

August 23, 2010

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

**Re: *WSPP Inc.*, Docket No. ER10-\_\_\_\_\_**  
**Submission of New Schedules D and E to WSPP Agreement**

Dear Ms. Bose:

WSPP Inc. (“WSPP”)<sup>1</sup> submits with this transmittal letter two additional service schedules for incorporation into the WSPP Agreement<sup>2</sup> (“Agreement”) and related conforming changes to the main body of the Agreement. The two service schedules provide, respectively, for the purchase and sale of reserve services and intra-hour supplemental power service. WSPP proposes an effective date of November 1, 2010, for the new service schedules and related conforming changes to the WSPP Agreement.

**I. Background**

**A. WSPP and the WSPP Agreement**

WSPP is a non-profit organization with approximately 300 electric utility members, most or all of which transact in bulk electricity markets. WSPP administers the WSPP Agreement, fosters competitive electricity markets, serves as a neutral forum for discussion of market issues, educates and trains members about the WSPP Agreement, energy trading and related matters, and, as required by the Federal Energy Regulatory Commission (“Commission”), maintains an open access transmission tariff. WSPP’s membership includes all industry sectors: investor-owned utilities, public power districts

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<sup>1</sup> This submittal is pursuant to section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and section 35.13 of the Commission’s regulations, 18 C.F.R. § 35.13.

<sup>2</sup> The current effective WSPP Agreement is on file with the Commission as WSPP Rate Schedule FERC No. 6.

and municipal entities, Federal power administrations, electric cooperatives, and independent generation companies.

The WSPP Agreement is a multilateral, Commission-approved enabling agreement for bilateral bulk electric energy transactions. The Agreement is used extensively in the West and also in other regions. The pre-set terms and conditions contained in the WSPP Agreement eliminate the need for bilateral negotiations of separate enabling agreements between members. This permits members to enter into energy transactions with each other by agreeing to transaction-specific price, quantity, delivery point, and schedule terms, and documenting these terms in a brief confirmation. Any entity that has the legal authority to buy or sell electric power at wholesale, and that has staff available on a continuous 24-hour basis to administer WSPP transactions, is eligible to become a WSPP member and transact with other WSPP members under the Agreement.<sup>3</sup>

The WSPP Agreement includes three service schedules, respectively, for economy energy service (Service Schedule A), unit commitment service (Service Schedule B), and sale or exchange of firm energy or capacity (Service Schedule C).<sup>4</sup> The Agreement does not provide explicitly for the purchase and sale of ancillary services.

The WSPP Agreement is subject to amendment, including the revision or addition of service schedules, only upon the agreement of 90% of voting members. See WSPP Agreement § 6.1 (regarding amendment to or addition of service schedules). On June 15, 2010, the WSPP Executive Committee approved the amendments now submitted. All amendments to the WSPP Agreement are subject to the Commission's approval.

## **B. Development of Service Schedules D and E**

### **1. Market Evolution and the WSPP Reserves Task Force**

The wide acceptance in the bilateral markets of the WSPP service schedules demonstrates that availability of standardized products under the WSPP Agreement adds liquidity to energy markets and advances competition. While vast amounts of power are purchased and sold under existing WSPP service schedules, particularly Service Schedule C, WSPP has for some time considered whether standardization of additional products would enhance the bilateral markets. More specifically, WSPP considered whether a more liquid and competitive market for reserves and intra-hour power help to facilitate

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<sup>3</sup> Commission-jurisdictional entities must file the signed WSPP Agreement with the Commission.

<sup>4</sup> WSPP Agreement at Schedules A, B, and C, respectively. The WSPP Agreement also allows for the sale of physically-settled options, i.e., a call option to buy Schedule B or C power, or a put option to sell Schedules B or C power.

the operation of balancing authorities, support load following and generation leveling needs, and, more generally, promote competitive opportunities and efficiency.

WSPP established a Reserves Task Force, comprised of representatives from various market sectors, to consider the reserve services market and other product issues. Following several meetings and considerable deliberation, the Reserves Task Force concluded that facilitation of competitive markets for reserves would provide balancing authorities and market participants with additional flexibility, operational support, and competitive opportunities. Additionally, the Reserves Task Force concluded that a standardized intra-hour supplemental power product could fulfill various requirements for generation leveling and load following, thereby reducing the potential dispatch of reserves. The Reserves Task Force considered various approaches to fulfill these goals and eventually settled upon the products described in Service Schedules D and E.

## **2. Development of Service Schedules D and E within the WSPP Membership**

Throughout 2008, 2009, and early 2010, WSPP facilitated numerous meetings and webinar telephone conferences for its members to develop consensus about the contents and language of Service Schedules D and E. WSPP's 90% approval threshold necessitates virtual unanimity. Through telephone conferences and meetings of the WSPP Operating and Executive Committees, members devoted significant resources and effort to discuss, negotiate, and reach agreement upon terms and conditions of the two service schedules that would not draw objections exceeding 10% of the voting membership.

### **a. Scope of Service Schedule D and Product Definitions**

The discussions and negotiations focused upon several issues. In its early stages, Service Schedule D was focused upon contingency reserves. Several members urged that the schedule would have greater value to more WSPP members throughout all regions if it covered all reserves as defined in the NERC Glossary of Terms Used in Reliability Standards ("NERC Glossary"). The members supported this expansion.

WSPP members also focused on descriptions of reserves products. Product definitions are particularly important to assure that reserves sold under the schedules conform to reliability requirements. The members determined that to avoid the risk of inconsistency between reliability requirements and the Service Schedule, the text should incorporate the NERC Glossary definitions by reference. Other members urged that incorporation by reference would be cumbersome for practical use and cause confusion. Brief descriptors of each reserves product, based upon the NERC Glossary, were added to the schedule together with provisos that any inconsistencies between the descriptors and the NERC Glossary would be resolved in favor of the NERC Glossary.

**b. Harmonization of Service Schedule D with Reliability Requirements**

Members recognized that the reserves products under Service Schedule D would be purposeful only if they were consistent with and fulfilled reliability requirements. In the first instance, this concern was addressed by reliance upon and incorporation of the NERC Glossary definitions and, as discussed below, incorporation of the applicable reliability standards.

It was recognized, however, that particularly in the WECC, the purchaser of reserves might be a different entity than the entity that must have authority to dispatch the reserves. Accordingly, terms were placed in Service Schedule D to allow for agreements between the purchaser and the applicable “Designated Authority” – the applicable balancing authority or reserve sharing group. These agreements can assure that the Designated Authority has all requisite dispatch authority required by the Applicable Standards. The schedule does not require that agreements be put in place; the parties to a transaction will make a determination, in conformity with applicable standards, whether such an agreement is required.

Members also recognized that the reserves source must be connected physically to, subject to dispatch by, and otherwise conform to the requirements of, the Designated Authority. It is intended that the purchase and sale of reserves under Service Schedule D fully support all applicable reliability requirements. Consequently, the Designated Authority must be identified on the confirmation form, and Service Schedule D requires that the reserves service be:

physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by the Applicable Standards for the applicable Reserves Service, and as required to conform to any additional attributes stated in the Confirmation.

Service Schedule D § D-3.2. Applicable Standards are defined in the schedule as NERC Reliability Standards, and other applicable standards and criteria of NERC and any applicable Regional Reliability Organization, balancing authority, and reserve sharing group. *Id.* § D-2.2.1. Section D-3.3.2 restricts dispatch of the reserves capacity to circumstances in which the Designated Authority determines in its good faith discretion that dispatch is required under the Applicable Standards to respond to a contingency or other event for which use of the Reserve is permitted under the Applicable Standards, or as the confirmation may otherwise permit. *Id.* § D-3.3.2.

Members concluded that these provisions will assure that reserves services under Service Schedule D conform to the Applicable Standards. They concluded further that a more specific delineation of reliability requirements in Service Schedule D could create a risk of inconsistency between the schedule and Applicable Standards, particularly

because Applicable Standards vary from region to region. Reliability requirements will be fulfilled by identifying the Designated Authority (allowing a particular identification of the Applicable Standards) and imposing the Applicable Standards upon the transaction. Nothing in Service Schedule D diminishes any member's obligation to conform to all applicable reliability requirements. Therefore, the schedule has no impact upon any entity's reliability obligations, including obligations of purchasing/selling entities, balancing authorities, reserve sharing groups, and others to assure, in conformity with any and all requirements of NERC and applicable regional reliability organizations, that reserves be connected and capable of dispatch to serve the Designated Authority.

### **c. Performance and Remedies**

The members also focused considerable efforts on the drafting of performance and remedies provisions. Many members emphasized that actual physical delivery of services under Service Schedules D and E (the latter because of the short term or dynamic scheduling) could be, and likely often would be, critical to reliability. Some made clear that if the liability for non-delivery was limited to the mere cost of replacing non-delivered energy, then the products would be insufficiently reliable for the intended purpose and they would not purchase. Others made clear that the products were clearly defined and, in order to be priced appropriately, dispatch needed to be limited to the conditions stated in the definitions and other reliability requirements.

The agreed upon solution was a damages multiplier. The members concluded that the Service Schedules should not impose a specific multiplier, however; rather, the parties in a specific transaction could agree to a range from between one (no multiplier) to a maximum of five. Through this approach, the counterparties to each transaction will have flexibility to tailor the appropriate damages remedy to the particular product and transactional context, and thereby balance the need for remedial teeth with the counterparty's need to cap risk.

To provide additional remedial teeth, the members also agreed to permit, but not impose, a contract termination and liquidation remedy for even a single instance of non-performance. By contrast, WSPP Service Schedule C (firm energy and capacity) does not provide for termination and liquidation due to a party's failure to deliver or receive energy or capacity. Service Schedules D and E will allow termination and liquidation for that failure to perform.

### **d. Load Reduction as Reserves Capacity**

Seeking to assure the widest availability of resources to provide economical reserves capacity, the members agreed to specify that Reserve Service could be provided through generation or "electrical load(s) to which Seller is authorized to reduce or interrupt the supply of electricity. . ." *Id.* § D-3.2. The Service Schedule will accommodate load shedding, as well as energy storage devices.

### **e. Scheduling Under Service Schedule E**

With respect to Service Schedule E, the members sought to permit diverse intra-hour scheduling options. As members developed the product definition, they recognized that transacting parties could best fulfill intra-hour requirements if Service Schedule E provided two scheduling options. It would permit manual scheduling with scheduling increments as the parties may agree and alternatively permit dynamic (electronic) dispatch. They also determined to include an energy exchange option by which the purchaser could return energy in kind to the seller.

### **f. Avoiding Potential Prejudice to Variable Energy Markets**

Although Service Schedule E may be used for generation leveling, and thereby for integration of variable resources, a wind generation member expressed concern that market participants could conclude erroneously that intra-hour supplemental power under Service Schedule E is a necessary part of a transaction in which wind energy is sold firm. WSPP members have diverse views regarding the “firmness” of wind or solar energy. Although intra-hour supplemental power under Service Schedule E would be available for whatever purposes market participants may determine, including support for variable energy, the addition of Service Schedule E to the WSPP Agreement is not intended to imply a requirement that intra-hour supplemental power must be part of a firm sale of wind or solar energy.

WSPP members resolved these and other issues through an open and lengthy process of conceptual evolution and compromise. This process ultimately allowed membership approval of the two Service Schedules in fulfillment of the WSPP 90% requirement.

