _____

Phone: (602) 250-4601

Phone: _____

Facsimile: (602) 250-3199

Facsimile: _____

Payments:

Attn: Energy Settlements

Payments:

Attn: _____

Phone: (602) 250-3150

Phone: _____

Facsimile: (602) 250-2325

Facsimile: _____

Wire Transfer:

BNK: Wells Fargo Bank

Wire Transfer:

BNK: _____

ABA: 121 000 248

ABA: _____

ACCT: 415 954 0921

ACCT: _____

Credit and Collections:

Attn: Credit Risk Manager

Credit and Collections:

Attn: _____

Phone: (602) 250-3433

Phone: _____

Facsimile: (602) 250-2663

Facsimile: _____

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With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Law Department, Mail Station 8695
Phone: (602) 250-2052
Facsimile: (602) 250-2663

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff TBD Dated _____ Docket Number ER

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

Cross Default for Party A:

Party A: _____ Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B:

Party B: _____ Cross Default Amount means an amount equal to three percent (3%) of shareholders' equity (howsoever described) of Party B as shown on the most recent annual audited financial statements of Party B.

Other Entity: Party B's Guarantor, if any Cross Default Amount means an amount equal to three percent (3%) of shareholders' equity (howsoever described) of Party B's Guarantor as shown on the most recent annual audited financial statements of Party B's Guarantor.

5.6 Closeout Setoff

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

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

Option C (No Setoff)

Article 8

8.1 Party A Credit Protection:

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Credit and Collateral Requirements

(a) Financial Information:

- Option A: Unless guaranteed, in which case Option B is applicable with the Guarantor specified.
- Option B Specify: _____
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Maximum Collateral Threshold:

Credit Rating* (S&P / Moody's)	Collateral Threshold
AA- / Aa3 or better	\$100 Million
A- to A+ / A3 to A1	\$50 Million
BBB+ / Baa1	\$20 Million
BBB / Baa2	\$10 Million
BBB- / Baa3	\$5 Million
Below BBB- / Below Baa3	Zero

*Credit Rating, as that term is used herein, shall mean the Credit Rating in effect for Party B or Party B's Guarantor at any time during the term of any Transaction. In determining the Credit Rating, APS shall utilize the better of the credit ratings for long term senior unsecured debt as published by S&P and Moody's or, if not rated by at least one of these rating agencies, APS's internal credit rating as determined by APS's credit department.

Party B's Collateral Threshold shall be zero, however, if an Event of Default or Potential Event of Default with respect to Party B or Party B's Guarantor has occurred and is continuing.

If the amount of the guarantee provided by Party B's Guarantor is less than the Maximum Collateral Threshold amount as described above, then the Collateral Threshold amount applicable for Party B shall be the guarantee amount provided by Party B's Guarantor.

In addition to any and all other requirements set forth herein, an Independent Amount, whether in the form of a Letter of Credit or a cash deposit, shall be required of Party B within three (3) Business Days of the execution of this Agreement if Party B does not have a credit rating of BBB or better by S&P or Baa2 or better by Moody's. If unrated by both agencies, Party B's APS-determined internal rating will be used to

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establish the appropriate level of Party B's Independent Amount, if any. The following matrix shall be used in determining the appropriate Independent Amount for Party B:

Party B Independent Amount:

<u>Credit Rating* (S&P / Moody's)</u>	<u>Independent Amount Required for Party B</u>
BBB / Baa2	NONE
BBB- / Baa3	\$ 2.50 / Mwh
BB- to BB+ / Ba1 to Ba3	\$ 3.00 / Mwh
B- to B+ / B1 to B3	\$ 3.50 / Mwh
Below B- / Below B3	\$ 4.00 / Mwh

*Credit Rating, as that term is used herein, shall mean the Credit Rating in effect for Party B or Party B's Guarantor (if any) at any time during the term of any Transaction. In determining the Credit Rating, APS shall utilize the better of the credit ratings for long term senior unsecured debt as published by S&P and Moody's or, if not rated by at least one of these rating agencies, APS's internal credit rating as determined by APS's credit department.

Failure by Party B to timely provide the appropriate Independent Amount to APS shall be considered an Event of Default and APS shall be entitled to all relating available remedies.

The Independent Amount will be reviewed every six (6) months from the commencement of power deliveries and will be reduced to reflect the remaining amount of power to be delivered. For capacity and energy contracts with variable MWh's, the number of MWh's in the term of the agreement will be calculated using the maximum capacity in MW of the contract awarded and any estimated capacity factor.

In the event that a Respondent with an initial rating of better than BBB / Baa2, and thus a Respondent who is not initially required to post an Independent Amount, experiences a ratings downgrade to BBB- / Baa3 or below before it has completed its contractual obligations, that Respondent will be required to immediately supply the appropriate Independent Amount based on the undelivered amount of power and/or capacity. Similarly, if a Respondent has been required to post an Independent Amount, and experiences a ratings downgrade sufficient to require an increased Independent Amount, that Respondent will be required to immediately supply the appropriate Independent Amount based upon its revised credit rating and the corresponding undelivered amount of power and/or capacity. Conversely, if a Respondent which has posted an Independent Amount experiences a ratings upgrade, APS will return to the Respondent the excess amount (if any) held by APS based upon its revised credit rating and the corresponding undelivered amount of power and/or capacity.

Party B Rounding Amount: \$250,000

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(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating or Party B's Guarantor's Credit Rating falls below B- from S&P or B3 from Moody's or if Party B or Party B's Guarantor is not rated by either S&P or Moody's.

Other:

Specify: It shall be a Downgrade Event for Party B if, during the term of this Agreement, APS, in its reasonably exercised discretion, determines that the creditworthiness, financial responsibility or performance viability of Party B has become unsatisfactory.

(e) Guarantor for Party B: _____

Guarantee Amount: See Section 8.1(c) above.

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable*
- Applicable

* Except in the event Party B has, as of the date of execution of this Agreement, a Credit Rating of either A- or better by S&P or A3 or better by Moody's, in which case and for so long as Party B maintains such rating, the Collateral Threshold matrix applicable to Party B shall apply to Party A.

If applicable, complete the following:

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

Party A Independent Amount: \$ N/A

Party A Rounding Amount: \$ N/A

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(d) Downgrade Event:

- Not Applicable*
- Applicable

* Except in the event Party B has as of the date of execution of this Agreement a Credit Rating of either A- or better by S&P or A3 or better from Moody's, in which case and for so long as Party B maintains such rating, the Downgrade Event provision shall be applicable to Party A as follows: It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P and Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

If applicable, complete the following:

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

(e) Guarantor for Party A: NOT APPLICABLE

Guarantee Amount: NOT APPLICABLE

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

The following changes shall be applicable

Article One - General Definitions

Section 1.1: is amended to include "or a governmental entity" after the word "individual".

Section 1.3: is amended in its entirety to read as follows:

"Bankrupt" means, with respect to a Party, that such Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv)

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institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts. "

Section 1.4: is amended by adding the following after "holiday" in the second line: "or, if applicable, Canadian bank holiday".

Section 1.11: is amended by adding the following after "Party" in the third line: "after using commercially reasonable efforts to mitigate costs."

Section 1.12: is amended by deleting in the fourth line the word "issues" and replacing it with the word "issuer".

Section 1.23: is amended by inserting the following at the beginning of the second sentence: "Notwithstanding the foregoing,".

Section 1.27: is amended in its entirety to read as follows:

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. or Canadian commercial bank or a non-U.S. or non-Canadian bank with a U.S. branch with such bank having a rating of at least A- from S&P or A3 from Moody's and a stockholder's equity of at least USD \$3,000,000,000 as of December 31, 2002, in a form and in an amount acceptable to the Party in whose favor the letter of credit is issued. Cost of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Section 1.45: is amended by inserting the phrase ", excluding any Independent Amount." at the end of the definition.

Section 1.45: is amended by inserting the phrase "(subject to a form of account control agreement reasonably acceptable to both parties)" in the first line after the word "cash".

Section 1.46: is amended by adding before the period at the end thereof the following:

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“provided that the failure to comply with any requirement of this Agreement or a Transaction, including the requirements of Article 8, before the expiration of the time period expressly specified for such compliance in this Agreement or the Transaction, if any, shall not be considered a Potential Event of Default unless and until the applicable time period has expired without compliance”.

Section 1.50: is amended by deleting the reference to “Section 2.4” and replacing it with “Section 2.5”.

Section 1.51: is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point”; and (ii) inserting in the second line, the phrase “or at an alternate Delivery Point acceptable to Buyer in Buyer’s sole discretion” after the phrase “at Delivery Point”.

Section 1.53: is amended by (i) deleting the phrase “at the Delivery Point” in the second line, and (ii) deleting the phrase “at Seller’s option” in the fifth line and inserting in its place the following: “absent a sale, assuming a sale could not have been made in a commercially reasonable manner”.

Section 1.60: is amended by inserting the words “in writing” immediately following the words “agreed to”.

Section 1.62: The following definition is added as **Section 1.62:** ““Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's credit rating is lower than that of such Party immediately prior to such action.”

Article Two - Transaction Terms and Conditions

Section 2.1: is hereby amended by deleting the phrase in the second line “orally or, if expressly required by either Party with respect to a particular Transaction,”.

Section 2.3: is hereby amended by deleting the text in its entirety and substituting the following:

"Buyer shall confirm a Transaction by forwarding to Seller by facsimile within five (5) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer in writing of such objections within five (5) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Buyer fails to send a Confirmation within five (5) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Seller to Buyer. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller of such objections within five (5)

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Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Buyer and Seller each send a Confirmation and neither Party objects to the other Party's Confirmation within five (5) Business Days of receipt, Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Buyer's Confirmation was sent more than five (5) Business Days after the Transaction was entered into and (ii) Seller's Confirmation was sent prior to Buyer's Confirmation, in which case Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties."

Section 2.6: A new **Section 2.6** is added to Article Two, worded as follows:

"**2.6 No Oral Agreements or Modifications.** Notwithstanding any thing to the contrary in this Agreement, including in this Article Two, no Transaction or other binding commitment between the Parties shall be entered into unless such Transaction or commitment is in writing, including through electronic communication, and signed by both Parties, and this Agreement and any and all Transactions may not be orally amended or modified, including by Recording pursuant to Section 2.5."

Article Three - Obligations and Deliveries

Section 3.4: A new **Section 3.4** is added to Article Three, worded as follows:

"**3.4 Regulatory Approval Provisions.** The parties expressly agree and acknowledge that this Agreement is executed in furtherance of the competitive bidding process dated March 14, 2003, by and through which APS may acquire energy and/or capacity and which has been developed by and through the Arizona Corporation Commission (the "ACC"). For Transactions which include deliveries on or after January 1, 2006, APS will file with the ACC an application for approval and full cost recovery by APS for such Transactions within sixty (60) days after acceptance of the Transaction (the "Request for Approval"). If the ACC has not issued a final order expressly approving full recovery of all costs incurred by APS in such Transactions within twelve (12) months of the submission of the Request for Approval either Party may, at its option, terminate the Transaction as to any and all deliveries on or after January 1, 2006 without further liability.

Section 3.5: A new **Section 3.5** is added to Article Three worded as follows:

"**3.5 Failure to Provide Minimum Capacity and/or Power for Capacity, System Firm and/or Unit Firm Products.** If Party B is supplying Capacity, System Firm and/or Unit Firm products, Party B must meet the minimum Equivalent Availability Factor, as that term is defined in the NERC Generating Unit Availability Data System ("GADS"), (the "Availability Factor") which is established in the Confirmation of the Transaction for each period (specifically, on-peak, off-peak and super-peak) of each month throughout the proposed Delivery Period. If Party B falls below the minimum Availability Factor during any period of any month during the term of the Transaction under this Agreement, except in the event that such failure is excused by Force

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Majeure, it will be responsible to APS for the Accelerated Payment of Damages as described in Article 4.1 of this Agreement, specifically to include the highest cost Replacement Price incurred by APS in obtaining substitute power and/or capacity up to that minimum Availability Factor for each period of each month.