## **3. Anticipated Development of Markets**

WSPP foresees clear value in fostering more liquid and robust markets for reserves and intra-hour supplemental power in the regions its members serve. As the Commission affirmed in Order No. 890-A, generators or balancing authorities are permitted to contract with third parties to help meet their ancillary service obligations, including contingency reserves.<sup>5</sup> As more variable energy resources come on line, it is

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<sup>5</sup> See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261, at P 506 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (“A generator serving load outside the control area can make alternative comparable arrangements to provide reserves on behalf of its load by contracting with third parties.”).

reserves and possibly intra-hour supplemental power products are likely to be part of integration solutions. Developing more liquid and robust markets to meet these needs can enhance competition in bulk energy and capacity sales and thereby promote consumer welfare. Standardization of these products in WSPP service schedules, to facilitate convenient transactions under the WSPP Agreement, is expected to facilitate additional sales and purchases of these services. As the success of the WSPP Agreement demonstrates, standardization is a powerful tool for fostering liquidity. Indeed, WSPP hopes and expects that eventually, a market for these services will grow to be sufficiently robust that trading will occur on third party trading platforms.

On the other hand, WSPP does not expect markets for Service Schedule D and E products to appear instantly. The two Service Schedules are likely to induce market development and WSPP members do foresee demand, but it is likely to take some time for competitive markets for these services to evolve. As further described in Section III below, WSPP respectfully submits that the Commission's current special requirements for market-based trading of ancillary services will materially hinder development of markets. Lifting of these requirements would be just and reasonable, and would help to foster a receptive climate for these markets.

## **II. Description of Submitted Tariff Revisions**

WSPP proposes to add two service schedules to the WSPP Agreement:

1. Service Schedule D, Reserves Services, for the provision and maintenance of all reserves services defined in the NERC Glossary, including contingency reserves; and
2. Service Schedule E, Intra-hour Supplemental power, to help balance supplies and loads.

WSPP's proposed new Service Schedule D includes reserve services that satisfy Open Access Transmission Tariff (pro forma) ("OATT") Schedules 5 (Operating Reserves-Spinning) and 6 (Operating Reserves-Supplemental), which services transmission customers and balancing authorities may self schedule, including through purchase from third-party suppliers. Additionally, while the Agreement does not currently provide for purchase and sale of ancillary services, WSPP rules implicate those services. WSPP's Operating Procedure No. 1 provides in part that, to implement a WSPP transaction, at least one party must obtain or provide control area services. WSPP's proposed Service Schedule E allows various flexible arrangements, including generation leveling for variable energy resources and load following. As more fully explained below, Service Schedules D and E can significantly advance the Commission's objectives for advancing competition in wholesale power markets in regions that do not include organized central markets. The proposed service schedules are just and reasonable.

### **A. Service Schedule D—Reserve Services**

Schedule D provides for Reserve Services, which includes any of five operating reserve services currently defined in the NERC Glossary. Although the definitions in the NERC Glossary will govern, Schedule D explains that the five services are as follows:

- spinning reserve, referring to unloaded generation that is synchronized and ready to serve additional demand;
- non-spinning reserve, referring to (a) that generating reserve not connected to the system but capable of serving demand within a specified time and (b) interruptible load that can be removed from the system in a specified time;
- Operating Reserve-Spinning, referring to the portion of Operating Reserve consisting of (a) generation synchronized to the system and fully available to serve load within the disturbance recovery period following the contingency event; or (b) load fully removable from the system within the disturbance recovery period following the contingency event;
- Operating Reserve-Supplemental, referring to the portion of Operating Reserve consisting of (1) generation (synchronized or capable of being synchronized to the system) that is fully available to serve load within the disturbance recovery period following the contingency event; or (2) load fully removable from the system within the disturbance recovery period following the contingency event; and
- regulating reserve, referring to an amount of reserve responsive to Automatic Generation Control, which is sufficient to provide normal regulating margin.

If any of these reserve services is deleted from the NERC Glossary, then it will no longer be a service under Service Schedule D (although parties to a transaction under Service Schedule D may elect to continue using the deleted service). While some of these services may include overlapping characteristics, they are listed in Service Schedule D to ensure that transacting parties have the flexibility to use any of the NERC-recognized forms of reserves and thereby fulfill their particular operational requirements.

WSPP members that wish to enter into a transaction for reserve services under Service Schedule D must memorialize their agreement through a confirmation, just as they would for power purchase transactions under Service Schedules A, B, or C. Each confirmation shall identify the Reserve Services provided, the Designated Authority (i.e., the entity, such as a Regional Reliability Organization, balancing authority, or reserve sharing group, that has the right to apply the provided reserve to the quantity of reserve it is required to maintain), the contract quantity, contract price, contract terms, transmission particulars, communications procedures, any conditions to the effectiveness of the

transaction agreement, the Damages Multiplier, and any additional attributes of the service (consistent with the applicable standards) to which the parties may agree.

The contract price may include separately stated capacity and energy charges. If it includes a capacity charge, then the purchaser is obligated to pay such charges to the seller at all applicable times during the contract term. The contract price may also state separate on-peak and off-peak prices for capacity and energy. The periodic energy charge is the product of the quantity of energy delivered by the purchaser to the seller during the period, multiplied by the applicable price for that period.

The seller's obligation is to deliver energy associated with the Reserve Service, as and when the Designated Authority requests such delivery in the manner specified in the confirmation, in quantities up to the applicable capacity specified in the confirmation.

For its part, the purchaser must ensure that the Designated Authority does not require the seller to deliver energy under Service Schedule D except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with good utility practice or such other criteria as may be stated in the confirmation, that such energy is required to enable it to respond to a contingency or other event for which the reserve specified in the confirmation is permitted to be utilized under the Applicable Standards (or as otherwise stated in the confirmation).

The parties and the Designated Authority each have certain audit rights. The purchaser and Designated Authority each has the right to audit the seller's records reasonably to assure that the Seller's provision of reserves conforms to the Applicable Standards and the confirmation. The Seller has the right to inspect or audit the Designated Authority's records as reasonably required to assure that any use of reserves by the Designated Authority conforms to Service Schedule D and the confirmation. The parties may state further details and conditions in the confirmation, such as provisions on confidentiality and third-party auditors.

Service Schedule D also includes provisions addressing market-based and cost-based pricing, performance and non-performance of obligations, and damages, as discussed in Section III of this transmittal letter.

Provisions in Service Schedule D concerning rates are discussed in Section III.B below.

#### **B. Service Schedule E—Intra-Hour Supplemental Service**

Under Intra-Hour Supplemental Service, a seller provides capacity and energy to the purchaser, and the purchaser is permitted to call upon energy at a variable rate within each hour, up to and including the stated capacity. Scheduling can occur manually or dynamically through electronic communications. As with other services under the WSPP Agreement, WSPP members enter into transactions for Intra-Hour Supplemental Service through confirmations that specify the maximum capacity (which may vary, e.g., by

season or by clock hour), the intra-hour interval period (“Interval”), the contract price, contract term, whether the service is dynamic or manually scheduled, points of delivery, the Damages Multiplier (discussed below), and any additional provisions to which the parties agree, including ramp rates or other constraints on changes in the rate of flow; which party is responsible for obtaining and paying for, and bears the risk of the unavailability of, necessary transmission service; and provisions on in-kind return of energy.

For manually scheduled Intra-Hour Supplemental Service, the purchaser has the right to request energy from the seller at any rate of flow (in whole megawatts) up to the maximum capacity, and the seller must, subject to certain conditions, deliver the energy at the requested rate of flow. The purchaser must transmit its request electronically to the seller and to the balancing authority. The purchaser’s requests must comply with applicable scheduling rules and protocols, and may not exceed limits on the rate of increase or decrease (e.g., ramp rates) set forth in the confirmation.

For manually scheduled service, each clock hour is divided into equal Intervals (e.g., ten six-minute intervals) specified in the confirmation. Unless otherwise stated in the confirmation, the purchaser can make a single request for energy at any time during each Interval. The seller must begin providing energy at the purchaser’s requested flow rate at the beginning of the first scheduled Interval, and continue to provide energy at that flow rate until the previously specified cessation time, or until a subsequent request for a changed flow rate takes effect. Subsequent requests for a changed flow rate can take effect no sooner than is consistent with the previously specified ramp rate or other such constraint, but no later than the end of the Interval that follows the Interval in which the request for a change was made.

For dynamic Intra-Hour Supplemental Service, the purchaser can request energy from the seller at a flow rate (which need *not* be in whole megawatts) up to the maximum capacity specified in the confirmation. The request must comply with applicable scheduling rules and protocols, as well as any constraints on flow-rate changes stated in the confirmation, and must be transmitted dynamically to the seller and all applicable balancing authorities by electronic communications that comply with applicable communication rules and protocols of the applicable Regional Reliability Organizations and balancing authorities.

Dynamic service does not use scheduling Intervals. Instead, the seller must begin providing energy at the requested flow rate at the earliest time its equipment is capable of responding to the purchaser’s electronic request, but in no case sooner than is consistent with any ramp rates or other constraints specified in the confirmation. The seller must continue to provide energy at that flow rate until the cessation time specified by the purchaser, or until superseded by a subsequent request from the purchaser for a different flow rate.

The parties may specify in the confirmation that the purchaser has the right, but not the obligation, to return in-kind some or all of the energy delivered by the seller.

Returns of energy must be at flow rates that do not exceed the maximum capacity stated in the confirmation, and must be completed, unless otherwise agreed, within 168 hours of the purchaser's receipt of energy from the seller. When the return option is included, the parties must specify the governing details in the confirmation, including the allowable times and delivery points for energy returns, the type of transmission service (for which the purchaser must be financially responsible) the purchaser will use for returns, and any other terms that are reasonably necessary for purchaser to exercise its right to return energy, such as any requirement to return peak energy at peak periods.

Service Schedule E sets out certain warranties that seller and purchaser make to each other by executing a confirmation for Intra-Hour Supplemental Service. The seller warrants that its communication and automated control facilities are sufficient (absent Uncontrollable Forces, as discussed below) to enable the seller's sources of energy to receive, and to respond in a timely and accurate manner to, the purchaser's electronic communications conveying its requests for energy. For its part, the purchaser warrants that its communication and automated control facilities (or those of the Balancing Authority) are sufficient (absent Uncontrollable Forces) to enable the purchaser's system to convey to the seller and the applicable Balancing Authorities requests for energy in the manner required under the applicable terms of Service Schedule E, and to adjust the purchaser's equipment and facilities in an accurate and timely manner as needed to receive deliveries of energy from the seller in accordance with the purchaser's instructions to the seller in conformance with applicable communications criteria.

The contract price must be specified in the confirmation, and may include separate prices for capacity, energy, transmission (when provided by the seller), and off-peak and on-peak periods. Unless otherwise agreed, the purchaser shall pay any capacity and transmission charges at all times during the contract term. The energy charge shall reflect any agreed on-peak and off-peak pricing and any permitted in-kind returns of energy.

Service Schedule E also includes provisions addressing market-based and cost-based pricing, performance and non-performance of obligations, and damages, as discussed in Section III of this transmittal letter.

Provisions in Service Schedule E concerning rates are discussed in Section III below.

### **C. Other Conforming Changes**

WSPP is revising the main body of the WSPP Agreement to add necessary definitions, i.e., Balancing Authority, Contract Term, Intra-hour Supplemental Power, NERC Glossary, NERC Reliability Standards, Reserve Services, Reserve Sharing Group, Regional Reliability Organization, and to delete the definition of the superseded term "Control Area" and replace certain references to "Control Area" with the term "Balancing Authority Area."

### **III. The Proposed Changes to the WSPP Agreement Are Just and Reasonable; Review and Lifting of the Commission's Special Requirements for Sale of Ancillary Services at Market-Based Rates Would be Just and Reasonable**

#### **A. The Service Schedules Terms and Conditions are Just and Reasonable**

Adoption of Service Schedules D and E is expected to foster efficiency, promote liquidity, and aid the development of competitive markets for the supply of the services they cover. Schedules D and E adopt the same proven and successful approach the Commission previously approved for WSPP Service Schedules A, B, and C—establishing standard terms on file with the Commission to govern a multitude of transactions while allowing parties the flexibility to include transaction-specific terms in their confirmations.

Moreover, the standard terms for these new products, which in the case of Service Schedule D are ancillary services required for reliability and in the case of Service Schedule E provide services that enhance reliability, appropriately rely upon and incorporate to a great extent the definitions and standards produced by the national and regional reliability standards development and approval process overseen by the Commission.

Consistent with Commission policy, Service Schedules D and E would allow market-based pricing for third-party suppliers. Both schedules would also adopt the procedure already approved by the Commission for utilities that do not have market-based pricing tariffs or are subject to mitigation to include their cost-based rate schedules in a separate schedule of the WSPP Agreement.

#### **B. Market-Based Pricing Sales Conditions**

##### **1. Service Schedule D: Market-Based Pricing and Provisions for any Applicable Price Caps**

The special restrictions upon sales of ancillary services at market-based rates emerged in the late 1990s, generally in parallel with the Commission's open access transmission policy and related requirement that jurisdictional transmission providers adopt OATTs. Under the OATT, transmission providers are required to offer ancillary services at cost based rates. In the late 1990s, energy markets with market-based pricing and independent generation (other than incremental to qualified facilities) were beginning to develop and expand. Cost-based ancillary services, whether provided by RTO/ISOs in centralized markets or by single-entity transmission providers, occurred in combination with sales of transmission under OATTs. Apparently, the sale of ancillary services at cost-based rates was to foster the Commission's open access transmission policy.

Today, open transmission access and energy markets with market-based pricing are well-established, both in centralized RTO/ISO markets and in bilateral markets. The

need for reserves is expected to increase to support load growth and the integration of variable energy resources. While the Commission would be appropriately concerned with exercises of undue market power, it should, as described below, balance the need for more robust markets against that concern.

### **a. Special Tariff Requirements and Sales Restrictions**

Restrictions and requirements concerning ancillary services, including special market-based tariffs and market power studies, are first described and then addressed.

#### Restrictions:

(a) Off-system sales of ancillary services by jurisdictional utilities are to occur “pursuant to a specific tariff,”<sup>6</sup> which tariff is to include language “identifying the ancillary services that they offer.”<sup>7</sup>

(b) The tariff requirement can be met by amending the selling utility’s market-based rate tariff to permit the utility to sell certain ancillary services at market-based rates, provided that the amendment includes a condition that the ancillary services not be, “sold in conjunction with transmission service pursuant to [the same utility’s] open access transmission tariff.”<sup>8</sup>

(c) The Commission allows third-party providers to sell ancillary services at market-based rates without filing a study to demonstrate their lack of market power, subject to certain requirements and restrictions.<sup>9</sup> The Commission explained, “entry by third-party suppliers in ancillary service markets in which a transmission provider is obligated to provide such services at cost-based rates can potentially result in lower prices than would otherwise emerge.”<sup>10</sup> A lack of the

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<sup>6</sup> *Avista Corp.*, 89 FERC ¶ 61,136, at 61,391 (1999) (“*Avista II*”).

<sup>7</sup> *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities*, Order No. 697, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,252, at P 1060 (2007), *order on clarification*, Order No. 697-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,268, *order on reh’g*, Order No. 697-B, III FERC Stats. & Regs., Regs. Preambles ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, III FERC Stats. & Regs., Regs Preambles ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010).

<sup>8</sup> *Wisc. Pub. Serv. Corp.*, 91 FERC ¶ 61,254, at 61,889 (2000); *see also Avista Corp.*, 87 FERC ¶ 61,223, at n.12 (1999) (“*Avista I*”).

<sup>9</sup> *See Avista I* and *Avista II*; *see also* Order No. 697, at P 1049.

<sup>10</sup> *Avista I* at 61,882.

necessary industry data, however, precluded potential sellers of ancillary services from conducting reliable market power analyses.<sup>11</sup> Therefore, another method of regulating ancillary services rates was needed “to encourage sufficient market entry of third-party providers of ancillary services.”<sup>12</sup> The Commission concluded “that third party ancillary service sellers *that cannot perform a market power study* should be allowed to sell ancillary services at flexible rates.”<sup>13</sup>

WSPP Proposal:

As the Commission foresaw, special tariff requirements, and particularly market power studies, can impede the development of these markets. WSPP proposes the following revised approach, referring respectively to items (a) through (c) above:

(a) With respect to transactions under Service Schedule D, there should be no requirement for a separate description of reserves in a jurisdictional utility’s market based tariff. Service Schedule D fully and efficiently satisfies the Commission’s policy that third-party suppliers of ancillary services must have “a specific tariff” that “identif[ies] the ancillary services that they offer.”<sup>14</sup> When WSPP members agree through a confirmation to sell Reserve Services, they do so expressly subject to the terms of the WSPP Agreement and Service Schedule D on file with and approved by the Commission. In these circumstances, the filed terms of the standardized agreement are as binding on the seller as they would be if set forth in a seller’s individual tariff on file with the Commission. Therefore, no substantive reason appears to require WSPP sellers under Service Schedule D to file potentially one hundred or more duplicative individual tariffs as a condition to obtaining the flexible pricing that the Commission routinely allows to individual third-party sellers of ancillary services.

Moreover, imposing such a requirement would undermine the standardization that is essential to promoting greater liquidity for reserves markets. Requiring the filing of numerous individual ancillary services tariffs would impose vastly greater costs and administrative burdens on the electric industry than simply relying on WSPP’s single, equally binding, standard agreement, thus raising an obstacle to broad use and acceptance of standard reserves products. Even more problematic is that individual ancillary service tariffs would be subject to individual filing rights under FPA section 205. Even if

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<sup>11</sup> *See id.*

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

<sup>13</sup> *Id.* at 61,883 (emphasis supplied).

<sup>14</sup> Order No. 697 at P 1060.

separate individual tariffs were initially identical to one another, the individual sellers would have the right to file distinct changes to each over time. The mere possibility of such changes could be enough to destroy the expectation of standard terms that is essential to promoting broad acceptance and liquidity of the reserves services. By contrast, changes to the WSPP Agreement and its service schedules require acceptance by WSPP; and when such changes are made, they apply equally and simultaneously to all members, thus ensuring that the terms on file with the Commission remain standard.

(b) If the Commission determines that the restriction that market-based ancillary services not be, “sold in conjunction with transmission service pursuant to [the same utility’s] open access transmission tariff, WSPP does not object to a preclusion of sales under Service Schedule D at market-based rates by an entity to itself or to its affiliate, for resale under its own or its affiliate’s OATT at cost-based rates.

(c) As noted above, the Commission has already determined that an ancillary services market power study is not required if the study is infeasible. WSPP proposes, for the following reasons, that the requirement of a separate study or a showing of infeasibility be eliminated altogether in order to facilitate transactions under Service Schedule D.

First, an entity’s market power study for market-based energy sales is a reasonable proxy for an assessment of market power with respect to reserves sales; although reserves is an ancillary service under an OATT, the service also is merely the provision of capacity and energy with prompt ramp-up.

Second, balancing authorities seeking to procure reserves from external sources are unlikely to face exercises of market power. The anticipated addition of new vendors of reserves at market-based prices may be expected to widen the market, adding competition and diminishing any market power. Stated differently, the special requirements may be having an unintended and unexpected affect of narrowing the market- an anticipatory cure worse than the feared disease.

Third, these market-based rate sales would be in addition to sales in the market by transmission providers under OATTs at reasonable (cost-based) rates. When the transmission provider has reserves to sell under its OATT, its prices will be market signals with respect to third-party sales at market-based rates. It is reasonable to infer that the third-party sales will not occur unless the market-based rates are generally competitive with the cost-based rates associated with transmission service. Thus, because sales under OATTs are price competitive, third-party market-based sellers will lack market power.

WSPP does not seek to extend market-based pricing for Service Schedule D transactions to entities that lack market-based rate authority or in areas where market power is mitigated by requiring sales at cost-based rates. Where

mitigation is imposed, the mitigated entity would be permitted to sell under Service Schedule D at cost-based rates filed under Schedule Q of the WSPP Agreement. This provision simply extends to Service Schedule D the approach the Commission already has approved for power and energy sales under the WSPP Agreement. WSPP members that lack market-based rate authority for some or all of the services under Schedules A, B or C are permitted to incorporate their cost-based rate schedules into the WSPP Agreement through Schedule Q.<sup>15</sup> Once a market-mitigated company's rate schedule is incorporated into Schedule Q, that company applies the incorporated rate to its cost-based transactions under the WSPP Agreement.<sup>16</sup> Service Schedule D (as well as E) expressly provides for this procedure under Schedule Q. Consistent with its current practice, WSPP's filing of Schedule Q cost-based rate schedules will be a ministerial task on behalf of the affected WSPP member; the member, not WSPP, will be responsible for supporting the substance of its rate schedule.

#### **b. Special Restrictions upon Sales to Transmission Providers**

The Commission also has established conditions regarding certain specific ancillary services customers. These restrictions are now described and addressed.

##### Restrictions:

(a) Third-party providers are precluded from selling ancillary services at market-based rates to an RTO/ISO that has no ability to self-supply ancillary services but instead depends on procurement from third parties;<sup>17</sup>

(b) Similarly, third-party providers are prohibited from selling ancillary services at market-based rates "to a public utility who is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its customers."<sup>18</sup>

##### WSPP Proposal:

(a) In today's robust RTO/ISO markets, RTO/ISOs can assure just and reasonable rates by procuring ancillary services through competitive requests for proposals. This procedure inherently assures competitive rates and thereby negates any need to stifle competition by requiring sales to RTO/ISOs under

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<sup>15</sup> See *W. Sys. Power Pool*, 126 FERC ¶ 61,193 (2009).

<sup>16</sup> See *id.* at PP 9-10.

<sup>17</sup> See *Avista I* at n.12.

<sup>18</sup> *Avista I* at n.12.

Service Schedule D at cost-based rates. Moreover, RTO/ISOs generally procure reserves to support systems in which energy is sold at competitive rates based upon locational marginal pricing. Just as energy is sold at market-based competitive rates, with mitigation only in pockets where market power has been found, so too reserves should be permitted to be sold at market rates. RTO/ISO market monitors are fully capable of identifying any material market power pockets and seek mitigation.

(b) Nor should market-based sales be prohibited by a third-party supplier to satisfy the purchasing utility's own OATT requirements to offer ancillary services to its customers. The Commission has already waived this requirement, allowing such market-based rates when the utility had divested its generation and procured the necessary ancillary services from third parties pursuant to a competitive request for proposals.<sup>19</sup> This shift from requiring proof of an absence of market power to requiring procurement through competitive processes should be broadened by eliminating the restriction on sales entirely. Purchasing utilities have inherent and adequate incentive to conduct their purchases prudently, including arranging for competitive supply through competitive procurement. Moreover, just as with any energy and capacity sales, if a problem arises, individual enforcement actions are available.

## **2. Service Schedule E: Market-Based Pricing and Provisions for any Applicable Price Caps**

As explained in this section, the Commission has imposed certain restrictions and conditions upon sales of ancillary services. WSPP respectfully submits that most all of these conditions no longer are necessary or appropriate to assure just and reasonable rates and may, indeed, impede the growth of reserves markets, particularly in regions not under Regional Transmission Organizations or Independent System Operators ("RTO/ISO"). To facilitate the development of reserves markets, WSPP requests that the Commission review and lift these conditions, either across the board or, at a minimum, for transactions under Service Schedule D.