Article Four - Remedies for Failure to Deliver or Receive

Section 4.1: is amended by including the following paragraph:

“In the event Seller’s Failure is related to the failure to meet the minimum monthly Availability Factor, including as described in Section 3.4 of this Agreement, Buyer shall be permitted to use the highest of the actual costs incurred in obtaining replacement power during each of the periods in which Seller failed to meet the minimum monthly Availability Factor as its Replacement Price.”

Section 4.3: A new **Section 4.3** is added to Article Four, worded as follows:

“4.3 **Suspension of Performance.** Notwithstanding, and in addition to the remedies provided pursuant to Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days, and such failure is not excused under the terms of this Agreement, by the other Party’s failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of 31 days or less, the performing Party may resume performance at the end of the term of such replacement contract. Remedies available under this provision to the performing Party are in addition to, not in replacement for, other remedies specified in this Agreement.”

Article Five - Events of Default; Remedies

Section 5.1(b): is amended by adding at the end of that paragraph “, if such failure is not remedied within three (3) Business Days.”

Section 5.1(f): is amended in its entirety as follows: “a Merger Event occurs with respect to such Party;”

Section 5.1(h)(i): is amended by adding at the end of that paragraph “, if such failure is not remedied within three (3) Business Days.”

Section 5.1: is amended by adding a new subsection “(i)” which reads as follows:

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(i) “if, during any consecutive ninety (90) day period under any Transaction, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, regarding which the Seller shall be deemed to be the Defaulting Party and regarding which Buyer shall also be entitled to its remedies under Section 4.1;

Section 5.1: is amended by adding a new subsection “(j)” which reads as follows:

(j) “if Party B has not timely provided or maintained the applicable Independent Amount.”

Section 5.2: is amended by adding the following sentence to the end of that provision:

“In the Event of a Default based upon Section 5.1 (d), (e), (h), (i) or (j) of this Agreement, if the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision of this Agreement to the contrary.”

Section 5.3: is amended by inserting the phrase:

“plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight,” between the words “that are due to the Non-Defaulting Party,” and “plus any and all other amounts” in the sixth line thereof.

Article Eight - Credit and Collateral Requirements

Section 8.1(c): shall be amended by deleting the phrase "plus Party B's Independent Amount, if any" wherever it occurs.

Section 8.1(c): shall be further amended by inserting the following additional paragraph:

“If at the time of the request by Party A for Performance Assurance, Party B's Collateral Threshold is determined by the guarantee amount when the Credit Rating applicable to Party B's Guarantor would otherwise have resulted in a higher Collateral Threshold, rather than providing Performance Assurance, Party B may at its option, increase the Collateral Threshold up to the maximum amount applicable to Party B's Guarantor based upon its Credit Rating. No such increase, however, shall become effective until Party B has provided to Party A a new guarantee or an amended guarantee executed by Party B’s Guarantor (in form and substance acceptable to Party A at its sole discretion). If the operation of the foregoing results in the sum of Party B Performance Assurance and Party B's Collateral Threshold being in excess of its Termination Payment (rounding upwards for any fractional amount to the next Party B Rounding Amount), Party B shall have the right to request that Party B’s Performance Assurance be reduced accordingly.”

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Section 8.4: a new **Section 8.4** is added to Article 8 as follows:

8.4 Disputes Regarding Requested Performance Assurance. For purposes of Sections 8.1 and 8.2 (Collateral Threshold), if a Party which has been asked to provide Performance Assurance pursuant to Section 8.1 or 8.2 (the "Posting Party"), disputes the other Party's (the "Requesting Party's") calculation of the amount of Performance Assurance due, then the Posting Party shall deliver to the Requesting Party the undisputed portion of the Performance Assurance requested within three (3) Business Days of the original request. Regarding the disputed portion of the Performance Assurance originally requested, the Parties agree to negotiate in good faith for a period not to exceed two (2) Business Days to determine the amount the Posting Party shall be required to deliver. If the Parties cannot mutually agree upon such amount after such time, then the Requesting Party shall obtain quotations from three independent brokers for the marked-to-market value of all of the relevant Transactions and shall provide copies of such quotations to the Posting Party. The Requesting Party shall then use the arithmetic average of the broker quotations to compute the amount of additional Performance Assurance, if any, due to the Requesting Party in addition to the undisputed portion of the Performance Assurance originally requested. The additional Performance Assurance, if any, shall be delivered to the Requesting Party within two (2) Business Days of the computation thereof.

Section 8.5: a new **Section 8.5** is added to Article 8 as follows:

8.5 Holding Posted Performance Assurance. To the extent the Pledgor provides Performance Assurance to the Secured Party pursuant to the terms of this Article Eight, the following provisions shall apply:

(a) The Secured Party shall exercise reasonable care to assure the safe custody of all Performance Assurance delivered by the Pledgor ("Posted Performance Assurance") to the extent required by applicable law, and, in any event, the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Performance Assurance, including without limitation, any duty to collect any distributions, or to enforce or preserve any rights pertaining thereto.

(b) In the event and for the duration that the Secured Party or its Guarantor (i) is either a Defaulting Party, or (ii) fails to maintain either a Moody's rating of Baa3 or a S&P rating of BBB-, at the request of the Pledgor the Secured Party shall promptly appoint a Custodian as its agent on its behalf to hold Performance Assurance, and promptly transfer to said Custodian said Performance Assurance. "Custodian" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000. The holding of Performance Assurance by a Custodian will be deemed to be the holding of that Performance Assurance by the Secured Party for which the Custodian is acting. The exposed party will not be liable for the acts or omissions of its Custodian so appointed.

(c) To the extent the Pledgor delivers Performance Assurance in the form of cash to the Secured Party and the Pledgor requests that such Performance Assurance be returned pursuant to Section

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8.1 or 8.2, as applicable then the Secured Party shall return such Performance Assurance to the Pledgor within three (3) Business Days of such Pledgor's request with interest at the Fed Funds Rate (as defined below) calculated from and including the date such Performance Assurance was delivered to the Secured Party to but excluding the date such Performance Assurance was returned to the Pledgor. "Fed Funds Rate" means, for any day, the "Federal Funds (Effective)" rate in effect for such day as displayed on Telerate page 118 for such day under the caption "Effective" or, if such rate is not so published for any day which is a Business Day, then the overnight Federal Funds Rate as reported in Federal Reserve Publication H.15-519 or any successor publication, published by the Board of Governors of the Federal Reserve System.

(d) To the extent the Pledgor requests that Performance Assurance be substituted, then the Pledgor shall be entitled to substitute one form of Performance Assurance for another form of Performance Assurance upon one (1) Business Day's notice to the Secured Party and the Secured Party shall take all reasonable steps at the Pledgor's expense to facilitate the substitution of such Performance Assurance.

Article Ten - Miscellaneous

Section 10.2: shall be amended by (a) inserting immediately following the words "other Party" in the second line the following: "(except in connection with the representations in clause (ix), which is made only by Party B); (b) inserting a new Section (xiii) as follows:

(xiii) in addition, Seller represents and warrants that if it is providing power and/or capacity through a specific generating unit for this Transaction, it has met and will continue to meet all applicable material federal, state, and local regulatory and environmental requirements, and possesses all required and relating certificates, permits, and approvals with respect to such generating unit. In the event Seller is notified that it is or may be in violation of any such requirements, certifications and/or permits it shall immediately notify APS and the ACC in writing of the same.

Section 10.4: shall be amended by inserting the phrase "To the extent permitted by law" at the beginning of each of the first two sentences.

Section 10.5: is hereby amended by deleting the text in its entirety and substituting the following:

10.5 Assignment. Neither Party shall assign this Agreement, or any Transactions or rights hereunder without the prior written consent of the other.

Section 10.8: shall be further amended by deleting its penultimate sentence in its entirety and replacing it with the following sentences: "The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months."

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Section 10.11: is amended by inserting the following after the word “law” in the sixth line:
“, including as necessary as to the tax treatment and tax structure of the transaction,”

Section 10.12: New **Section 10.12** shall be added to Article 10 as follows:

10.12 Venue. Each party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the County of Maricopa, State of Arizona; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum.

Section 10.13: New **Section 10.13** shall be added to Article 10 as follows:

10.13 FERC Standard of Review; Certain Covenants and Waivers.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, 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 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)(the "Mobile-Sierra" doctrine).

(b) The Parties, for themselves and their successors and assigns, (i) agree that the "public interest" standard described in Section 10.13(a) shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

(c) The Parties agree that in the event that any portion of this Section 10.13 is determined to be invalid, illegal or unenforceable for any reason, the provisions of Section 10.13(a) shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.”

Section 10.14: A new **Section 10.14** is added to Article 10 as follows:

10.14 Alternative Dispute Resolution. All disputes arising from any Transaction under this Agreement are subject to the provisions of this Section 10.14.

(a) Mediation. Any disputes between the Parties shall first be submitted to a non-binding mediation. The mediation shall be commenced by written request of either Party and shall begin within fifteen (15) calendar days of such written notice. The mediator shall be chosen by mutual agreement of the Parties within fifteen (15) calendar days of submission of the above written notice. Any discussions or materials presented during or for purposes of the mediation shall be confidential and governed by the limitations and restrictions of Rule 408 of the Federal and Arizona Rules of Evidence and/or any like regulatory rules. Any arbitration commenced under this Article shall not be initiated until

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following the completion of the mediation detailed herein; provided, however, that (i) in the event the Parties are unable to agree on a mediator despite their good faith efforts within fifteen (15) calendar days of submission of the above-written notice, or (ii) in the event such mediation extends for longer than sixty (60) days following commencement, then either Party may proceed directly to arbitration.

(b) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Agreement, or the breach thereof (collectively “Claims”), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10) calendar days after written notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related Transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute within six (6) months after his/her appointment and shall render the panel’s decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. The arbitration shall take place in Phoenix, Arizona. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed confidential.

(c) Judicial Relief. Either Party may petition a court of appropriate jurisdiction, as described in Section 10.14, for non-monetary relief relating to any claim of breach of this Agreement solely to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 10.14.

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Section 10.15: A new **Section 10.15** is added as follows:

10.15 Seller's Certification Not to Engage in Unlawful Market Manipulation Practices. Seller guarantees that it will not engage in unlawful market manipulation in either the solicitation process or in carrying out its obligations under the Agreement. Seller guarantees that it is not and shall not engage in any unlawful market manipulation in the Western Interconnection wholesale market of which Arizona is a part. Allegations of Seller's failure to abide by this written guarantee will constitute grounds for the institution of ACC proceedings to determine whether the Seller or its officers are in violation of this guarantee. If this guarantee against market manipulation is determined to have been violated, the ACC in its discretion shall be entitled to take appropriate action, after notice and opportunity for hearing, including but not limited to penalties, fines, rescission of the Agreement and/or exclusion of Seller from future solicitation processes.

Schedule M - Governmental Entity or Public Power System

N/A Party A is NOT a Governmental Entity or Public Power System

___ Party B is a Governmental Entity, Schedule M Applicable. In the event Party B is a Governmental Entity, the provisions of Schedule shall apply in their entirety.

Schedule M: Paragraph (B) which amends the definition of "Force Majeure" shall be further amended by inserting the words "or proprietary" between "government" and "capacity."

Schedule P - Products and Related Definitions

Schedule P: The paragraph relating to "Capacity" shall be amended by including the following after "Transaction" ", except, and notwithstanding the above, Seller shall be liable to APS for deliveries up to and including the assured minimum Availability Factor, as described in Section 3.5 of this Agreement.

Schedule P: The paragraph relating to "Capacity" shall also be amended by inserting at the close of that paragraph the following: "Performance by APS shall be excused without recourse, however, by the occurrence of a Regulatory Event as described in Section 3.4 of this Agreement."

Schedule P: The paragraph relating to "Capacity" shall be amended by inserting the following additional paragraph: "In addition, Party B shall specifically identify the unit(s) from which the Capacity will be provided, and affirmatively represent and warrant to APS that:

- (i) At the time of the execution of this Agreement, Party B has good defensible title, or valid and effective leasehold rights in the case of leased property, to the Applicable Generating Unit(s), free and clear of all liens, charges, claims,

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pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances that in the aggregate do not detract from or interfere with the ability of Party B to deliver the contract quantity of the Product. For purposes of this Schedule P, “Applicable Generating Unit(s)” shall mean the unit(s) designated by Party B to serve the power and/or Capacity to APS as agreed upon in the Transaction.

- (ii) As a condition precedent to the execution of this Agreement, Party B shall provide the historical operating and performance data of the Applicable Generating Unit(s), including (a) the date of Party B’s most recent recorded measurement of dependable operating capacity of such unit; (b) the date of Party B’s most recent annual wide open valve heat rate test for each such unit and the outcome of such tests recorded; and (c) the date of the last major scheduled turbine overhaul recorded for each unit and the results recorded by Party B, if any (as part of its customary overhaul procedures), of a wide open valve heat rate test immediately prior to overhaul and immediately after such overhaul.”
- (iii) Party B shall maintain and operate the Applicable Generating Unit(s) pursuant to Reasonable Utility Practice. As used in Schedule P herein, “Reasonable Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Systems Coordinating Council region during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a commercially reasonable cost consistent with good business practices, reliability, safety and expedition. Reasonable Utility Practice includes a requirement that Party B provide installed or purchased generating reserves reasonably needed to supply APS as required under the Transaction. In the event Party B fails to maintain and/or operate the Applicable Generating Unit(s) pursuant to Reasonable Utility Practice, Party B shall be deemed to be in default of the Agreement and APS shall be entitled to all appropriate remedies under this Agreement.”

Schedule P: The paragraph relating to “Firm (LD)” shall be amended by inserting immediately following the words “Force Majeure” on lines 4 and 5, the following words: “or the occurrence of the Regulatory Approval as described in Section 3.4 of this Agreement”.

Schedule P: The paragraph relating to “Firm Transmission Contingent – Contract Path” is deleted in its entirety.

Schedule P: The paragraph relating to “Firm Transmission Contingent – Delivery Point” is deleted in its entirety.

Schedule P: The paragraph relating to “Firm (No Force Majeure)” is deleted in its entirety.

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Schedule P: The paragraph relating to “Into _____ (the “Receiving Transmission Provider”), of Schedule P (8th paragraph of definitions beginning on Page 1) and all relating provisions thereto are deleted in their entirety:

Schedule P: The paragraph relating to “System Firm” shall be amended by inserting immediately following the words “by Force Majeure” on line 14, the following words: “or the occurrence of the Regulatory Approval as described in Section 3.4 of this Agreement”.

Schedule P: The paragraph relating to “System Firm” shall further be amended by inserting the following additional paragraphs: “In addition, Party B shall specifically identify the unit(s) from which the System Firm energy will be provided and affirmatively represent and warrant to APS that:

- (i) At the time of the execution of this Agreement, Party B has good defensible title, or valid and effective leasehold rights in the case of leased property, to the Applicable Generating Unit(s), free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances that in the aggregate do not detract from or interfere with the ability of Party B to deliver the contract quantity of the Product. For purposes of this Schedule P, “Applicable Generating Unit(s)” shall mean the units designated by Party B to serve the power (and/or Capacity) to APS as agreed upon in the Transaction.
- (ii) As a condition precedent to the execution of this Agreement, Party B shall provide the historical operating and performance data of the Applicable Generating Unit(s), including (a) the date of Party B’s most recent recorded measurement of dependable operating capacity of such unit; (b) the date of Party B’s most recent annual wide open valve heat rate test for each such units and the outcome of such tests recorded; and (c) the date of the last major scheduled turbine overhaul recorded for each unit and the results recorded by Party B, if any (as part of its customary overhaul procedures), of a wide open valve heat rate test immediately prior to overhaul and immediately after such overhaul.”
- (iii) Party B shall maintain and operate the Applicable Generating Unit(s) pursuant to Reasonable Utility Practice. As used in Schedule P herein, “Reasonable Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Systems Coordinating Counsel region during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a commercially reasonable cost consistent with good business practices, reliability, safety and expedition. Reasonable Utility Practice includes a requirement that Party B provide installed or purchased generating reserves reasonably needed to supply APS as required under the Transaction. In the event Party B fails to maintain and/or operate the Applicable Generating Unit(s) pursuant to Reasonable Utility

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Practice, Party B shall be deemed to be in default of the Agreement and APS shall be entitled to all appropriate remedies under this Agreement.”

Schedule P: The paragraph relating to “Transmission Contingent” is deleted in its entirety.

Schedule P: The paragraph relating to “Unit Firm” shall be amended by inserting, at the close of that paragraph, the following words “Performance by APS shall be excused without recourse, however, by the occurrence of the Regulatory Approval as described in Section 3.4 of this Agreement.”

Schedule P: The paragraph relating to “Unit Firm” shall further be amended by inserting the following additional paragraph: “In addition, Party B shall specifically identify the unit(s) from which the Product will be provided, and affirmatively represent and warrant to APS that:

- (i) At the time of the execution of this Agreement, Party B has good defensible title, or valid and effective leasehold rights in the case of leased property, to the Applicable Generating Unit(s), free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances that in the aggregate do not detract from or interfere with the ability of Party B to deliver the contract quantity of the Product.
- (ii) As a condition precedent to the execution of this Agreement, Party B shall provide the historical operating and performance data of the Applicable Generating Unit(s), including (a) the date of Party B’s most recent recorded measurement of dependable operating capacity of such unit; (b) the date of Party B’s most recent annual wide open valve heat rate test for each such unit and the outcome of such tests recorded; and (c) the date of the last major scheduled turbine overhaul recorded for each unit and the results recorded by Party B, if any (as part of its customary overhaul procedures), of a wide open valve heat rate test immediately prior to overhaul and immediately after such overhaul.”
- (iii) Party B shall maintain and operate the Applicable Generating Unit(s) pursuant to Reasonable Utility Practice. In the event Party B fails to maintain and/or operate the Applicable Generating Unit(s) pursuant to Reasonable Utility Practice, Party B shall be deemed to be in default and APS shall be entitled to all appropriate remedies under this Agreement.

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

ARIZONA PUBLIC SERVICE COMPANY

COUNTERPARTY NAME

Party A

Party B

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

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GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

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

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider

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for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

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

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

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

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

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

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

1.30 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.31 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

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

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

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

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party’s Confirmation within two (2) Business Days of receipt, Seller’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller’s Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer’s Confirmation was sent prior to Seller’s Confirmation, in which case Buyer’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g.,

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price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller’s and Buyer’s Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its

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obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the

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time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;
 - (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
 - (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments

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due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

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

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

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

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any

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

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment

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shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

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

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

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

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

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

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

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

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

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In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an

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amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

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

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

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ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

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

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

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Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection

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with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

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

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement

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

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

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

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

**PRELIMINARY DRAFT – SUBJECT TO FURTHER REVISIONS
SCHEDULE M**

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

- A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

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law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

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Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

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G. The Parties agree to add the following sentence at the end of Section 10.6 -
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS
OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

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SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

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

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

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

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

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

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider’s transmission system from the Designated Interface

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

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

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

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

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection

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

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

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

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted

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transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

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

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

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

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

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

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

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product.

PRELIMINARY DRAFT – SUBJECT TO FURTHER REVISIONS

Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

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

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

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

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines)

PRELIMINARY DRAFT – SUBJECT TO FURTHER REVISIONS

or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**PRELIMINARY DRAFT – SUBJECT TO FURTHER REVISIONS
EXHIBIT A**

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

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

Seller: _____

Buyer: _____

Product:

- Into _____, Seller’s Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- System Firm
(Specify System: _____)
- Unit Firm
(Specify Unit(s): _____)
- Other _____
- Transmission Contingency (If not marked, no transmission contingency)
 - FT-Contract Path Contingency Seller Buyer
 - FT-Delivery Point Contingency Seller Buyer
 - Transmission Contingent Seller Buyer
 - Other transmission contingency
- (Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

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Confirmation Letter

Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

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

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

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12

FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION

Attachment No. 12

**Arizona Public Service Company
Request for Proposals**

**PRELIMINARY DRAFT ONLY
SUBJECT TO REVISION**

**Arizona Public Service Company
Request for Proposals**

**Competitive Power Procurement
Commencing July 1, 2003**

March 21, 2003

Arizona Public Service Company

Request for Proposal

Notice of Intent to Respond

Capacity and Energy Delivery Proposal

This form should be received no later than 5:00 P.M. (MST), March 28, 2003 via facsimile (602) 250-3116, or e-mail to commodityauction@apsc.com

The undersigned respondent certifies that (he/she) has read this Request for Proposal, understands all terms, conditions, and intends to submit a proposal.

Proposal by _____

Company Name

Street Address _____

City

State

Zip Code

Mailing Address _____

City

State

Zip Code

Contact Numbers (_____) _____ / (_____) _____

Phone Number

Fax Number

E-mail Address _____ @ _____

Signature _____ / _____

Date

Signed by _____

(Please Print) Name

Title

Arizona Public Service Company

Request for Proposal

Proposal Information

CAPACITY/ENERGY DELIVERIES BEGINNING JULY 2003

I. Purpose and Scope

Arizona Public Service Company ("APS") issues this Request for Proposal ("RFP" or "RFP Process") to solicit competitive proposals ("Proposals") for electric capacity and energy to meet a portion of the APS Retail Network Load. The purpose of this RFP is to solicit Proposals for capacity and energy in compliance with the Arizona Corporation Commission's ("ACC") Track B Process which provides in part that APS will acquire certain capacity and energy needs through a competitive bid process.

- II. APS is a public service corporation with retail load in eleven (11) counties in Arizona, with approximately 60-70% of such load located in the Phoenix metropolitan area.

ATTACHMENT 1 to this RFP is a detailed Term Sheet specifying the products to be solicited. **ATTACHMENT 1** is incorporated in and by this reference made a part of this RFP.

III. Changes to RFP, Schedules and Addenda

APS reserves the right to revise, suspend, or terminate this RFP Process and any schedule related thereto at its sole discretion without liability to persons or entities responding to this RFP ("Respondents"). APS will communicate in writing (via hard copy, facsimile, or e-mail) to prospective Respondents information regarding the status of this RFP Process, including any and all changes and addenda to this RFP or attendant schedules.

IV. Quality of Credit

Credit quality of the Respondent or the Respondent's guarantor and the form of guaranty and letter of credit, if required, are important factors in the selection process. APS shall utilize the better of the published credit ratings from Standard & Poor's Ratings Group ("S&P") and Moody's

Investor Services, Inc. ("Moody's) for long term senior unsecured debt to determine a Respondent's, or the Respondent's guarantor's, credit rating. Such published credit rating will be used to determine the amount of credit support required. APS will perform an independent credit analysis on every Respondent who is not rated or whose guarantor is not rated by at least one of these ratings agencies. Such internal and agency ratings will be used in a non-discriminatory manner to determine the creditworthiness and required credit support of each bidder. Credit support will include the Independent Amount, as described in the EEI Agreement, the enabling agreement for any transaction. It will also include the appropriate collateral threshold. Awarding of this RFP will be conditional upon full satisfaction of any APS credit support requirements. If a Respondent would like to propose enhancing its rating through third-party credit support, please inquire through the website.

V. Respondent's Qualifications

APS will consider Proposals from electric utilities (e.g. investor-owned, municipal, co-operative, or tribal), independent power producers, qualifying facilities, exempt wholesale generators, or electric power marketers who have received certification as such by the Federal Energy Regulatory Commission ("FERC").

Each Proposal must include the most current Securities and Exchange Commission ("SEC") Form 10-K and 10-Q reports of any Respondent or its guarantor subject to SEC filing requirements, including a list, with names, addresses and other electric generation and transmission activities of all equity participants having 10% or greater ownership interest in the system or facilities from which power is to be supplied to APS.

Any Respondent or guarantor not subject to SEC filing requirements should provide as soon as practical, its most recently issued statement of financial condition, including balance sheet, income statement, cash flow statement and complete footnotes, with (if available) an unqualified statement certified by a nationally recognized certified public accounting firm for the 3 most recent fiscal years, and its most recent unaudited interim statement. For a more complete list of credit information requested, please refer to the Important Credit Announcement on the website.