Intra-Hour Supplemental Power does not appear to be an ancillary service. The product is not intended to provide Frequency Regulation. The manually scheduled product could not have sufficiently prompt response to provide Frequency Regulation. The dynamically scheduled product could serve that function, but is intended as a load following/generation leveling product—i.e., a balancing product. In centralized markets, balancing of generation with load under normal conditions is provided by the intra-hour workings of the real-time energy market, and is not considered an ancillary service. No reason appears why an analogous product in bilateral market should be treated

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<sup>19</sup> *Dynegy Power Marketing, Inc.*, 120 FERC ¶ 61,278, at P 19 (2007).

differently. With reference to the definition of Ancillary Services set out in the margin,<sup>20</sup> intra-hour power is properly considered as “capacity and energy” rather than a “service[ ] that [is] necessary to support the transmission of capacity and energy...”

Service Schedule E incorporates the same procedure concerning market-based rates as applies to sales under Service Schedule C (except, as noted above, the WSPP cost caps). In the event a seller lacks market-based rate authority for a sale, it may conduct the sale under the WSPP Agreement in accordance with rates it may have incorporated under Schedule Q to the Agreement. These procedures have been found to be just and reasonable with respect to existing service schedules.<sup>21</sup>

### **C. Performance, Non-Performance, and Damages**

The two service schedules set out essentially identical provisions defining and limiting damages for non-performance. The services may be interrupted (without damages liability for the seller) only if due to an Uncontrollable Force (as defined in section 10 of the WSPP Agreement). If either service is interrupted for any reason other than an Uncontrollable Force, the seller will be responsible for damages, as described below.

Both service schedules establish rules and procedures to determine damages that will be the “sole and complete” remedy for certain specified types of non-performance. Both schedules expressly provide that all other damages and remedies for those types of non-performance are waived. Service Schedule D defines “Reserves Non-Performance” by the seller as its failure to fulfill its obligation to deliver energy to the Designated Authority when and as required under Service Schedule D and the confirmation, and that is not excused by an Uncontrollable Force. Reserves Non-Performance by the buyer means the seller’s delivery of energy or reduction of load for reserves in response to a request from a Designated Authority that was not based on a proper determination, under Service Schedule D and the confirmation, that reserves are needed to meet a contingency, and that is not excused by an Uncontrollable Force.

Service Schedule E defines I-HSP (intra-hour supplemental power) Non-Performance as the seller’s failure (not excused by an Uncontrollable Force) either to fulfill its obligation to deliver energy to the purchaser when required by Service Schedule E and the confirmation, or the seller’s failure to receive returned energy (when the

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<sup>20</sup> Adopting the Commission’s own definition in Order No. 888A, the NERC Glossary defines Ancillary Services as, “[t]hose services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Service Provider’s transmission system in accordance with good utility practice. (*From FERC order 888-A.*)”

<sup>21</sup> See footnote 18 and accompanying text.

purchaser has the right to return energy) in accordance with Service Schedule E and the confirmation.

Both service schedules expressly recognize that because the subject services are “to support the reliable operation of the regional electric transmission system,” the actual damages to one party resulting from the other’s non-performance “will be difficult or impossible to quantify.” Moreover, because the Commission and NERC may in certain circumstances have authority to impose penalties in situations arising from non-performance of these services, the parties under both schedules expressly acknowledge that “it is reasonable to limit the amount of actual damages” one party may recover for the other’s non-performance. Therefore, under both Service Schedules, the parties (a) stipulate to the recoverable damages amounts; (b) agree that the stipulated amounts are exclusive and in lieu of the actual losses the performing party could sustain; and (c) agree that the stipulated damages are not a penalty assessed against the non-performing party. To address these uncertainties and establish a reasonable stipulated and exclusive remedy, both schedules provide for a Damages Multiplier that can range from one (1) to five (5), as the transaction-specific counterparties determine. The parties may agree to a Damages Multiplier in their confirmation; if they do not, the default multiplier is one (1).

For reserves non-performance by the seller, the stipulated damages are the capacity charge for the month in which non-performance occurred (or for the full contract term, if less than a month), times the Damages Multiplier, plus the energy charge, times the quantity of energy that was not delivered during all hours of non-performance, times the Damages Multiplier, plus any transmission charges incurred by the purchaser for each hour of non-performance.

For reserves non-performance by the purchaser, the stipulated damages are based only on the capacity and energy charges, calculated in the same way as described above, including application of the Damages Multiplier.

For a seller’s failure to deliver energy for Intra-Hour Supplemental Power as required by Service Schedule E and the confirmation, the stipulated damages are the capacity charge for the month in which non-performance occurred (or for the full contract term, if less than a month), times the Damages Multiplier, plus the energy charge, times the energy that was not delivered during all hours of non-performance, times the Damages Multiplier, plus any transmission charges incurred by the purchaser for each hour of non-performance.

For a seller’s failure to receive returned energy for Intra-Hour Supplemental Power as required by Service Schedule E and the confirmation, the stipulated damages are the energy charge, times the energy that was not received during all hours of non-performance, times the Damages Multiplier, plus any transmission charges incurred by the purchaser for each hour of non-performance.

As noted above, Service Schedule D also grants the performing party an option to terminate the agreement in the event of non-performance by the other party, exercisable

through written notice provided within 30 days after the occurrence that gives rise to the termination right.<sup>22</sup> Specifically, in the event the seller must pay damages for Reserves Non-Performance, the purchaser may terminate that transaction and any other transactions between the parties under Service Schedule D. In that event, the seller must pay the purchaser a termination payment based on the Replacement Price (as defined in section 4.16a of the WSPP Agreement) the purchaser incurs (within 30 days after termination) for the same quality and type of reserves for each transaction, less the amounts remaining to be paid by the purchaser to the seller under all terminated transactions (but never less than zero, i.e., the purchaser need not pay anything to the seller to terminate). If the seller disagrees with the proposed termination payment, the matter is sent to informal dispute resolution under section 34.1 of the WSPP Agreement.

Similarly, in the event the purchaser must pay damages for Reserves Non-Performance, the seller may terminate that transaction and any other transactions between the parties under Service Schedule D. In that event, the purchaser must pay the seller a termination payment based on the present value of the capacity charges (and any transmission charges) remaining to be paid under the agreement less the present value of the amount the seller is able to obtain (within 30 days after termination) from the same quantity of capacity from the same resource (but never less than zero, i.e., the seller need not pay anything to the purchaser to terminate). If the purchaser disagrees with the proposed termination payment, the matter is sent to informal dispute resolution under section 34.1 of the WSPP Agreement.

The proposed provisions on non-performance and damages are just and reasonable. The provisions extend and apply the limitations of damages for WSPP transactions previously accepted by the Commission.<sup>23</sup> Consistent with the existing provisions, which prescribe exclusive remedies for failure to deliver power or make capacity available as agreed, Service Schedules D and E set forth stipulated damages calculations as the exclusive remedy for failure to perform the essential agreed obligations for these ancillary and reliability services. Stipulated damages are especially appropriate for failure to provide services such as these. As the Commission has explained, “[t]he whole point of liquidated damages is that they simplify matters when it is difficult to quantify the extent of actual damages.”<sup>24</sup> The Commission therefore has

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<sup>22</sup> Since termination in such circumstances simply implements the terms of the agreement, Service Schedule D provides that no Commission filing is required to effectuate the termination.

<sup>23</sup> See WSPP Agreement, section 21; *W. Sys. Power Pool*, 87 FERC ¶ 61,332 (1999).

<sup>24</sup> *Standardization of Generator Interconnection Agreements and Procedures*, 106 FERC ¶ 61,220, at P 252 (2004), citing 22 Am. Jur. 2d Damages § 683 (1988). See also *Fayetteville Express Pipeline LLC*, 129 FERC ¶ 61,235, at PP 41, 46 (2009) (approving liquidated damages clause by which pipeline project sponsor

found that when the types of damages a performing party might suffer “are varied and complex,” and the damages “speculative and difficult to quantify,” then “liquidated damages are appropriate . . . when the Parties agree to use them as a remedy.”<sup>25</sup>

Here, the failure to provide energy when needed in the event of a contingency to meet reserve obligations, or the failure to provide energy as agreed within the hour to ensure the continuous proper balance between supply and load, have direct adverse implications for the maintenance of reliability. Indeed, operating reserves are called only in response to a contingency, and must be provided to avoid adverse effects on reliability. When reliability is not maintained, the potential damages implications can be far-reaching. Limiting and managing the risk of such damages is essential to encouraging parties to transact and promoting responsive and liquid bilateral markets in wholesale electricity products.

Notably, the level of stipulated damages is entirely within the control of the parties that choose to transact under Service Schedules D and E. The stipulated damages will simply be the portion of contract charges applicable during, and to the extent of, the failure to perform unless the parties agree to use a multiple of those charges as the measure of damages. Thus, for example, no seller will have to pay damages equal to five times the applicable charges unless it agreed to that multiplier when it signed the confirmation.

As discussed above, the damages multiplier (indeed all the provisions of both Service Schedules), reflect considerable deliberations of WSPP’s membership. Some members, envisioning a purchaser’s role, commented that they would not participate in the market for these services unless the damages provisions had teeth, reflecting the practical risks to the purchaser of a seller’s non-performance. Other members, envisioning a seller’s role, commented that they would not participate in the market unless remedies for a buyer’s improper use of reserves also had teeth. Still other members opposed a mandated, specific, multiplier. The members compromised, settling upon the range of multipliers (one to five) and concluding that these provisions would permit them flexibility to set a multiplier that would reflect the particular risks associated with each specific transaction.

#### **IV. Effective Date**

WSPP proposes an effective date of November 1, 2010 for Service Schedule D and Service Schedule E, and the related revisions to the WSPP Agreement.

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and prospective shippers share construction and start-up risks); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008) (same)

**V. Additional Information**

**1. Documents Enclosed:**

- (a) This transmittal letter;
- (b) Revised WSPP Agreement pages; and
- (c) A redlined version of the revised WSPP Agreement pages.

**2. Names and addresses of persons served with this filing:**

On the same date as this transmittal, a copy of this filing will have been:

- (a) emailed to WSPP members who have supplied email addresses for the contact lists posted on the WSPP website (this service emailing will reach most or all active WSPP members); and
- (b) posted on the WSPP website: [wspp.org](http://wspp.org)

**VI. Correspondence and Communications**

Correspondence and communications with respect to this filing should be sent to, and WSPP requests the Secretary to include on the official service list, the following:

Arnold B. Podgorsky  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005-3802  
(202) 393-1200 – office  
(202) 393-1240 – fax  
[podgorsky@wrightlaw.com](mailto:podgorsky@wrightlaw.com)

Respectfully submitted,

WRIGHT & TALISMAN, P.C.  
By:

/s/ Arnold B. Podgorsky

Arnold B. Podgorsky  
**Attorneys for WSPP Inc.**

## **TABLE OF CONTENTS**

1. PARTIES
2. RECITALS
3. AGREEMENT
4. DEFINITIONS
5. TERM, TERMINATION AND WITHDRAWAL
6. SERVICE SCHEDULES AND WSPP DEFAULT TRANSMISSION TARIFF
7. ADMINISTRATION
8. EXECUTIVE AND OPERATING COMMITTEES
9. PAYMENTS
10. UNCONTROLLABLE FORCES
11. WAIVERS
12. NOTICES
13. APPROVALS AND EFFECTIVENESS
14. TRANSFER OF INTEREST IN AGREEMENT
15. SEVERABILITY
16. MEMBERSHIP
17. RELATIONSHIP OF PARTIES
18. NO DEDICATION OF FACILITIES
19. NO RETAIL SERVICES
20. THIRD PARTY BENEFICIARIES
21. LIABILITY AND DAMAGES
22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND CONFIRMATIONS

- 22A. DEFAULT IN PAYMENT OF WSPP OPERATING COSTS
23. OTHER AGREEMENTS
24. GOVERNING LAW
25. JUDGMENTS AND DETERMINATIONS
26. COMPLETE AGREEMENT
27. CREDITWORTHINESS
28. NETTING
29. TAXES
30. CONFIDENTIALITY
31. TRANSMISSION TARIFF
32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS
33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES
34. DISPUTE RESOLUTION
35. FORWARD CONTRACTS
36. TRADE OPTION EXCEPTION
37. ADDITIONAL REPRESENTATIONS AND WARRANTIES
38. FLOATING PRICES
39. AMENDMENT
40. EXECUTION BY COUNTERPARTS
41. WITNESS

EXHIBIT A: NETTING

EXHIBIT B: FORM OF COUNTERPARTY GUARANTEE AGREEMENT

EXHIBIT C: SAMPLE FORM FOR CONFIRMATION

EXHIBIT D: WSPP MEDIATION AND ARBITRATION PROCEDURES

SERVICE SCHEDULES

- A. ECONOMY ENERGY SERVICE
- B. UNIT COMMITMENT SERVICE
- C. FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE
- D. RESERVE SERVICES
- E. INTRA-HOUR SUPPLEMENTAL POWER

LIST OF MEMBERS

#### 4. DEFINITIONS:

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

Agreement: This WSPP Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation(s) are not included within this definition.