VI. Credit Support

Up to three forms of credit support may be required of each successful Respondent:

- a) Guaranty – If a Respondent would like to be evaluated on the basis of a parent, affiliate, or third-party's credit ratings or financial statements, a proposed guaranty format must be submitted with the response to this RFP. If the form of guaranty is not in a form acceptable to

APS at its sole discretion, both parties agree to attempt to negotiate a mutually acceptable form in good faith. If such guaranty is required to satisfy minimum credit criteria, an executed guaranty in a form acceptable to APS is a condition to final acceptance of an offer. If the guaranty amount is less than Respondent's collateral threshold amount (see the "Performance Assurance" discussion below), then the collateral threshold amount shall be the guaranty amount.

- b) Independent Amount ("IA") – Commensurate with the requirement that power procured under this RFP be supplied from a highly reliable supplier and to help mitigate our costs in the event that a Respondent defaults on its obligations, IA in the form of a Letter-of-Credit ("LOC") or a cash deposit will be required for all Respondents who do not have a rating of BBB or better by S&P or Baa2 or better by Moody's. If unrated by both agencies, a Respondent's APS-determined internal rating will be used to establish the need for a Respondent's IA. The following matrix shall be used in determining the appropriate IA for fixed price supply:

Credit Rating (S&P/Moody's) (better rating shall apply)	Independent Amount Required
BBB / Baa2	None
BBB- / Baa3	\$ 2.50 / Mwh
BB- to BB+ / Ba1 to Ba3	\$ 3.00 / Mwh
B- to B+ / B1 to B3	\$ 3.50 / Mwh
Below B- / Below B3	\$ 4.00 / Mwh

For capacity and energy contracts with variable MWh's, the number of MWh's in the term of the agreement will be calculated using the maximum capacity in MW of the contract awarded and any estimated capacity factor for the product(s) bid. The IA is a requirement separate from the potential requirement of a guaranty. Cash deposits will be held in an interest-bearing segregated account with the interest amount payable to the Respondent. LOCs must be essentially in the form of Exhibits A and B. The issuing bank must be rated A- or better by S&P or A3 or better by Moody's and have stockholder's equity of at least USD \$3,000,000,000 as of 12/31/2002. Respondent is responsible for the cost of any such LOC. The required IA will be reviewed every 6 months from the commencement of power deliveries and will be reduced to reflect the remaining amount of anticipated power to be delivered under the agreement with Respondent. In the event that a Respondent with an initial rating of at least BBB / Baa2, and thus a Respondent who is not initially required to post an IA, experiences a ratings downgrade to BBB- / Baa3 or below before it has completed its contractual obligations, that Respondent will be required to immediately supply the appropriate IA based on the undelivered amount of power and/or capacity. Similarly, if a Respondent has been required to post an IA, and experiences a ratings downgrade sufficient to require an increased IA, that Respondent will be required to immediately supply the

appropriate IA based upon its revised credit rating and the corresponding undelivered amount of power and/or capacity. Conversely, if a Respondent which has posted an IA experiences a positive ratings upgrade APS will return to the Respondent the amount (if any) in excess of the appropriate IA held by APS based upon its revised credit rating and the corresponding undelivered amount of power and/or capacity.

The IA matrix above is for fix priced forward sales of energy or capacity, including unit contingent sales. Additional matrixes are being developed for options and dispatchable supply. Index priced term sales and basis exchanges may not require an IA. APS reserves the right to require an IA for other products and non-conforming bids based on the market price sensitivity of the particular product or bid.

- c) Performance Assurance ("PA") – Commensurate with the requirement that power procured under this RFP be supplied from a highly reliable supplier and to limit the amount of credit risk that APS may have with any individual supplier, PA in the form of a LOC or a cash deposit will be required if at any time after the execution of the Agreement, the termination payment that would be due APS in the event of a supplier default (as determined by APS) exceeds the collateral threshold. The amount of the collateral threshold is determined according to the following matrix (the better rating shall apply):

Credit Rating (S&P/Moody's) (better rating shall apply)	Collateral Threshold
AA- / Aa3 or better	\$ 100 Million
A- to A+ / A3 to A1	\$ 50 Million
BBB+ / Baa1	\$ 20 Million
BBB / Baa2	\$ 10 Million
BBB- / Baa3	\$ 5 Million
Below BBB- / Below Baa3	Zero

Such PA, if required, would be in addition to a guaranty and/or Respondent's IA. Cash deposits will be held in an interest-bearing segregated account with the interest amount payable to the Respondent and will be available to APS only upon the occurrence of an event of default by Respondent. LOCs must be essentially in the form of Exhibits A and B. The issuing bank must be rated A- or better by S&P or Fitch or A3 or better by Moody's and have stockholder's equity of at least USD \$3,000,000,000 as of December 31, 2002.

- d) APS will provide identical Performance Assurances, and certain related credit support requirements, for Respondents which at the time of execution of the contract have an A- or better rating from S&P or a A3 or better rating from Moody's.

VII. Notification of Intent to Respond

In order to identify persons or entities interested in submitting a Proposal, and to assure that all those having such an interest receive any subsequent information distributed in the Proposal Process, interested parties, as a condition to submitting a Proposal, must submit via e-mail or FAX a *Notification of Intent to Respond* ("Notification"), a signed confidentiality agreement and certification by an officer of the Respondent (which are both available on the website) consistent with the recent order relating to the same by the ACC on or before 5:00 P.M. MST on Friday, March 28, 2003. The form for the Notification is part of the RFP Package. Proposals received from Respondents who have not timely submitted the Notification will be returned unopened.

VIII. Proposal Content and Submission Instructions

- A. In addition to the information described elsewhere in this RFP, all Respondents must include as part of their Proposal all information described in this RFP (which will be provided in a Proposal Response Form at a later date).
- B. Proposals that do not contain all required information or do not fully reflect the specifics of the Term Sheet may not be considered at APS's sole discretion. In addition to the required information, Respondents should include with their Proposals all information requested by APS that may be needed for a thorough understanding or evaluation of their Proposals.
- C. Respondents shall submit three (3) hard copies of the original proposal and one (1) "wet" original signature with evidence satisfactory to APS that the signatory has full authority to bind the Respondent to all of the terms and conditions contained in the Proposal. **APS will not accept Proposals via email, facsimile, or other electronic means. Only sealed Proposals will be accepted.**
- D. Complete Proposals (whether for Group A or Group B Proposals), including all exhibits, and excluding only fixed pricing if applicable to a Proposal, must be received on or before 5:00 p.m. (MST) on Friday, April 4, 2003, at the address below. **All Proposals must expressly confirm that the pricing and terms and conditions of the Proposal will be binding and held open in the manner described in Paragraph F below. APS will not accept late Proposals or Proposals delivered by e-mail, facsimile, or other electronic means.**

Tom Carlson
Head of Trading
Arizona Public Service Company
400 N. 5th Street- MS 9831
Phoenix, AZ 85004
602/250-3116 FAX
602/250-3199 FAX
602/250-3719 FAX
e-mail: commodityauction@apsc.com

- E. Fixed pricing for all Proposals must be received on or before 5:00 p.m. (MST) on Thursday April 24, 2003, at the above-address. **All Proposals must expressly confirm that the pricing and terms and conditions of the Proposal will be binding and held open in the manner described in Paragraph F below.** Again, APS will not accept late Proposals or Proposals delivered by email, facsimile, or other electronic means.
- F. Except as specified in this paragraph, all Proposals including terms, conditions, and pricing, are binding through the close of business (5:00 p.m. MST) Thursday, May 22, 2003. If Respondent submits a fixed price Proposal, the Respondent may withdraw that Proposal in writing received by APS (either through hand-delivery or facsimile) no later than 5:00 p.m. (MST) Friday, April 25, 2003. If Respondent submits a fixed price Proposal and does not timely withdraw that Proposal as described above, the pricing for that Proposal will remain binding through 12:00 p.m. (MST) Monday, April 28, 2003, thereafter which the pricing will no longer be binding.
- G. On April 28, 2003, APS will announce a short-list and immediately begin accepting Proposals (whether from Group A or Group B bids). Beginning at that time, and through the end of the bidding process on May 22, 2003, APS may also contact Respondents to negotiate, if appropriate, any Proposals on the short-list. Proposals from the short-list will be accepted on a rolling basis, commencing April 28, 2003 through May 22, 2003.
- H. Proposals shall be delivered to the above address on or before the specified due date and hour, and shall be enclosed in a sealed envelope. On the envelope, Respondent shall indicate "APS RFP." Any Proposals received after the scheduled date and time will be returned unopened.
- I. Prices and dollar figures must be clearly stated in \$US.

J. None of the material received by APS from Respondents in response to this RFP will be returned. All Proposals and exhibits will become the property of APS

K. All inquiries and other communications relating in any manner to this RFP must be directed in writing or by facsimile or e-mail to the APS contact (See Item F).

IX. Confidentiality

APS will require all parties to execute the Confidentiality Agreement, which is available on the website, and will also execute the Confidentiality Agreement upon receipt of signed Confidentiality Agreement from the Respondent. APS will take reasonable precautions and use commercially reasonable efforts to protect any claimed proprietary and confidential information contained in a Proposal (excluding the environmental information referenced in Exhibit C); provided that such information is clearly identified by the Respondent as "PROPRIETARY AND CONFIDENTIAL" on the page on which proprietary and confidential material appears. APS will release such information, (1) to its external contractors for the purpose of evaluating Proposals but such contractors will be required to observe the same care with respect to disclosure as APS and to others who have a need for such information for purposes of evaluating the Transaction, including but not limited to the ACC, its employees, staff, consultants and/or agents and the independent monitor(s) who has been assigned by the ACC to review the Bidding Process, and its employees, staff, consultants and/or agents. or (2) if APS is compelled to disclose such information (or portions thereof) (i) pursuant to subpoena or other court or administrative process; (ii) at the express direction of any agency with jurisdiction over APS. or (iii) as otherwise required by law. If APS becomes legally compelled to disclose any of the confidential information, APS will provide Respondent with written notice. APS holds no duty or requirement to Respondent to withhold such information if it is so requested as described in Section (2) above. Under no circumstances will APS, or its directors, management, employees, agents or contractors be liable for any damages resulting from the disclosure of Respondent's claimed confidential information during or after the solicitation process.

X. Capacity, Energy and Other Resource Information

In addition to information required elsewhere in this RFP, all Proposals shall contain information on product types as specified in the Term Sheet.

XI. Site/Facility Requirements for Proposed Generating Facilities

If Respondent's Proposal includes power from generating projects, Respondents shall provide the following information where applicable:

- A. If new, projected date for completion of construction, testing and commercial operation
- B. If new, projected schedule for acquisition of necessary transmission and interconnection service.
- C. If new, level of product commitments made in the event generating facility does not go commercial as scheduled.
- D. Access to physical plant site for ACC staff inspection pursuant to the Opinion and Order on Generic Proceedings Concerning Electric Restructuring Issues (Track B), Decision Number: 65743
- E. Certain minimum environmental requirements as set forth on Exhibit C (please note that such information will not be treated confidentially).
- F. Demonstration of adequate fuel supply and transport.

XII. Affiliate Bidding and Evaluation Procedures

APS affiliates may submit Proposals in response to this RFP subject to the same restrictions and qualifications as non-affiliates.

XIII. Proposal Evaluation

- A. Respondents shall include sufficient detail to evaluate all costs associated with the Proposal(s). Respondents are advised that price will be a major factor in APS's evaluation, as well as credit and contract considerations, reliability, deliverability and other criteria including but not limited to those detailed in the Staff Report on Track B, dated October 25, 2002. In addition, Proposals will also be compared and evaluated in terms of other non-price characteristics of each submittal as well. Therefore, the lowest price submittal may not be selected. The evaluation of submittals will be based on the information provided by the Respondent with special emphasis on source of supply, scheduling procedures, and other actions Respondent submits to use in maximizing its economic value to APS' retail customers and minimizing risk to those Customers.
- B. APS reserves the right to negotiate after submission of a Proposal with a Respondent, or with more than one Respondent. In the event negotiations with a Respondent or Respondents do not produce a final and fully executed contract satisfactory to APS, APS reserves the right to pursue any and all other resource options available to it.