Administrative Committee: A sub-committee of the Executive Committee in accordance with Section 8.1.2.

Balancing Authority: has the meaning given in the NERC Glossary.

Bookout: A transaction where:

- (a) (i) prior to the time performance is to commence under a Confirmation, the Parties enter into a second (substitute) transaction for the purpose of fulfilling their respective obligations under that Confirmation by offset rather than physical delivery, or
- (ii) after non-performance under a Confirmation, the Parties enter into a second (substitute) transaction for the purpose of finally settling losses incurred by the Performing Party due to non-performance of such Confirmation; and
- (b) the second transaction, under either (i) or (ii), was performed.

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

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 places of business in Canada, Canadian holidays shall apply and 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 apply.

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

Confirmation(s): The confirmations for transactions developed and made effective in accordance with Section 32.

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

Contract Quantity: The amount of capacity and/or energy to be supplied for a transaction under the Agreement.

Contract Term: The mutually agreed duration for a transaction undertaken pursuant to this Agreement, as stated in the Confirmation for such transaction.\_

Costs: As defined in Section 22.3 of this Agreement.

Dealer: An entity or person that buys or sells power and takes title to the power at some point.

Defaulting Party: As defined in Section 22.1 of this Agreement.

Determination Period: As defined in Section 38.2 of this Agreement.

Documentary Writing: A document which is physically delivered by courier or U.S. mail, or a copy of which is transmitted by telefacsimile or other electronic means.

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.

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.

Electronic Writing:

- (1) Recorded oral conversation; or
- (2) electronic communications, including but not limited to e-mail, if the Parties to the transaction use such method to create an electronic writing for the Confirmation for such transaction and, except with respect to e-mail, specifically agree to the method of electronic communication.

Electronic Writings shall not include the transmittal of a copy of a document by electronic means, which is considered a Documentary Writing.

ERCOT: Electric Reliability Council of Texas, Inc., and any successor organization.

Event of Default: As defined in Section 22.1 of this Agreement.

Executive Committee: The committee established pursuant to Section 8 of this Agreement.

FERC: The Federal Energy Regulatory Commission or its regulatory successor.

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.

First Party: As defined in Section 27 of this Agreement.

Floating Price: As defined in Section 38.1 of this Agreement.

Gains: As defined in Section 22.3 of this Agreement.

Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for obligations arising under this Agreement and Confirmation. A sample form of Guarantee Agreement is provided in Exhibit B.

Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

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.

Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.

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.

Intra-Hour Supplemental Power: A service by which the Seller provides capacity and energy to the Purchaser and Purchaser is permitted within each hour to call upon energy on a scheduled or dynamic basis up to and including the stated capacity, under the terms and conditions set forth in the Agreement, Service Schedule E, and the Seller and Purchaser's Confirmation.

Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.

Losses: As defined in Section 22.3 of this Agreement.

Market Disruption Event: As defined in Section 38.2 of this Agreement.

NERC: North American Electric Reliability Council or any successor organization.

NERC Glossary: means the NERC Glossary of Terms Used in Reliability Standards in effect during the Contract Term, including any amendments made during the Contract Term.

NERC Reliability Standards: means the NERC Reliability Standards for the Bulk Electric Systems in North America in effect during the Contract Term, including any amendments made during the Contract Term.

Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.

Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

Non-Standard Confirmation Provisions: Provisions other than Standard Confirmation Provisions.

NYMEX: New York Mercantile Exchange and any successor organization.

Operating Agent: An agent of the WSPP as may be designated by the Executive Committee from time to time.

Operating Committee: That committee established pursuant to Section 8 of this Agreement.

Party or Parties: As defined in Section 1 of this Agreement.

Performing Party: As defined in Section 21.3(a) of this Agreement.

Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.

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; 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.

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.

Present Value Rate: As defined in Section 22.3(b) of this Agreement.

Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement and any applicable Confirmation.

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.

Regional Reliability Organization: has the meaning given in the NERC Glossary.

Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute capacity and/or energy in place of the capacity and/or energy not delivered (for energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point specified for the transaction in the Confirmation.

Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of capacity and/or energy, as determined by the Seller in a commercially reasonable manner at the delivery point specified for the transaction in a Confirmation.

Reserve Service(s): One or more of the following services under Service Schedule D provided by the Seller to enable the Designated Authority to meet a reserve obligation or for other purposes consistent with the definition of the product:

SERVICE SCHEDULE D-1 NON-SPINNING RESERVE  
SERVICE SCHEDULE D-2 SPINNING RESERVE  
SERVICE SCHEDULE D-3 REGULATING RESERVE  
SERVICE SCHEDULE D-4 OPERATING RESERVE - SPINNING  
SERVICE SCHEDULE D-5 OPERATING RESERVE SUPPLEMENTAL

Any one or more of the foregoing Services that is deleted from the NERC Glossary shall not, as of the effective date of such deletion, be a Reserve Service

unless the parties to a transaction otherwise agree.

Reserve Sharing Group: has the meaning given in the NERC Glossary.

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.

Second Party: As defined in Section 27 of this Agreement.

Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement and the applicable Confirmation.

Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement on file with FERC as part of this Agreement.

Standard Confirmation Provisions: Provisions setting forth: Seller, Purchaser, period of delivery, schedule, delivery rate, delivery points, type of service (e.g. Service Schedule A, B, C or other), contract quantity, price, transmission path (if any), date, and certain additional information for physically settled options (option type, option style, exercise date or period, premium, premium payout date, and method for providing notice of exercise).

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.

Terminated Transaction: As defined in Section 22.2 of this Agreement.

Termination Payment: As defined in Section 22.2 of this Agreement.

Trading Day: As defined in Section 38.2 of this Agreement.

Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation.

Unit Commitment Service: A capacity and/or associated scheduled energy transaction or a Physically-Settled Option under 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.

WSPP: WSPP Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

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

WSPP Homepage: WSPP's internet web site, [www.wspp.org](http://www.wspp.org).

**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 Membership in WSPP and status as a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Balancing Authority and any Party which operates within that Balancing Authority's Balancing Authority 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 WSPP incurred hereunder.

16.5 In addition to requirements set forth elsewhere in this Agreement imposed on Parties as part of their membership in the WSPP, each Party shall abide by the following requirements:

16.5.1 Each Party shall maintain updated information regarding its Executive Committee and Operating Committee representatives on the WSPP Homepage and shall submit changes within a reasonable time period.

16.5.2 With regard to disputes involving transactions under this Agreement or other agreements, no Party shall seek to conduct discovery of the WSPP or issue or seek to obtain the issuance of any subpoena to the WSPP or WSPP officers acting in their capacities as officers of the WSPP or of the WSPP's attorneys or consultants with regard to their work for the WSPP or their opinions regarding the construction or interpretation of any clause of the Agreement, provided that the foregoing prohibition shall not apply in proceedings brought against the WSPP. In the event a Party seeks to compel discovery or testimony in violation of this Section, that Party shall be deemed to have consented to the quashing of the subpoena or other process providing therefor. Notwithstanding any other provision in this Agreement, a Party that seeks to conduct discovery or issue or seek to obtain the issuance of any subpoena in breach of this provision shall compensate the WSPP and its officers, attorneys, and consultants, as applicable, for all out-of-pocket costs incurred.

16.6 An entity shall become a Party to this Agreement and a member of the WSPP upon satisfaction of the requirements in this Section 16 and on the date allowed

by FERC if it is a FERC public utility or upon the date of satisfaction of the requirements in this Section 16 if it is not a FERC public utility.

**30. CONFIDENTIALITY:**

30.1 The terms of any transaction under this Agreement 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 federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, Regional Reliability Organization, or successor organization requirements; (6) necessary to obtain transmission service; or (7) to a developer of an index of electric power prices in accordance with Section 30.2. 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).

30.2 A Party may disclose the terms of transactions under this Agreement, excluding the identities of parties, to any developer of any index of electric power prices without violation of the confidentiality obligations under Section 30.1 if: (1) the disclosing Party and the index developer have entered into a written agreement, prior to the disclosure, under which the developer has agreed to use the information solely for the development of an index of electric power prices for publication and not for any other purpose; and (2) the index with respect to which disclosure is made is an aggregation of terms of transactions and does not identify terms of single transactions or the identities of parties to transactions.

**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 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. 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.

C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. A firm capacity sale or exchange is a commitment, in accordance with the terms and conditions specified in the Confirmation, of capacity resources.

C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy between Parties in accordance with the terms and conditions specified in the Confirmation.

C-3.5 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-3.6 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).

C-3.6 Except as provided for in Section C-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 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. 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. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

C-3.7 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within any recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule, as may be 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; provided, however, this paragraph (c) shall not be used to allow interruptions for reasons other than

reliability of service to native load. If service under this Service Schedule is interrupted under Section C-3.7(a) or (b), neither Seller nor Purchaser shall be obligated to pay any damages under this Agreement or Confirmation. If service under this Service Schedule is interrupted for any reason other than pursuant to Section C-3.7(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-3.8 Each Party that is a FERC regulated public utility as defined in Section C-3.5 shall file the Confirmation 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 or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.9 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 Organization.

## **SERVICE SCHEDULE D**

### **RESERVE SERVICES**

<b>SERVICE SCHEDULE D-1</b>	<b>NON-SPINNING RESERVE</b>
<b>SERVICE SCHEDULE D-2</b>	<b>SPINNING RESERVE</b>
<b>SERVICE SCHEDULE D-3</b>	<b>REGULATING RESERVE</b>
<b>SERVICE SCHEDULE D-4</b>	<b>OPERATING RESERVE - SPINNING</b>
<b>SERVICE SCHEDULE D-5</b>	<b>OPERATING RESERVE SUPPLEMENTAL</b>

#### **D-1 PURPOSE**

This Service Schedule specifies procedures, terms and conditions pursuant to which the Seller provides one or more Reserve Services specified in the Confirmation, to enable the Designated Authority to meet a reserve obligation or for other purposes consistent with the definition of the specified Reserve Service.

#### **D-2 DEFINITIONS**

D-2.1 Terms used in this Service Schedule with initial capitalization which are not defined in the Agreement or this Service Schedule shall have the meanings given to them in the NERC Glossary.

D-2.2 In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule D.

D-2.2.1 “Applicable Standards” means the NERC Reliability Standards and the respective reliability standards and criteria of NERC, and any applicable Regional Reliability Organization, Balancing Authority, and Reserve Sharing Group, applicable to the Seller’s provision and Designated Authority’s use of the Reserve Services specified in the Confirmation.