- C. APS, at its sole discretion, shall evaluate responsive Proposals and select for further review and negotiation a Proposal or Proposals, if any, that provide the most value to APS retail customers.
- D. Proposals may be combined with other Proposals, at APS's sole discretion.
- E. APS shall determine at its sole discretion the value to APS customers of any and/or all Proposals.
- F. APS shall evaluate all Proposals in terms of price and non-price attributes and reject any Proposal that, in APS's sole discretion:
 - 1) Does not meet the minimum requirements set forth in the RFP;
 - 2) Is not economically competitive with other Proposals; or
 - 3) Is submitted by Respondents who are determined by APS, in its sole discretion, to have insufficient creditworthiness, insufficient financial resources, and/or insufficient technical qualifications to provide dependable or reliable service.
- G. APS reserves the right, without qualification and in its sole discretion, to accept or reject any or all Proposals for any reason at any time after submittal without explanation to the Respondent, or to make an award at any time to a Respondent who, in the opinion of APS will provide the most value to APS retail customers. APS also reserves the right to make an award to other than the lowest price offer or other than the Respondent evidencing the greatest technical ability if APS, in its sole discretion, determines that to do so would result in the greatest value to APS' retail customers.
- H. APS, in its sole discretion, may decline to enter into an agreement with any Respondent, to terminate negotiations with any Respondent, or to abandon the RFP process in its entirety, at any time during the process.
- I. Those Respondents who submit Proposals, do so without legal recourse against APS, or its directors, management, employees, agents or contractors based on APS's rejection, in whole or in part, of their Proposal or for failure to execute any agreement tendered by APS. APS shall not be liable to any Respondent or to any other party, in law or equity, for any reason whatsoever relating to APS's acts or omissions arising out of or in connection with the RFP.

- J. Respondents who submit Proposals for products other than firm products will be required to submit a corresponding minimum availability factor with their bid for all power and/or capacity which they propose to provide APS under this RFP (please see the Term Sheet for additional detail).
- K. Proposals for delivery of power and/or capacity on or after January 1, 2006 will be subject to the Regulatory Approval Provision of Article 3.4 of the EEI Agreement.
- L. Respondent shall be liable for all of its costs, and APS shall not be responsible for any of Respondent's costs, incurred to prepare, submit, or negotiate its Proposal, a contract or any other activity related thereto.
- M. Respondents must disclose if they intend to, or have acquired capacity and/or energy from APS or an APS affiliate during the term of the proposed Bid Solicitation and Contract.
- N. APS reserves the right, at any time, to establish a minimum and/or maximum of capacity or energy to be acquired from any one Respondent.

Selection and elimination of Proposals and subsequent notification of Respondents at all stages of the evaluation will remain entirely at APS's discretion. APS's intent is to notify Respondents of those Proposals that are eliminated from further consideration under this solicitation within a reasonable amount of time, which will be determined by APS in its sole discretion.

XIV. Definitive Agreement

The contract format for this RFP is a modified Edison Electric Institute's Master Power Purchase and Sale Agreement ("EEI Agreement"), which is currently available on the APS Commodity Auction website. Any comments or questions from a Respondent on APS's amended EEI Agreement shall be submitted through the APS Commodity Auction website prior to March 20, 2003, and will be reviewed and considered by APS.

As soon as practicable after APS completes its analysis of Proposals and completes negotiations as appropriate, it expects Respondent to execute the EEI agreement. Failure of a Respondent to promptly after notification of a winning bid execute a definitive written agreement will, in APS's sole discretion, result in rejection of the Proposal. The definitive agreement shall not bind APS until both Parties execute it, and if appropriate, the agreement is approved or otherwise authorized by the ACC.

XV. Collusion

By submitting a Proposal for APS in response to this RFP, the Respondent certifies that the Respondent has not divulged, discussed, or compared its Proposal with other Respondents and has not colluded whatsoever with any other Respondent or parties with respect to this or other Proposals.

XVI. Compliance with Regulations

Each Respondent shall ensure that its Proposal is in full compliance with all applicable Federal, State and local laws, rules, regulations or other requirements.

XVII. Bid Solicitation Fee

As recommended by the ACC, the cost of conducting each bid solicitation can be borne by qualified Respondents who submit Proposals in this and future auctions. As such, a bid fee of \$10,000 per Respondent will be required with this RFP in order to qualify the Respondent for consideration. In the event bid fees collected exceed incremental costs by APS to conduct this auction, such excess shall be refunded to all non-winning Respondents on a pro rata basis up to the amount of fee paid by each Respondent

RFP SCHEDULE

The RFP process shall proceed in accordance with the following schedule:

Phase I – Calendar 2003	<u>Day of Week</u>	<u>Date</u> <i>(except as noted, close of business – 5:00 p.m. MST)</i>
Website Rollout/Draft RFP and EEI	Friday	February 28, 2003
First RFP Bidders Conference	Wednesday	March 5, 2003
Final Date for Written Comments and/or Questions on RFP and EEI Master Agreement	Wednesday	March 19, 2003
Second Bidders Conference	Wednesday	March 19, 2003
Final RFP and EEI Master Agreement Issued	Friday	March 21, 2003
Notice of Intent to Respond to RFP Due	Friday	March 28, 2003
Sealed Proposal(s) Due Date for Group A Bids and Group B Bids (excluding <u>only</u> pricing for fixed price Proposals)	Friday	April 4, 2003
Due Date for Submitting Pricing for Fixed Price Proposals for Group A Bids and Group B Bids	Thursday	April 24, 2003
Withdraw Deadline for Fixed Price Group A and Group B Proposals	Friday	April 25, 2003
Begin to Notify Respondents of Short List (includes both Group A and Group B Bids)	Monday	April 28, 2003 (on or before Noon, 12:00 p.m. MST)
Notification of Initial Successful Respondent(s) for Fixed Price Group A Bids and Group B Bids	Monday	April 28, 2003 (on or before Noon, 12:00 p.m. MST)
Final Evaluation Complete/Successful Respondent(s) Notification for All Group A and Group B Bids		April 28, 2003 through May 22, 2003
Estimated Commencement of Service Under Contract	Tuesday	July 1, 2003

Proposal Response Forms
Arizona Public Service Company
Request for Proposal
Capacity & Energy Delivery Proposal

The undersigned hereby certifies that this proposal is genuine and not sham or collusive or made in the interest of or on behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other respondent to put in a sham bid or any other person, firm or corporation to refrain from submitting a proposal, and that the undersigned has not by any manner sought by collusion to secure for himself an advantage over any other respondent.

The undersigned respondent certifies that (he/she) has read this Request for Proposal understands it is proposing in full compliance with all terms, conditions, or other inclusions of the Request for Proposal.

Proposal by _____
Company Name

Signature _____

Signed by _____
Name *Title*

Federal Employer's Identification Number of Firm _____

The demonstrated competence and professional qualifications of all respondents will be considered to assure that these services are engaged by APS on the basis of competence and qualifications at fair and reasonable prices.

Name of person in your organization whom we should contact for questions, details, information and/or order placement.

Name *Area Code/Phone Number*

Please advise us of the following:

Mailing Address _____

Street Address _____

Phone Number (_____) _____

Fax Number (_____) _____

E-mail Address _____

Arizona Public Service Company
Request for Proposals- Attachment 1

TERM SHEET

Terms APS will consider Proposals that begin delivery on July 1, 2003

- Minimum term for qualified Proposals will be for one quarter in a calendar year.
- APS prefers bids based on the term products listed below but will review and evaluate non-conforming bids that the Respondent believes can meet APS's energy and capacity needs.

Group A Term Product(s)

- On Peak 6x16 - HE 0700 to 2200 PPT - 6 days/week from January 1 through December 31 of each year.
- Off Peak 6 x 8- HE 2300 to HE 0600 PPT - 6 days/week plus all day Sunday from July 1 through September 30 in 2003, and June 1 through September 30 of each subsequent year.
- Summer Super Peak - HE 1300 to 2000 PPT - 7 days/week from July 1 through September 30, 2003 and from June 1 through September 30 of each subsequent year.
- Daily Call Options - Up to 200 MW of firm, fixed price capacity for On Peak 6x16, by month from July 1 through September 30 of each subsequent year.
- Winter Super Peak – HE 0800 to 1100 MST and HE 1800 to 2100 MST from November 1 through March 31 of each subsequent year.
- Although APS is presently more interested in Proposals for the above products up to and through the calendar year 2006, Respondents may submit Proposals for Group A Term Products for the years ending before and after 2006.

Group B Term Product(s)

- Dispatchable (including Capacity, System Firm and/or Unit Firm Products– Beginning July 1, 2003 through September 30, 2003, and from June 1 through September 30 of each subsequent year.
- Energy Swaps – energy/capacity swaps between delivery points.
- Heat Rate – price of energy is tied to natural gas prices.
- Index – energy priced to a daily or monthly price index.
- Although APS recommends Proposals for the above products up to and through the calendar year 2006, Respondents may submit Proposals for Group B Term Products for the years ending before and after 2006.

Group B RMR Product(s)

- Dispatchable capacity/energy to meet:
 1. July through September 2003: 835 MW of firm capacity a Firm (LD) product up to 518 Hours of operation for Phoenix load.
 2. June through September 2004: 956 MW of firm capacity a Firm (LD) product up to 590 Hours of operation for Phoenix load.
 3. June through September 2005: 1024 MW of firm capacity a Firm (LD) product up to 656 Hours of operation for Phoenix load.
 4. July through September 2003: 144 MW of firm capacity a Firm (LD) product up to 1066 Hours of operation for Yuma load.
 5. June through September 2004: 148 MW of firm capacity a Firm (LD) product up to 974 Hours of operation for Yuma load.
 6. June through September 2005: 160 MW of firm capacity a Firm (LD) product up to 1196 Hours of operation for Yuma load.

Additional Requirements

1. If Respondent provides a Proposal for Capacity, System Firm and/or Unit Firm products (as defined in the EEI Agreement), Respondent must also provide a minimum Equivalent Availability Factor as determined in the NERC Generating Unit Availability Data System ("GADS") (the "Availability Factor") for each period for each month during the Transaction. In this regard, if a Party is proposing to supply a Capacity, System Firm and/or Unit Firm product for the Summer 2003 Delivery Period, that Party must also identify a specific Availability Factor which will have a minimum guaranteed delivery level for each proposed month during the Delivery Period (which shall be further broken down into Off-Peak, On Peak, and Super-Peak). If the Respondent falls below the minimum Availability Factor, it will be responsible for all damages and costs pursuant to the Accelerated Payment of Damages provision as described in Article 4.1 of the EEI Agreement, incurred by APS in obtaining replacement power and/or capacity up to that minimum Availability Factor. For example, if a Party is proposing a Unit Firm, System Firm or Capacity product for delivery during the months July through September of 2003, it must identify an Availability Factor for each month and period during that term (e.g., for July 2003 – Off Peak Availability Factor-85%; On-Peak Availability Factor-95%; Super-Peak Availability Factor-100% / For August, 2003 – Off-Peak Availability Factor-85%; On-Peak Availability Factor-95%; Super-Peak Availability Factor-100% / for September 2003 – Off Peak Availability Factor-85%; On-Peak Availability Factor-95%; Super-Peak Availability Factor-100% / etc.)
2. If Respondent provides a Proposal for Capacity, System Firm and/or Unit Firm products (as defined in the EEI Agreement), Respondent must agree not to plan any scheduled outages for the period June 1 through September 30 throughout the term of its Proposal.

3. If Respondent provides a Proposal for Capacity, System Firm and/or Unit Firm products (as defined in the EEI Agreement), Respondent shall with its Proposal acknowledge that it will: consult APS when scheduling or planning for outages and minimize the cost impact on APS; consult with APS on its short term and long term plans for scheduled outages; and operate the units consistent with Reasonable Utilities Practices. Unplanned outages are not excused from the minimum Availability Factor requirements discussed above.
4. Respondent must provide balanced schedules to the control area and must schedule in conformance with all NERC Guidelines.
5. A Delivery Point(s) must be specified for each bid (see Delivery Point below).

Delivery Point(s)

- Respondents must identify the Delivery Points at which they will deliver the products and reflect maximum amounts at each Delivery Point. For purposes of this RFP, all transmission related charges to move power to the Delivery Points are the responsibility of the Respondent.
- Delivery Points are: Westwing, Pinnacle Peak 230, Pinnacle Peak 345, Liberty, Palo Verde/Hassayampa, Four Corners, Mead, Navajo, Rudd, Kyrene, North Gila, Cholla, West Phoenix, Ocotillo, Yuma and Saguaro. Please refer to the APS Network Transmission Assessment study for delivery point capacity.
- Delivery to other feasible points may impose additional costs on APS, which will be evaluated when considering a Proposal to any point other than those noted above.
- Respondents must fix the Delivery Point(s) for the term of the Agreement.
- Respondent must provide satisfactory evidence of its ability to deliver power to the designated Delivery Points on a firm basis.

Price

- APS prefers Group A products be proposed as either fixed price products or index triggered products that allow APS to convert those products to fixed prices during the evaluation process.

- APS prefers Group B products can be proposed as either fixed price products, index products, or index triggered products that allow APS to convert those products to fixed prices during the evaluation process.
- Respondent is responsible for all arrangements and all costs to the Delivery Point specified, including the cost of all ancillary services that are not self-supplied. APS, as the control area operator, will be the default provider for ancillary services that must be purchased by Respondent, if not otherwise provided in the proposal. Ancillary services to the successful bidder will be provided by APS on a non-discriminatory basis in accordance with applicable FERC requirements.
- Ancillary services, including imbalance, will be priced to Respondent at APS tariffed rates. Respondent will also be responsible for the proportionate share of any costs associated with APS' participation in a regional sharing group.

Environmental Consideration

- Each Respondent will be required to provide the environment impact data set forth on Exhibit C.. The information is provided either based on actual data or permitted values. The affected population item of people living within the 50 miles radius of the plant generating electricity should be based on most recently available census data. Data regarding environmental performance of the generating company and its affiliates must be provided from the units that (to the best of Respondent's knowledge) will or could be supplying energy or capacity under the Respondent's proposal and must include the last five years of emissions data.

Market Consideration

- Each Respondent will be required to provide a copy of the market power analysis used by such provider to support its market rate authority from FERC.

Form of Letter-of-Credit
 [On Issuing Bank Letterhead]

Irrevocable Standby Letter of Credit No. _____

To: Arizona Public Service Company

400 N. Fifth Street
 Phoenix, Arizona 85004

Attn:

Ladies and Gentlemen:

We hereby issue in your favor our Irrevocable Stand-By Letter of Credit No. _____ in the amount of \$ _____ (U.S. Dollars) (_____ Million Hundred _____ Thousand and No/100 Dollars), account of Arizona Public Service Company ("Beneficiary"), available by your sight draft in the form attached hereto as Exhibit A executed by an individual as described below on us at any time or from time to time during the validity of this credit in whole or in part and accompanied by the original of this Letter of Credit:

SPECIAL INSTRUCTIONS:

- Partial Drawings Permitted. In the case of a partial draw, this Letter of Credit will be endorsed effective as of the payment date by us to you to reflect the amount of the partial draw and will be returned within 24 hours to the signer (if presentation is made by the signer) and otherwise by next-day delivery to the Beneficiary.

- All documents must show this Letter of Credit number.

- Payment under this Letter of Credit shall be made by wire transfer of immediately available funds into the following account:

We hereby engage with you that all drafts drawn in strict conformity with the terms and conditions of this Letter of Credit will be duly honored upon presentation of documents as specified if presented at _____ on or before _____, _____, the expiry date of this Letter of Credit. If a drawing in respect of payment is made by you hereunder at or prior to Noon (_____ time) on a business day, and provided that such drawing and the documents presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you as provided herein of the amount specified, in immediately available

funds, on the same business day. If a drawing in respect of payment is made by you hereunder after Noon (_____ time) on a business day, and provided that such drawing and the documents presented in connection therewith conform to the terms and conditions hereof, payment shall be made to you as provided herein of the amount specified, in immediately available funds, on the next succeeding business day.

If a demand for payment made by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we will give Beneficiary prompt notice thereof, stating the reasons thereof and that we are holding any documents at Beneficiary's disposal or are returning the same to Beneficiary, as Beneficiary may elect. Upon being notified that such demand was not effected in accordance with this Letter of Credit, the Beneficiary may attempt to correct any such non-conforming demand for payment.

This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, or amplified by reference to any document, instrument or agreement referred to herein (except the Uniform Customs, as hereinafter defined) or to which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such references shall not be deemed to incorporate herein by reference any document, instrument or agreement.

This Letter of Credit is transferable in its entirety to any person succeeding to Beneficiary's interest under the _____ Agreement, dated as of _____, 2003, as certified by Beneficiary to us, and such transfer shall be effected by amendment of this Letter of Credit to reflect the new beneficiary.

This Letter of Credit shall be governed by and construed in accordance with the Uniform Customs and Practices for Documentary Credits (1993 revision), Publication No. 500 of the International Chamber of Commerce (the "Uniform Customs"), and, to the extent not inconsistent therewith, the laws of the State of Arizona. Any failure by Beneficiary to draw upon this Letter of Credit shall not cause this Letter of Credit to be unavailable for any future drawing.

As used herein, the term "Business Day" shall mean a day on which we are open for the purpose of conducting a commercial banking business at our offices in _____.

By:
Name:
Title

FORM OF SIGHT DRAFT

DATE:

TO:

Check the applicable entry:

___ An Event of Default, as defined in that certain _____ Agreement between Beneficiary and _____, has occurred and is continuing.

___ The Letter of Credit shall expire before the term of the _____ Agreement and such Letter of Credit has not been extended or replaced in accordance with the terms of the _____ Agreement.

In accordance with the terms of the Letter of Credit issued by you to our favor dated _____, we hereby demand payment to the order of Arizona Public Service Company in the amount of \$_____.

Arizona Public Service Company

By:
Name:
Title:

ENVIRONMENTAL INFORMATION

Each Respondent must provide the following environmental impact information in summary:

1. The emission, consumption and other information requested in the attached template. The data must be provided based on actual emissions data or, if actual emissions data is not available, maximum permitted values. The affected population living within a 50 miles radius of the generating facility should be based on the most recent census data. Because emissions from a facility depend not only on permit limitations, but also on operating performance and permit compliance, each Bidder also must provide information regarding environmental performance for the past five years, which means data regarding any fines assessed against the generating facility, the generating company and any affiliated generating companies.

2. A detailed executive summary, with results, of any and all air quality emissions modeling prepared for or relating to the generating facility.

3. A detailed executive summary with results, of any and all surface or groundwater modeling that was performed for or relating to the generating facility, including a summary of any drawdown calculations.

4. A successful Respondent must make available to APS upon request copies of any modeling described in items 2 and 3 and any additional environmental data necessary for APS to comply with environmental requirements in Decision No. 65743.

Environmental Matrix for Bidders

<u>Item</u>	<u>Category</u>	<u>Respondent Value</u>	<u>4</u>	<u>3</u>	<u>2</u>	<u>1</u>
1	CO2 (lb/MWH)		0 - 500	500 - 1,000	1,000 - 2,000	> 2,000
2	NOx (lb/MWH)		0 - 1.0	1.0 - 5.0	5.0 - 10.0	> 10.0
3	SO2 (lb/MWH)		0 - 1.0	1.0 - 5.0	5.0 - 10.0	> 10.0
4	PM (lb/MWH)		0 - 0.1	0.1 - 0.25	0.25 - 0.50	> 0.50
5	CO (lb/MWH)		0 - 0.25	0.25 - 0.50	0.50 - 1.0	> 1.0
6	VOC (lb/MWH)		0 - 0.025	0.025 - 0.050	0.050 - 0.100	> 0.100
7	Hg (lb/GWH)		0 - 0.005	0.005 - 0.010	0.010 - 0.100	> 0.100
8	Water Consumption (gal/MWH)		0 - 100	100 - 500	500 - 1,000	> 1,000
9	Primary Water Source		Effluent	Surface	Ground	Other
10	Population (with... 50 miles)		0 - 10,000	10,000 - 100,000	100,000 - 1,000,000	> 1,000,000
11	Penalties (within last 5 years)		\$0 - \$25,000	\$25,000 - \$100,000	\$100,000 - \$250,000	> \$250,000

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 13

**APS
CONFIDENTIALITY AGREEMENT**

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of the _____ day March, 2003 by and between ARIZONA PUBLIC SERVICE COMPANY ("APS") and _____ ("Seller") (all of the foregoing referred to individually as "Party" or collectively as the "Parties").

WHEREAS, the Parties are currently exploring a possible transaction (the "Transaction") pursuant to the 2003 Track B Competitive Procurement Process approved by the Arizona Corporation Commission ("Commission" or "ACC") and required by Decision No. _____, through which APS may acquire capacity and or energy from Seller for APS' retail load and which is as of the date of execution of this Agreement being developed at and before the ACC (the "Bidding Process").

WHEREAS, in order to evaluate the Transaction, the Parties may request of each other that certain non-public, confidential or proprietary information be kept confidential (the "Information").

THEREFORE, in consideration of the receipt by the Parties from each other of such Information for their mutual benefit in connection with the Transaction, the Parties hereby agree:

1. The Parties will make best efforts to safeguard the Information against disclosure by employing the same means to protect the Information as that Party uses to protect its own non-public, confidential or proprietary information.

2. No receiving Party shall itself, or permit its employees, consultants and/or agents, to disclose to any person, corporation or other entity the Information without the prior written consent of the Party providing the Information, except a receiving Party may distribute the Information to its board members, officers, employees, agents and consultants and others who have a need for such Information for purposes of evaluating the Transaction, including but not limited to the ACC, its employees, staff, consultants and/or agents and the independent monitor who has been assigned by the ACC to review the Bidding Process, and its employees, staff, consultants and/or agents.

3. In the event that any Party receiving the Information becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the legally compelled Party shall give the other Party providing the Information with prompt prior written notice of such requirement so that the providing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, the providing Party waives compliance with the terms hereof.

4. The term "Information" does not include any information which (i) at the time of disclosure or thereafter is generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement), (ii) was available to any Party on a non-confidential basis from a source other than the Party hereto providing the Information, provided that such source is not and was not known by the receiving Party to

be bound by a confidentiality agreement that protected the Information, or (iii) has been independently acquired or developed by any Party without violating any of its obligations under this Agreement.

5. This Agreement shall be interpreted, governed and construed under the laws of the State of Arizona as if it were executed and to be performed wholly within the State of Arizona without regard to its conflict of laws principles.

6. The Parties agree that in the event of a breach of this Agreement, the Party providing the Information shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

7. The Parties' obligations under this Agreement will expire one (1) year from the date hereof.

8. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

9. This Agreement shall in no way be construed to (i) preclude in any way either Party from pursuing any business opportunities; (ii) establish any relationship between the parties with respect to such business opportunities; or (iii) establish any relationship between the parties with respect to the Transaction that is the subject of this Agreement.

10. This Agreement (i) may only be amended by both Parties in writing, and (ii) represents the entire understanding of the Parties with respect to the matters that are the subject hereof.

IN WITNESS WHEREOF, the Parties have duly executed this Confidentiality Agreement as of the date first above written.

ARIZONA PUBLIC SERVICE COMPANY

By: _____

Title: _____

Dated: _____

By: _____

Title: _____

Dated: _____

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 14

APS

REDACTED CONFIDENTIAL MATERIAL

**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 14

APS

REDACTED CONFIDENTIAL MATERIAL

**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 14

APS

REDACTED CONFIDENTIAL MATERIAL

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 15

**TEP
Confidentiality and Nondisclosure Agreement**

Confidentiality and Nondisclosure Agreement

In connection with Tucson Electric Power Company ("Company"), an Arizona corporation, engaging _____ (the "Recipient"), a _____ corporation, to provide certain services in response to Company's Competitive Solicitation (the "Project"), Company will be furnishing Recipient with certain information, which is non-public, confidential and/or proprietary in nature. All such information (whether or not reduced to writing or specifically identified as non-public, confidential and/or proprietary), and all analyses, compilations, passwords, data, studies or other documents based in whole or in part on any such furnished information is hereinafter collectively referred to as the "Information."