D-2.2.2 “Damages Multiplier” means the applicable multiplier specified in

the Confirmation, to be applied in the calculation of damages under Section D-5, which multiplier shall not exceed five (5).

D-2.2.3 “Designated Authority” means the Regional Reliability Organization, Balancing Authority, Reserve Sharing Group or other entity designated in the Confirmation, and which shall have a right to apply the applicable Reserve to the quantity of Reserve it is required to maintain, and to use such Reserve, in each case in accordance with the Applicable Standards. The Designated Authority and the Purchaser may be a single entity or two respective entities. If the Designated Authority and the Purchaser are a single entity, then the Designated Authority shall also be the Purchaser for all purposes under the Agreement.

D-2.2.4 “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the applicable time period in the applicable region, 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 in question was made, could have been expected to accomplish the desired result in a manner that: (a) is consistent with the Applicable Standards; (b) gives due consideration to reliability, safety and protection of equipment and the public welfare; and (c) is consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, or

the exclusion of all other practices, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

D-2.2.5 “NERC Glossary” means the NERC Glossary of Terms Used in Reliability Standards, as it may be amended or restated from time to time.

D-2.2.6 “Non-Spinning Reserve” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to (a) that generating reserve not connected to the system but capable of serving demand within a specified time and (2) interruptible load that can be removed from the system in a specified time, as it may be further defined in the NERC Glossary of Terms and the Applicable Standards. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.7 “Operating Reserve – Spinning” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to the portion of Operating Reserve consisting of (a) Generation synchronized to the system and fully available to serve load within the Disturbance Recovery Period following the contingency event; or (b) load fully removable from the system within the Disturbance Recovery Period following the contingency event. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any

inconsistency with the foregoing.

D-2.2.8 “Operating Reserve – Supplemental” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to the portion of Operating Reserve consisting of (1) generation (synchronized or capable of being synchronized to the system) that is fully available to serve load within the Disturbance Recovery Period following the contingency event; or (2) load fully removable from the system within the Disturbance Recovery Period following the contingency event. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.9 “Regulating Reserve” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to an amount of reserve responsive to Automatic Generation Control, which is sufficient to provide normal regulating margin. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.10 “Reserve” means any of non-spinning reserve, spinning reserve, regulating reserve, operating reserve – spinning and operating reserve supplemental, sold and purchased in accordance with the Confirmation.

D-2.2.11 “Reserves Non-Performance” shall mean with respect to Seller, Seller’s failure to fulfill its obligation to deliver energy to the

Designated Authority when and as required by Section D-3.3.1 and the Confirmation during the Contract Term, that is not excused under Section D-4, and shall mean with respect to Buyer, Seller's delivery of energy to a Designated Authority or reduction of load to provide energy associated with Reserves(s) under this Service Schedule during the Contract Term, upon the request of a Designated Authority that does not conform to Section D-3.3.2, and that is not excused under Section D-4.

D-2.2.12 "Spinning Reserve" shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to unloaded generation that is synchronized and ready to serve additional demand. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.13 In the event any of the Reserve Services identified in sections D-2.2.6 (Non-Spinning Reserve), D-2.2.7 (Operating Reserve), D-2.2.8 (Operating Reserve – Supplemental), D-2.2.9 (Regulating Reserve) or D-2.2.12 (Spinning Reserve) is deleted from the NERC Glossary, as of the effective date of such deletion and unless the parties to a transaction otherwise agree, the deleted service shall not be a Reserve Service under this Service Schedule.

### D-3 TERMS OF SERVICE

D-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the

Parties agree.

(a) At the top of the first page of the Confirmation, one or more of the following

Service Schedule designations:

Service Schedule D-1	Non-Spinning Reserve
Service Schedule D-2	Spinning Reserve
Service Schedule D-3	Regulating Reserve
Service Schedule D-4	Operating Reserve - Spinning
Service Schedule D-5	Operating Reserve Supplemental

(b) The Designated Authority and if the Designated Authority is not a Regional Reliability Organization, the Regional Reliability Organization within which the Designated Authority is electrically located;

(c) Contract Quantity(ies), Contract Price(s), and Contract Term(s);

(d) Any additional attributes of the Reserve Service, as the Parties may agree, consistent with the Applicable Standards;

(e) Transmission particulars, including Contract Path, any provisions regarding responsibility to arrange transmission and the party responsible for transmission costs, and any other requirements with respect to transmission;

(f) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated;

(g) Any conditions to the effectiveness of the Confirmation, including, for example, the completion of arrangements or agreements between the Seller and the Designated Authority or among the Seller, Designated Authority, and Purchaser; and

(h) The Damages Multiplier (which shall not exceed five (5)). If a Damages Multiplier is not specified then the Damages Multiplier shall be one (1). The Parties may agree to respective Damages Multipliers to apply to damages paid to

the Purchaser and damages paid to the Seller.

D-3.2 Seller shall provide the specified Reserve Service(s) to the Designated Authority in conformity with the Applicable Standards and any additional attributes specified in the Confirmation. Seller shall provide Reserve Service from (a) one or more generation resources, or (b) electrical load(s) to which Seller is authorized to reduce or interrupt the supply of electricity, which are, in each case, physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by the Applicable Standards for the applicable Reserve Service, and as required to conform to any additional attributes stated in the Confirmation. The Designated Authority shall use the capacity provided by Seller under this Service Schedule for the sole purpose of satisfying the Designated Authority's Reserve obligation as specified in the Applicable Standards and in accordance with Section D-3.3.2.

D-3.3 Obligations Concerning Requests for and Delivery of Energy

D-3.3.1 Seller shall deliver energy associated with Reserve Service, in quantities up to the applicable capacity(ies) specified in the Confirmation for the applicable hour(s), as and when the Designated Authority requests such delivery in the manner of request specified in the Confirmation and in accordance with Section D-3.3.2.

D-3.3.2 Purchaser shall ensure that the Designated Authority shall not require Seller to deliver energy under this Service Schedule except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with Good Utility Practice or such other criteria as may be stated in the Confirmation, that such energy is

required to enable it to respond to a Contingency or other event for which the Reserve specified in the Confirmation is permitted to be utilized under the Applicable Standards or as otherwise stated in the Confirmation.

D-3.4 Inspection and Audit. The Purchaser or Designated Authority shall have the right, to conduct such inspections and audits of Seller's records as are reasonably to assure that the Seller's provision of Reserve(s) conforms to the Applicable Standards and the Confirmation. The Seller shall have the right to conduct such inspections and audits of the Designated Authority's records as are reasonably required to assure that any use of Reserve by the Designated Authority conformed to Section 3.3.2 and the Confirmation. The Parties may state further details and conditions in the Confirmation concerning these rights, including, for example, to protect confidentiality, provisions that inspections and audits may be conducted only by an agreed third-party auditor.

#### D-3.5 Contract Price

D-3.5.1 The Contract Price for Reserve Service(s) may include separately stated charges for capacity and energy. If the terms and conditions of the transaction provide that Seller is to procure or provide transmission (and Seller has such authority), the transmission charge may be separately stated.

D-3.5.1.1 If the Contract Price includes separately stated capacity charge(s) and energy charge(s), then, except as provided in Section D-4, the Purchaser shall be obligated to pay such charges to the Seller at all times during the Contract Term.

D-3.5.1.2 The Contract Price may state separate on-peak and off-peak prices for capacity and energy.

D-3.5.1.3 The periodic energy charge for Reserve Service shall be the amount(s) equal to the product of the quantity of energy delivered by Seller to Purchaser during the period multiplied by the applicable price(s) for such period.

D-3.5.2 Price Caps. 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). In each transaction under this Service Schedule in which the Seller (i) is a FERC-regulated public utility that is subject to market power mitigation in an area that encompasses one or more points of delivery for such transaction, or (ii) otherwise does not have authority to sell power like that provided for under this Service Schedule at market-based rates, the rates for Reserve Service(s) shall not exceed the applicable rates set forth in the Seller's rate schedule incorporated, at Seller's request, into Schedule Q of the Agreement.

#### D-4 UNCONTROLLABLE FORCES

D-4.1 Reserve Service shall be interruptible only if the interruption is due to an Uncontrollable Force as provided in Section 10 of the Agreement, and in the event of such an interruption, Seller shall not be obligated to pay any damages as a consequence thereof under the Agreement, this Service Schedule, or the Confirmation. If Reserve Service is interrupted for any reason other than an Uncontrollable Force, the Seller shall be responsible for payment of damages as

provided in Section D-5.

D-5 DAMAGES AND TERMINATION.

D-5.1 Section 21.3(a)(1) and (2) of the Agreement shall not apply to any event(s) of Reserves Non-Performance under this Service Schedule. The remedies set out in this Section D-5 and in the parts of Section 21.3 that are not excluded by the preceding sentence shall be the sole and complete remedy available to the Parties for Reserves Non-Performance under this Service Schedule. All other damages or remedies are hereby waived.

D-5.2 The Parties acknowledge and agree that, because Reserve Service is to support the reliable operation of the regional electric transmission system, the Performing Party's actual damages due to Reserves Non-Performance by the other Party will be difficult or impossible to quantify. The Parties also acknowledge that because NERC and FERC, under certain circumstances and as provided and limited by applicable law, may have authority to impose penalties in connection with Reserves Non-Performance, it is reasonable to limit the amount of actual damages the Performing Party may recover hereunder due to the other Party's Reserves Non-Performance. The Parties stipulate to the damages amounts recoverable under this Section D-5, and agree that such stipulated amounts are exclusive and in lieu of the actual losses the performing Party could sustain, and further agree that such stipulated damages are not themselves a penalty assessed against the Non-Performing Party by or on behalf of the Performing Party.

### D-5.3 Seller Reserves Non-Performance

D-5.3.1 Purchaser Entitlement to Damages. In the event of Reserves Non-Performance by Seller, Seller shall pay damages to Purchaser in an amount equal to the sum of:

- (a) The product of the total charge for capacity for the Contract Term multiplied by the Damages Multiplier, provided, that if the Contract Term exceeds thirty (30) days, then the capacity charge for the single month in which non-performance occurred shall be substituted in this calculation for the total charge for capacity for the Contract Term; plus
- (b) the product of the quantity of energy Seller failed to deliver during each hour of non-performance, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier; plus
- (c) any transmission service charge incurred by the Purchaser for each hour of non-performance (if Purchaser arranged transmission, the charge incurred by the Purchaser, and if Seller passes a transmission charge through to Purchaser under Section D-3.5.1, the amount of the passed-through charge).

D-5.3.2 Purchaser Option to Terminate. In the event Seller is required to pay damages under Section D-5.3.1 arising from a single instance of Seller's Reserves Non-Performance (or such other parameter to which the Parties may agree), then Purchaser shall have an option to terminate the transaction that was not performed and, concurrently with the exercise of such option, a further option to terminate all other transactions under this

Service Schedule D between the Purchaser and Seller. This Section D-5.3.2 shall not be construed to diminish a Party's rights or obligations under the WSPP Agreement regarding an Event of Default.

- (a) In the event of termination under this Section D-5.3.2, the Purchaser shall liquidate the terminated transactions as soon as practicable. A termination payment due to Purchaser from Seller shall be calculated as follows: the payment shall be equal to the present value (calculated with reference to the Present Value Rate) of the Replacement Price that Purchaser incurs, within thirty (30) days from the termination date, for the same quantity and type of Reserve for each transaction, less the total amount remaining to be paid by Purchaser to the Seller under all terminated transactions provided that in no event shall Purchaser owe any amount to Seller resulting from a termination under this Section D-5.3.2. Seller shall pay any termination payment owed pursuant to this Section D-5.3.2 within three (3) Business Days after its receipt of Purchaser's invoice for same.
- (b) If the Seller disagrees with the Purchaser's calculation of the termination payment under Section 5.3.2(a) 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 the Agreement.