In consideration of being furnished with the Information, the Recipient agrees that:

1. The Information will be kept confidential using the same degree of care as Recipient uses to protect its own such confidential and proprietary information, but in no case should the Recipient use any less than reasonable care. The Recipient further agrees that the Information will not, without the prior written consent of Company, be disclosed in any manner whatsoever, in whole or in part, and will not be used directly or indirectly for any purpose other than the Project. Moreover, the Recipient agrees to transmit the Information only to those representatives within the Recipient, or other individuals or companies confidentially bound to the Recipient, who need to know the Information for the purpose of the Project, who are informed by Company or the Recipient of the confidential nature of the Information and who agree in writing to be bound by the terms of this Agreement. The Recipient will be responsible for any breach of this Agreement by any of its representatives.

2. Without the prior written consent of the Company, Recipient will not disclose to any third party the fact that the Information has been made available, that discussions or negotiations are taking place concerning the Project, or any of the terms, conditions or other facts with respect to the Project, including the status thereof, except as required by law, regulation or governmental authority and then only with prior written notice given as soon as possible to Company.

3. Any Information and copies thereof disclosed by Company to the Recipient shall remain the property of Company. The Recipient shall keep a record of each location of the Information. The Information and all copies thereof will be destroyed or returned immediately, without retaining any copies thereof, to Company if the Recipient elects not to proceed with the Project, or otherwise upon the request of Company.
4. Paragraphs 1, 2, and 3 of this Agreement shall be inoperative as to any portion of the Information which (i) is or becomes generally available to the public other than as a result of a disclosure by Recipient in contravention of this Agreement; (ii) was known by the Recipient on a non-confidential basis prior to its disclosure; (iii) is received from a third party without breach of confidentiality; or (iv) is independently developed by Recipient without reference to the Company's Information.
5. This Agreement will be in effect for a period of three years from the date hereof. However, this three-year term shall not apply to any Information that meets the definition of a trade secret under applicable law ("Trade Secrets"). The obligations set forth herein with respect to Trade Secrets shall survive the expiration or termination of this Agreement and will continue to be in effect so long as that information remains a Trade Secret under applicable law.
6. This Agreement shall be governed in accordance with the laws of the State of Arizona, without regard to the conflict of law provisions thereof.

TUCSON ELECTRIC POWER COMPANY

By: _____

Title: _____

Date: _____

[COMPANY NAME]

By: _____

Title: _____

Date: _____

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 16

REDACTED TEP CONFIDENTIAL MATERIAL

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 18

REDACTED TEP CONFIDENTIAL MATERIAL

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 19

**APS SOLICITATION TEAM
AS OF 03/25/03**

APS SOLICITATION TEAM
AS OF 03/25/03

1. Tom Carlson - Head of Trading - APS
2. Tim Bolden - Attorney- PWCC Shared Services
3. Barb Klemstine - Manager of Regulatory Affairs- APS
4. Don Stoneberger - Senior Electricity Trader – APS
5. Randy Young - Senior Transmission Trader – APS
6. John Taggart - Energy Analyst – APS
7. Kelly Bond - Administrative Coordinator- APS
8. Lisa Williams - Contract Development Analyst – APS
9. Clark Worthley- Credit Risk Manager - PWCC Shared Services
10. Gary Zhu - Director Risk Management – APS
11. Ajit Bhatti - Vice President Generation Planning- APS
12. Steve McAdams - Manager of Contracts – APS
13. Bill Maese - Manager of Bulk Power Services – APS
14. Marc Schmidt - Financial Engineer – APS
15. Steve Norris - Director of Trading Floor Operations - APS
16. Tom Glock - Power Operations Manager - APS
17. Paul Smith - Manager of Generation Planning- APS
18. Pete Ewen - Financial Services Leader- APS
19. Jim Krombholz - Strategic Competition Leader- APS
20. Sue Mabee - Sr. Engineer- APS
21. Bill Wiley - Environmental Consultant- APS
22. Nguyen Van - Sr. Engineer- APS
23. Karen Hardy - Sr. Engineer- APS
24. Rick Mack - Engineer III- APS
25. Sam Ortega - Engineer III- APS
26. Outside Consultant: Brad Miller- APS

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 20

PWEC BID TEAM MEMBERS

PWEC BID TEAM

APRIL 10, 2003

NAME

KOTZMANN, Warren
Warren.Kotzmann@pwenergy.com
400 N. 5th Street (*MS:)
Phoenix, Arizona 85004

AUSTIN, Daniel P.
dan.austin@pwenergy.com

BANERJEE, Ajoy
Ajoy.Banerjee@pwenergy.com

BENAVIDES, David
David.Benavides@pwenergy.com

BERNAL, Ann
ann.bernal@pwenergy.com

GOMEZ, Barbara
Barbara.Gomez@pinnaclewest.com

JONES-ROSS, Toni
Toni.Jones-Ross@pwenergy.com

KOMAROMY, Todd
Todd.Komaromy@pinnaclewest.com

PAULK, Carol
Carol.Paulk@pinnaclewest.com

THOMPSON, Justin
Justin.Thompson@pwenergy.com

STEWART, William

WOOD, Diane
Diane.Wood@pinnaclewest.com

Outside Consultants
HENWOOD ENERGY SERVICES, INC.
NAVIGANT CONSULTING, INC.

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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 21

**ARIZONA PUBLIC SERVICE COMPANY
STANDARDS OF CONDUCT
FOR THE TRACK B
COMPETITIVE PROCUREMENT PROCESS**

ARIZONA PUBLIC SERVICE COMPANY
STANDARDS OF CONDUCT
FOR THE TRACK B
COMPETITIVE PROCUREMENT PROCESS
March 18, 2003

March 14, 2003

STANDARDS OF CONDUCT
FOR THE TRACK B
COMPETITIVE PROCUREMENT PROCESS

Arizona Public Service Company ("APS") is committed to complying with the standards of conduct discussed in the Staff Report on Track B: Competitive Solicitation (October 25, 2002). The following Standards of Conduct shall govern the Competitive Procurement Process and supplement the proposed APS Code of Conduct submitted to the Commission by APS on November 12, 2002. In case of any inconsistency between the APS Code of Conduct and these Standards of Conduct, the Standards of Conduct shall govern with respect to the Competitive Procurement Process unless otherwise ordered or authorized by the Commission. Nothing in these Standards of Conduct shall limit APS' ability to comply with other applicable federal or state requirements.

I. **Definitions**

"Affiliate," with respect to APS, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise. Third parties that co-own plants jointly with APS shall not, by virtue of such co-ownership, be considered Affiliates for purposes of these Standards of Conduct.

"Affiliate Bid Team" means those employees, officers, directors or contractors of an APS Affiliate that are directly participating in the preparation of a response to an APS request for proposal in the Competitive Procurement Process.

"APS" means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

"Bidders" means that subset of Potential Bidders that both (i) meet the minimum standards as established by the Procurement Team and (ii) submit a Letter of Intent to Bid in the Competitive Procurement Process.

"Commission" means the Arizona Corporation Commission.

"Commission Staff" means those employees and consultants (other than the Independent Monitor) of the Utilities Division of the Commission designated by the Director in writing as participating in the Competitive Procurement Process.

“Communications Protocol” means the procedure for communications between the Procurement Team and all Potential Bidders or Bidders in the Competitive Procurement Process. The Communications Protocol is attached hereto as Attachment I and incorporated herein by reference.

“Competitive Procurement Process” means the initial Track B solicitation process for APS retail load approved by the Commission and required by Decision No. 65743. The Competitive Procurement Process shall include preparing and conducting the solicitation, evaluating bids and negotiating the definitive agreement(s), but shall not include management or implementation of such agreement(s) after their execution.

“Confidential Information” means any and all written, printed or other materials, regardless of form, provided by a Potential Bidder or Bidder to the Procurement Team to meet pre-qualification and creditworthiness requirements. Confidential Information shall also include, but not be limited to, marketing, operational, economic or financial information or data relating to the Potential Bidder or Bidder that is disclosed to the Procurement Team by the Potential Bidder or Bidder during the Competitive Procurement Process, provided that such information or data is marked “Confidential” by the disclosing Potential Bidder or Bidder and further provided that such information or data is not otherwise publicly available.

“Director” means the Director of the Utilities Division Staff, or his or her designee.

“Extraordinary Circumstance” means any situation that requires APS to act in a manner contrary to these Standards of Conduct to protect system reliability, to protect the public interest, or to ensure the safety of employees or the public.

“Independent Monitor” means the individual(s) retained by the Commission to advise Commission Staff regarding the Competitive Procurement Process.

“Pinnacle West” means Pinnacle West Capital Corporation as it currently exists, as its name may be changed, or as any successor enterprise.

“Potential Bidders” means the list of potential bidders developed by the Procurement Team. With respect to APS Affiliates, the term “Potential Bidder” shall mean the Affiliate Bid Team.

“Procurement Team” means those APS and Pinnacle West employees, officers, directors or contractors designated by APS to conduct or assist in conducting the Competitive Procurement Process for APS. As of March __, 2003, the primary members of the Procurement Team include:

- Thomas Carlson – Head of Trading, Retail Procurement
- Steve McAdams – Manager, Power Contracts

- Gary Zhu – Risk Manager
- Brad Albert and Don Stoneberger – Senior Energy Traders
- Randy Young – Senior Transmission Trader
- John Taggart – Quantitative Analyst
- Lisa Williams – Contract Administrator
- Clark Worthley – Credit Risk Manager
- Sue Mabee – Financial Engineer
- Kelly Bond – Administrative Coordinator

APS may change, add to or subtract from the members of the Procurement Team from time to time consistent with these Standards of Conduct.

“**PWEC**” means Pinnacle West Energy Corporation as it currently exists, as its name may be changed, or as any successor enterprise, and its subsidiaries.

“**Shared Services**” means those support services provided by APS or its Affiliates, including but not limited to: human resources; accounting; tax; insurance; risk management; energy risk management; audit services; contract management; information and communication technology; communications; environmental, health and safety; regulatory services; fuel procurement; system dispatch; transportation; security; facilities; shareholder services; law and business practices; public affairs and enterprise finance.

“**Solicitation Web Site**” means the internet web site established by the Procurement Team for communications with Potential Bidders, whether affiliates or not, that are participating in the Competitive Procurement Process, except for communications of Confidential Information relating to pre-qualification and creditworthiness.

II. Effective Date

These Standards of Conduct shall become effective on March 18, 2003, and shall remain effective throughout the Competitive Procurement Process.

III. Applicability

These Standards of Conduct shall apply only to the Competitive Procurement Process.

IV. Standards of Conduct

A. Rules Governing Employee Conduct

Members of the Procurement Team and APS or APS Affiliate employees assisting the Procurement Team:

1. Shall not assist any Potential Bidder during the Competitive Procurement Process in evaluating the solicitation, preparing a bid in response to the solicitation, or negotiating a definitive agreement except as permitted in these Standards of Conduct or the Communications Protocol;
2. Shall not give preferential treatment to APS Affiliates in the Competitive Procurement Process; and
3. Shall comply with other applicable federal and state requirements, including Code(s) of Conduct, affiliate relations or other similar requirements.

B. Extraordinary Circumstances; Shared Services; Non-Competitive Procurement Process Matters

1. Notwithstanding any other provision in these Standards of Conduct, in an Extraordinary Circumstance, the Procurement Team may take whatever steps are necessary to ensure reliability of the APS system, to protect the public interest, or to ensure the safety of employees or the public.
2. The Procurement Team may consult with or utilize Shared Services or other APS employees, officers or directors provided that such consultation or utilization shall not otherwise circumvent these Standards of Conduct.
3. Nothing in these Standards of Conduct or the Code of Conduct shall be construed to prohibit:
 - a. APS, Pinnacle West or PWEC officers and directors from providing corporate oversight, support and governance to their employees so long as such activities do not favor PWEC in the Competitive Procurement Process or provide PWEC with Confidential Information during the Competitive Procurement Process that is not available to all other Potential Bidders; or
 - b. APS or Pinnacle West employees from communicating with PWEC employees about non-Competitive Procurement Process matters.