#### D-5.4 Purchaser Reserves Non-Performance

D-5.4.1 Seller Entitlement to Damages. In the event of Seller's Reserves Non-Performance (the amount of energy provided by Seller in response to the Designated Authority's unauthorized request, the "unauthorized energy"), Purchaser shall compensate Seller in an amount equal to the sum of the amounts described in the following subparagraphs (a) and (b):

- (a) The product of the total charge for capacity for the Contract Term multiplied by the Damages Multiplier, provided, that if the Contract Term exceeds thirty (30) days, then the capacity charge for the single month in which non-performance occurred shall be substituted in this calculation for the total charge for capacity for the Contract Term; plus
- (b) The product of the quantity of unauthorized energy Seller was required to deliver during each hour, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier.

D-5.4.2 Seller Option to Terminate. In the event Purchaser is required to pay damages under Section D-5.4.1 arising from a single instance of non-performance (or such other parameter to which the Parties may agree), then Seller shall have an option to terminate the transaction that was not performed and, concurrently with the exercise of such option, a further option to terminate all other transactions under this Service Schedule D between the Purchaser and Seller. This Section D-5.4.2 shall not be

construed to diminish a Party's rights or obligations under the WSPP Agreement regarding an Event of Default.

- (a) In the event of termination under this Section D-5.4.2, the Seller shall liquidate the terminated transactions as soon as practicable. A termination payment due to Seller from Purchaser shall be calculated as follows: the payment shall be equal to the present value of the capacity charges and any applicable transmission service charges remaining to be paid to Seller under all terminated transactions (calculated with reference to the Present Value Rate) less the present value (calculated in the same manner) of the amount Seller is able to obtain, within thirty (30) days from the termination date, for the same quantity of capacity from the same resource(s), provided that in no event shall Seller owe any amount to Purchaser resulting from a termination in accordance with this Section D-5.4.2. Purchaser shall pay any Termination Payment owed pursuant to this Section D-5.4.2 within three (3) Business Days after its receipt of Seller's invoice for same.
- (b) If the Purchaser disagrees with the Seller's calculation of the termination payment under Section 5.3.2(a) 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 the Agreement.

D-5.5 Termination under Section D-5.3.2 or D-5.4.2 shall be effected upon written notice by the Performing Party to the Non-Performing Party, which notice shall

specify the non-performance, such notice of termination to be effective immediately upon receipt. If the Performing Party fails to exercise its termination option within thirty (30) days following the date when the option to terminate arose, then such termination option shall no longer be available to the Performing Party. The Performing Party terminating transaction(s) under this Service Schedule D may do so without making filings at FERC that otherwise may be required.

## **SERVICE SCHEDULE E**

### **INTRA-HOUR SUPPLEMENTAL POWER**

#### E-1 PURPOSE

This Service Schedule states procedures, terms and conditions for the Seller's provision of Intra-Hour Supplemental Power ("I-HSP") to, and receipt of such service by, the Purchaser.

#### E-2 DEFINITIONS

In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule E.

E-2.1 "Damages Multiplier" means the multiplier specified in the Confirmation, to be applied in the calculation of damages under Section E-5. The Damages Multiplier shall not exceed five (5). If a Damages Multiplier is not specified then the Damages Multiplier shall be one (1).

E-2.2 "I-HSP Non-Performance" shall mean with respect to Seller, Seller's failure to fulfill its obligation to deliver energy to the Purchaser when and as required under Section E-3.111 or E-3.1.1.2 and the Confirmation, that is not excused under Section E-4, or, if the Parties agreed in the transaction that Purchaser shall have the right to return energy to Seller, Seller's failure to receive returned energy when and as required by Section E-3.3 and 3.3.1 and the Confirmation, that is not excused under Section E-4.

#### E-3 TERMS

E-3.1 Seller agrees to make available to Purchaser the Maximum Capacity (in megawatts) stated in the Confirmation and associated energy for service under,

and subject to the terms of, this Service Schedule for the Contract Term stated in the Confirmation. To the extent as may be stated in the Confirmation, the Maximum Capacity for delivery of energy under this Service Schedule may vary from time to time based, for example, on clock hours or seasons.

E-3.1.1 The purpose of I-HSP is to allow Purchaser to call upon Seller to deliver energy in quantities subject to variation within each hour, up to and including the Maximum Capacity. I-HSP may be made available either on a scheduled basis, as described in Section E-3.1.1.1; or on a dynamic basis, as described in Section E-3.1.1.2. The Confirmation shall state whether I-HSP is scheduled or dynamic.

E-3.1.1.1 Scheduled I-HSP

(a) This Section E-3.1.1.1 applies to transactions for which the parties have agreed to the provision of I-HSP on a scheduled basis. A Purchaser of I-HSP on a scheduled basis shall have the right to request energy from the Seller, at any rate of flow up to and including the Maximum Capacity and, subject to the terms of this Service Schedule, Seller shall be obligated to deliver the energy at the rate of flow requested by Purchaser at the point(s) of delivery stated in the Confirmation.

(b) Purchaser shall transmit its requests for energy associated with I-HSP by electronic communication to Seller and to the applicable Balancing Authority(ies). All such communications

shall conform to applicable scheduling and communications rules and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies).

(c) Purchaser's requests for energy shall be for a rate of flow stated in whole megawatts, and, subject to compliance with applicable scheduling rules and protocols, may be increased or decreased from the previous requests in amounts not exceeding any limits on such changes set forth in the Confirmation, provided that Purchaser's requested rate of flow of energy shall not exceed the Maximum Capacity. Each clock hour shall be divided into equal time periods ("Intervals") which shall be stated in the Confirmation. Unless otherwise provided in the Confirmation, Purchaser shall have the right to make a single request for energy at any time during each Interval.

(d) Seller shall commence providing energy at the rate of flow requested by Purchaser (up to the Maximum Capacity) at the commencement of the first Interval scheduled, and shall continue to provide energy at that same rate until the time Purchaser specified for cessation or pursuant to Purchaser's request for a different rate of flow (the "subsequent request"). Seller shall commence providing energy at the rate of flow stated in a subsequent request (i) in no case sooner than or at a rate faster than, is consistent with the ramp rates or other

constraints stated in the Confirmation, and (ii) no later than the end of the Interval that immediately follows the Interval during which Seller received the subsequent request. Seller shall provide energy to Purchaser in accordance with the subsequent request until the time Purchaser specified for cessation or pursuant to Purchaser's next request for energy at a different rate of flow (a further subsequent request).

E-3.1.1.2 Dynamic I-HSP

- (a) This Section E-3.1.1.2 shall apply to transactions for which the parties have agreed to the provision of I-HSP on a dynamic basis. A Purchaser of I-HSP on a dynamic basis shall have the right to request energy from the Seller at a rate of flow up to and including the Maximum Capacity and, subject to the terms of this Service Schedule, Seller shall be obligated to deliver the energy at the rate of flow requested by Purchaser (up to the Maximum Capacity) at the point(s) of delivery stated in the Confirmation.
- (b) Purchaser's requests for dynamic I-HSP need not be stated in whole megawatts, and, subject to compliance with applicable scheduling rules and protocols, may be increased or decreased from previous requests in amounts not exceeding any limits on such changes set forth in the Confirmation and up to the Maximum Capacity.

(c) Purchaser shall transmit its requests dynamically for energy associated with I-HSP by electronic communication to Seller and to the applicable Balancing Authority(ies). All such communications shall conform with applicable scheduling and communications rules and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies).

(d) Seller shall commence providing energy at the rate of flow requested by Purchaser (up to the Maximum Capacity) at the earliest time its equipment is capable of responding to the electronic communication conveying Purchaser's request, but in no case sooner than or at a rate faster than is consistent with the ramp rates or other constraints stated in the Confirmation. Seller shall provide energy to Purchaser in accordance with the request until the time Purchaser specified for cessation or pursuant to Seller's next request for energy at a different rate of flow.

E-3.2 The Parties may agree upon which Party is responsible for obtaining and paying for, and (as between Seller and Purchaser) shall bear all risk of unavailability of, any transmission service necessary for Purchaser to receive energy at the point(s) of delivery stated in the Confirmation, and to make use of, I-HSP under this Service Schedule.

E-3.3 In any transaction under this Service Schedule E, the Parties may agree that Purchaser shall have a right, but not an obligation, to return to Seller in kind all or

any quantity of the energy Seller delivers to Purchaser in the transaction. In the event the Parties agree that Purchaser shall have such right, unless otherwise agreed, any energy returned shall be returned at rates of flow not in excess of the Maximum Capacity, the return shall be completed within 168 hours after Purchaser's receipt of energy from Seller, and Seller shall receive the returned energy. Any return of energy shall conform to other terms of agreement stated in the Confirmation including, for example, provisions requiring return of peak energy during peak periods. Return of energy shall be reflected in the billing applicable to the respective days when returns were made. Sections E-3.3.1 and E-3.3.2 shall apply only in the event the Parties agree that Purchaser shall have a right to return energy.

E-3.3.1 The Parties shall state in the Confirmation the point(s) where, and the times when, Purchaser may deliver returned energy to Seller, the type of transmission service Purchaser shall use for such returns, and any other terms reasonably necessary to enable Purchaser to exercise its right to return energy in kind under this Service Schedule.

E-3.3.2 Purchaser shall arrange and be financially responsible for any transmission service it requires to enable it to exercise its right under this Service Schedule to return energy in kind to Seller at the delivery point(s) and times established pursuant to Section E-3.3.1.

E-3.4 By executing a Confirmation for I-HSP,

(a) Seller warrants to Purchaser that Seller's (or, as applicable, Seller's Balancing Authority's) communication and automated control facilities are sufficient, in the absence of Uncontrollable Forces, to enable Seller's

source(s) of energy to receive, and to respond in a timely and accurate manner to, and that Purchaser's electronic communications conveying its requests for energy under this Service Schedule conform with communications criteria stated in applicable standards and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies); and

- (b) Purchaser warrants to Seller that Purchaser's (or, as applicable, Purchaser's Balancing Authority's) communication and automated control facilities are sufficient, in the absence of Uncontrollable Forces, to enable Purchaser's system to convey to Seller and to the applicable Balancing Authority(ies) requests for energy in the manner required under the applicable terms of this Service Schedule and to adjust Purchaser's equipment and facilities in an accurate and timely manner as needed to receive deliveries of energy from Seller in accordance with Purchaser's instructions to Seller under this Service Schedule in conformance with communications criteria stated in applicable standards and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies).

#### E-3.5 Pricing.

E-3.5.1 Subject to the terms of this Section E-3.5, the price for I-HSP shall be stated in the Confirmation.

E-3.5.2 The Contract Price for I-HSP may include separately stated charges for capacity and energy. If the terms and conditions of the transaction

provide that Seller is to procure or provide transmission (and Seller has such authority), the transmission charge may be separately stated. Unless the Parties agree otherwise, any energy charge shall provide for prices for on-peak periods and for off-peak periods, which prices need not be the same for each day or other portion of the Contract Term.

#### E-3.5.3 Charges.

E-3.5.3.1 Purchaser shall pay Seller for service under this Service Schedule an amount equal to the sum of the following: (1) the capacity charge stated in the Confirmation, expressed in \$/MW for the calculation period, times the Maximum Capacity; (2) the energy charge determined pursuant to Section E-3.5.3.3; and (3) any agreed transmission service charges.

E-3.5.3.2 Except as provided in Section E-4, the Purchaser shall be obligated to pay to the Seller any capacity charge and any agreed transmission service charge at all times during the Contract Term.