C. Communications and Information Access

1. All communications relating to the Competitive Procurement Process between the Procurement Team and Potential Bidders or

Bidders shall be conducted in accordance with the Communications Protocol.

2. Once designated, the Procurement Team shall not provide to any Potential Bidder or Bidder preferential access to information substantively affecting the Competitive Procurement Process. This requirement shall not preclude APS from providing information to those entities that jointly own facilities with APS (or for which APS is the operating agent) to the extent such information is otherwise within the scope of information APS provides such entities the normal course of business.
3. Once designated, the Procurement Team shall make available information substantively affecting the Competitive Procurement Process to all Potential Bidders or Bidders at the same time and on equal terms pursuant to the Communications Protocol.
4. The Procurement Team shall not disclose to any Potential Bidder during the Competitive Procurement Process any Confidential Information obtained from another Potential Bidder without the prior written consent of the disclosing party.
5. If a member of the Procurement Team discloses information in a manner contrary to these Standards of Conduct or the Communications Protocol, the Procurement Team shall promptly inform Commission Staff and the Independent Monitor of such disclosure.

D. Mandatory Compliance

1. Written or electronic copies of these Standards of Conduct shall be provided to all APS and APS Affiliate employees.
2. A copy of the Standards of Conduct shall be maintained on the Solicitation Web Site. To qualify as a Bidder, a party must accept these Standards of Conduct and certify that it will, and that it will require its officers, directors, employees and contractors to, comply with these Standards of Conduct to the extent such Standards of Conduct apply to their activities.
3. Training on the requirements of these Standards of Conduct shall be provided to:
 - a. all members of the Procurement Team;
 - b. all members of any Affiliate Bid Team; and

- c. all APS and APS Affiliate employees assisting the Procurement Team or an Affiliate Bid Team in the Competitive Procurement Process.
4. The failure or refusal to abide by or to act according to these Standards of Conduct by a member of the Procurement Team or Affiliate Bid Team, or an APS or APS Affiliate employee assisting the Procurement Team or Affiliate Bid Team in the Competitive Procurement Process may subject the employee to disciplinary action, up to and including termination of employment.

E. Monitoring by Commission Staff and Independent Monitor

1. To the extent practicable, the Procurement Team shall provide to Commission Staff and the Independent Monitor drafts of all Competitive Procurement Process materials for review and comment prior to posting such materials on the Solicitation Web Site.
2. The Procurement Team shall provide to Commission Staff and the Independent Monitor access upon reasonable request to all written records relating to the Competitive Procurement Process and shall make available members of the Procurement Team upon reasonable request for consultation with Commission Staff and the Independent Monitor relating to the Competitive Procurement Process.
3. To the extent practicable, the Procurement Team shall provide Commission Staff and the Independent Monitor with reasonable advance notice of any scheduled or planned oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process to allow Commission Staff and the Independent Monitor to participate in such communications if desired by Commission Staff or the Independent Monitor.
4. The Procurement Team shall log all oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process consistent with the Communications Protocol and shall make such log available to Commission Staff and the Independent Monitor for review upon reasonable request.

F. Procedure to Modify the Standards of Conduct

APS may modify these Standards of Conduct from time to time after consultation with Commission Staff.

G. Audit Provisions

1. Audits regarding APS' compliance with these Standards of Conduct will be performed by Pinnacle West internal auditors in conformance with its standard audit practices.
2. Commission Staff may audit APS' compliance with these Standards of Conduct either during or within six (6) months of completion of the Competitive Procurement Process.

**ATTACHMENT I
TO THE
STANDARDS OF CONDUCT
FOR THE
COMPETITIVE PROCUREMENT PROCESS**

COMMUNICATIONS PROTOCOL

- I. Scope: This Communications Protocol applies to all substantive communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process.
- II. General:
- A. Except as provided in this Communications Protocol or in the Standards of Conduct, the Procurement Team shall not disseminate substantive information relating to the Competitive Procurement Process to any Potential Bidder or Bidder except to the extent such information is provided to all other Potential Bidders or Bidders.
 - B. The Procurement Team shall disseminate to Potential Bidders or Bidders substantive information relating to the Competitive Procurement Process by posting such information on the Solicitation Web Site, as set forth in Section III of this Communications Protocol.
 - C. Except for the submittal of sealed bids in response to a RFP and any subsequent negotiations or discussions relating to creditworthiness, all substantive communications from a Potential Bidder or Bidder to the Procurement Team relating to the Competitive Procurement Process shall be submitted to the Procurement Team through the Solicitation Web Site.
- III. Solicitation Web Site and Communications:
- A. Written Communications and Documentation:
 - 1. Except as otherwise provided in this Communications Protocol, all written communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process shall be done through the Solicitation Web Site.
 - 2. The Procurement Team shall maintain hard copies of all electronic communications between the Procurement Team and Potential

Bidders or Bidders, as well as other written documents, relating to or submitted during the Competitive Procurement Process for the life of the longest agreement resulting from such process, plus five (5) years. Electronic communications may be printed in hard copy and then deleted from the electronic system.

B. Oral Communications:

1. The Procurement Team shall maintain a log of all oral communications between the Procurement Team and any Potential Bidder or Bidder during and relating to the Competitive Procurement Process. The requirement to log such communications shall not apply to communications:
 - a. between legal counsel for APS and a Potential Bidder or Bidder, provided that such communications shall not be a conduit for transmitting substantive information affecting the Competitive Procurement Process in a manner inconsistent with the Standards of Conduct;
 - b. made during workshops, administrative hearings or similar proceedings of the Commission or other regulatory agency;
 - c. made during Bidders Conferences or similar meetings; or
 - d. that are covered by the attorney-client privilege.
2. The log of covered communications shall be generally in the form attached as Exhibit A.

C. Solicitation Web Site:

1. Information relating to the Competitive Procurement Process shall be made available to Potential Bidders, Bidders, the Commission, Commission Staff and the Independent Monitor through the Solicitation Web Site. The Procurement Team shall provide Potential Bidders, Commission Staff and the Independent Monitor who submit a request through the Solicitation Web Site with an identifier and password to access the information on the Solicitation Web Site.
2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information will be posted on the Solicitation Web Site, but such information shall include:

- a. Pre-qualification requirements for becoming a Bidder, including minimum creditworthiness requirements;
- b. Request for Proposal;
- c. Form agreement(s);
- d. Form Letter of Intent to Bid;
- e. Bidder Certification;
- f. Deliverability Analysis;
- g. RMR Study;
- h. Load & Resource Plan;
- i. APS Ten Year Plan; and
- j. Questions & Answers.

D. Bidder Specific Information:

1. Bidders may be provided access to certain additional information relating to the Competitive Procurement Process. If so, a Bidder's identifier(s) and password(s) will be coded to provide access to such information.
2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information falls within this category.

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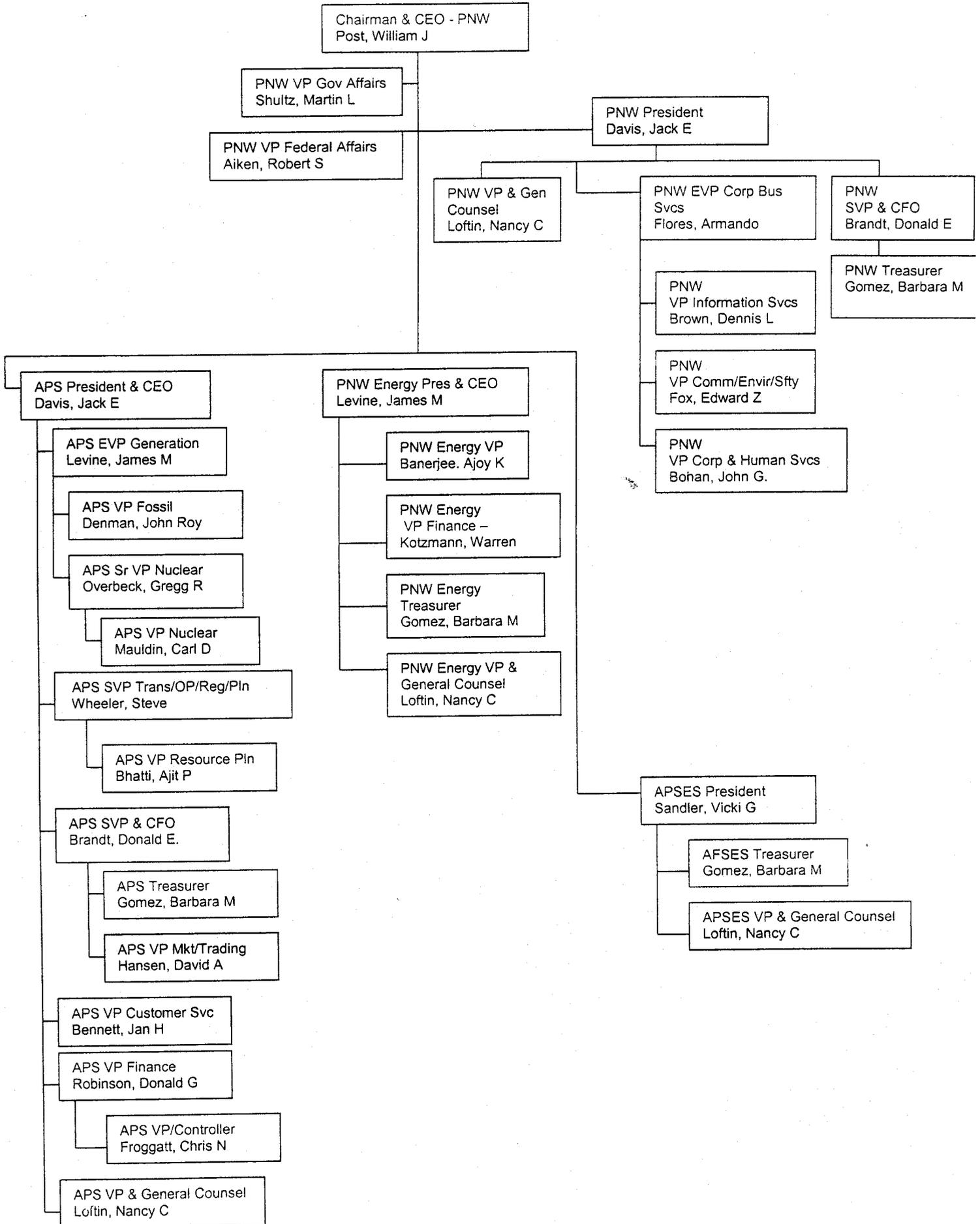
**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 22

PINNACLE WEST ORGANIZATION CHART

Pinnacle West Organization Chart

April 4, 2003



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**FINAL REPORT
OF ACCION GROUP, INC.
INDEPENDENT MONITOR
IN THE
TRACK B SOLICITATION**

Attachment No. 23

**APS
RESPONDENT CERTIFICATION**

RESPONDENT CERTIFICATION

Respondent guarantees that it will not engage in unlawful market manipulation in either the solicitation process or in carrying out the Agreement if Respondent is a successful bidder. Respondent guarantees that it is not and shall not engage in any unlawful market manipulation in the Western Interconnection wholesale market of which Arizona is a part. Allegations of Respondent's failure to abide by this written guarantee will constitute grounds for the institution of Arizona Corporation Commission ("Commission") proceedings to determine whether Respondent or its officers are in violation of this guarantee. If this guarantee against market manipulation is determined to have been violated, the Commission in its discretion shall be entitled to take appropriate action, after notice and opportunity for hearing, including but not limited to penalties, fines, rescission of the Agreement and/or exclusion of Respondent from future solicitation processes.

Respondent also certifies that it has reviewed the Arizona Public Service Company Standards of Conduct for the Track B Competitive Procurement Process (particularly Section II.C of the Communications Protocol) and that it will comply, and will require its officers, directors, employees and consultants to comply, with all provisions of those Standards of Conduct that apply to its activities.

[Insert Respondent full name]

By: _____

Its: Chief Financial Officer

Date: _____