E-3.5.3.3 The energy charge for I-HSP shall be the amount equal to: (i) the product of the quantity of on-peak energy delivered by Seller to Purchaser during the calculation period times the applicable price for such period, plus (ii) the product of the quantity of off-peak energy delivered by Seller to Purchaser during the calculation period times the applicable

price for such period, *less* the sum of (x) plus (y), where (x) is the product of the quantity of on-peak energy (if any) returned by Purchaser to Seller during the same calculation period times the applicable price for such period, and (y) is the product of the quantity of off-peak energy (if any) returned by Purchaser to Seller during the same calculation period times the applicable price for such period. If the parties have not designated on-peak and off-peak pricing, then the energy charge need not reflect such periodic pricing.

E-3.5.4 Price Caps. 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). In each transaction under this Service Schedule in which the Seller (i) is a FERC-regulated public utility that is subject to market power mitigation in an area that encompasses one or more points of delivery for such transaction, or (ii) otherwise does not have authority to sell power like that provided for under this Service Schedule at market-based rates, the rates for I-HSP shall not exceed the applicable rates set forth in the Seller’s rate schedule incorporated, at Seller’s request, into Schedule Q of the Agreement.

#### E-4 UNCONTROLLABLE FORCES

E-4.1 I-HSP shall be interruptible only if the interruption is due to an Uncontrollable Force

as provided in Section 10 of the Agreement, and in the event of such an interruption, Seller shall not be obligated to pay any damages as a consequence thereof under the Agreement, this Service Schedule, or the Confirmation. If I-HSP is interrupted for any reason other than an Uncontrollable Force, the Seller shall be responsible for payment of damages as provided in Section E-5.

## E-5 DAMAGES

E-5.1 Section 21.3(a)(1) and (2) of the Agreement shall not apply to any event(s) of I-HSP Non-Performance under this Service Schedule. The remedies set out in this Section E-5 and in the parts of Section 21.3 that are not excluded by the preceding sentence shall be the sole and complete remedy available to the Parties for I-HSP Non-Performance of any transaction under this Service Schedule. All other damages or remedies are hereby waived.

E-5.2 The Parties acknowledge and agree that, because I-HSP Service is to support the reliable operation of the regional electric transmission system, the Performing Party's actual damages due to I-HSP Non-Performance by the other Party will be difficult or impossible to quantify. The Parties also acknowledge that because NERC and FERC, under certain circumstances and as provided and limited by applicable law, may have authority to impose penalties in connection with I-HSP Non-Performance, it is reasonable to limit the amount of actual damages the Performing Party may recover hereunder due to the other Party's I-HSP Non-Performance. The Parties stipulate to the damages amounts recoverable under this Section E-5, and agree that such stipulated amounts are exclusive and in lieu of the actual losses the performing Party could sustain, and further agree that such

stipulated damages are not themselves a penalty assessed against the Non-Performing Party by or on behalf of the Performing Party.

E-5.3 In the event of Seller's I-HSP Non-Performance due to failure to deliver energy when and as required, Seller shall compensate Purchaser in an amount equal to the sum of:

- (a) if the Contract Term is for thirty (30) days or less, the capacity charge for the Contract Term or, if the Contract Term exceeds thirty (30) days, a monthly capacity charge calculated for the entire month in which the I-HSP Non-Performance occurred, in each case multiplied by the Damages Multiplier. (If the Contract Term is for a period exceeding a month and a monthly capacity charge is not stated in the Confirmation, then a monthly capacity charge for the month of I-HSP Non-Performance shall be derived by allocation or extension); plus
- (b) the product of the quantity of energy Seller failed to deliver during each hour of I-HSP Non-Performance, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier; plus
- (c) any transmission service charge incurred by the Purchaser for each hour of I-HSP Non-Performance (if Purchaser arranged transmission, the charge incurred by the Purchaser, and if Seller passes a transmission charge through to Purchaser under Section E-3.5.2, the amount of the passed-through charge).

E-5.4 In the event of Seller's I-HSP Non-Performance due to failure to receive returned energy when and as required (provided that the Seller agreed in the transaction to

a Purchaser right to return energy), Seller shall compensate Purchaser in an amount equal to:

- (a) the product of the quantity of energy Seller failed to receive during each hour of I-HSP Non-Performance, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier; plus
- (b) any transmission service charge incurred by the Purchaser for each hour of I-HSP Non-Performance (if Purchaser arranged transmission, the charge incurred by the Purchaser, and if Seller passes a transmission charge through to Purchaser under Section E-3.5.2, the amount of the passed-through charge).

## **TABLE OF CONTENTS**

1. PARTIES
2. RECITALS
3. AGREEMENT
4. DEFINITIONS
5. TERM, TERMINATION AND WITHDRAWAL
6. SERVICE SCHEDULES AND WSPP DEFAULT TRANSMISSION TARIFF
7. ADMINISTRATION
8. EXECUTIVE AND OPERATING COMMITTEES
9. PAYMENTS
10. UNCONTROLLABLE FORCES
11. WAIVERS
12. NOTICES
13. APPROVALS AND EFFECTIVENESS
14. TRANSFER OF INTEREST IN AGREEMENT
15. SEVERABILITY
16. MEMBERSHIP
17. RELATIONSHIP OF PARTIES
18. NO DEDICATION OF FACILITIES
19. NO RETAIL SERVICES
20. THIRD PARTY BENEFICIARIES
21. LIABILITY AND DAMAGES
22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND CONFIRMATIONS

- 22A. DEFAULT IN PAYMENT OF WSPP OPERATING COSTS
- 23. OTHER AGREEMENTS
- 24. GOVERNING LAW
- 25. JUDGMENTS AND DETERMINATIONS
- 26. COMPLETE AGREEMENT
- 27. CREDITWORTHINESS
- 28. NETTING
- 29. TAXES
- 30. CONFIDENTIALITY
- 31. TRANSMISSION TARIFF
- 32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS
- 33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES
- 34. DISPUTE RESOLUTION
- 35. FORWARD CONTRACTS
- 36. TRADE OPTION EXCEPTION
- 37. ADDITIONAL REPRESENTATIONS AND WARRANTIES
- 38. FLOATING PRICES
- 39. AMENDMENT
- 40. EXECUTION BY COUNTERPARTS
- 41. WITNESS

EXHIBIT A: NETTING

EXHIBIT B: FORM OF COUNTERPARTY GUARANTEE AGREEMENT

EXHIBIT C: SAMPLE FORM FOR CONFIRMATION

EXHIBIT D: WSPP MEDIATION AND ARBITRATION PROCEDURES

SERVICE SCHEDULES

A. ECONOMY ENERGY SERVICE

B. UNIT COMMITMENT SERVICE

C. FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE

D. RESERVE SERVICES

E. INTRA-HOUR SUPPLEMENTAL POWER

LIST OF MEMBERS

#### 4. DEFINITIONS:

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

Agreement: This WSPP Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation(s) are not included within this definition.

Administrative Committee: A sub-committee of the Executive Committee in accordance with Section 8.1.2.

Balancing Authority: [has the meaning given in the NERC Glossary.](#)

Bookout: A transaction where:

- (a) (i) prior to the time performance is to commence under a Confirmation, the Parties enter into a second (substitute) transaction for the purpose of fulfilling their respective obligations under that Confirmation by offset rather than physical delivery, or
- (ii) after non-performance under a Confirmation, the Parties enter into a second (substitute) transaction for the purpose of finally settling losses incurred by the Performing Party due to non-performance of such Confirmation; and
- (b) the second transaction, under either (i) or (ii), was performed.

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

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 places of business in Canada, Canadian holidays shall apply and 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 apply.

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

Confirmation(s): The confirmations for transactions developed and made effective in accordance with Section 32.

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

Contract Quantity: The amount of capacity and/or energy to be supplied for a transaction under the Agreement.

Contract Term: ~~The mutually agreed duration for a transaction undertaken pursuant to this Agreement, as stated in the Confirmation for such transaction.~~

Control Area: ~~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.~~

Costs: As defined in Section 22.3 of this Agreement.

Dealer: An entity or person that buys or sells power and takes title to the power at some point.

Defaulting Party: As defined in Section 22.1 of this Agreement.

Determination Period: As defined in Section 38.2 of this Agreement.

Documentary Writing: A document which is physically delivered by courier or U.S. mail, or a copy of which is transmitted by telefacsimile or other electronic means.

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.

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.

Electronic Writing:

- (1) Recorded oral conversation; or
- (2) electronic communications, including but not limited to e-mail, if the Parties to the transaction use such method to create an electronic writing for the Confirmation for such transaction and, except with respect to e-mail, specifically agree to the method of electronic communication.

Electronic Writings shall not include the transmittal of a copy of a document by electronic means, which is considered a Documentary Writing.

ERCOT: Electric Reliability Council of Texas, Inc., and any successor organization.

Event of Default: As defined in Section 22.1 of this Agreement.

Executive Committee: The committee established pursuant to Section 8 of this Agreement.

FERC: The Federal Energy Regulatory Commission or its regulatory successor.

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.

First Party: As defined in Section 27 of this Agreement.

Floating Price: As defined in Section 38.1 of this Agreement.

Gains: As defined in Section 22.3 of this Agreement.

Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for obligations arising under this Agreement and Confirmation. A sample form of Guarantee Agreement is provided in Exhibit B.

Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

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.

Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.

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.

Intra-Hour Supplemental Power: A service by which the Seller provides capacity and energy to the Purchaser and Purchaser is permitted within each hour to call upon energy on a scheduled or dynamic basis up to and including the stated capacity, under the terms and conditions set forth in the Agreement, Service Schedule E, and the Seller and Purchaser's Confirmation.

Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.

Losses: As defined in Section 22.3 of this Agreement.

Market Disruption Event: As defined in Section 38.2 of this Agreement.

NERC: North American Electric Reliability Council or any successor organization.

NERC Glossary: means the NERC Glossary of Terms Used in Reliability Standards in effect during the Contract Term, including any amendments made during the Contract Term.

NERC Reliability Standards: means the NERC Reliability Standards for the Bulk Electric Systems in North America in effect during the Contract Term, including any amendments made during the Contract Term.

Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.

Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

Non-Standard Confirmation Provisions: Provisions other than Standard Confirmation Provisions.

NYMEX: New York Mercantile Exchange and any successor organization.

Operating Agent: An agent of the WSPP as may be designated by the Executive Committee from time to time.

Operating Committee: That committee established pursuant to Section 8 of this Agreement.

Party or Parties: As defined in Section 1 of this Agreement.

Performing Party: As defined in Section 21.3(a) of this Agreement.

Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.

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; 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.

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.

Present Value Rate: As defined in Section 22.3(b) of this Agreement.

Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement and any applicable Confirmation.

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.

Regional Reliability Organization: [has the meaning given in the NERC Glossary.](#)

Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute capacity and/or energy in place of the capacity and/or energy not delivered (for energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point specified for the transaction in the Confirmation.

Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of capacity and/or energy, as determined by the Seller in a commercially reasonable manner at the delivery point specified for the transaction in a Confirmation.

Reserve Service(s): One or more of the following services under Service Schedule D provided by the Seller to enable the Designated Authority to meet a reserve

obligation or for other purposes consistent with the definition of the product:

SERVICE SCHEDULE D-1 NON-SPINNING RESERVE

SERVICE SCHEDULE D-2 SPINNING RESERVE

SERVICE SCHEDULE D-3 REGULATING RESERVE

SERVICE SCHEDULE D-4 OPERATING RESERVE - SPINNING

SERVICE SCHEDULE D-5 OPERATING RESERVE SUPPLEMENTAL

Any one or more of the foregoing Services that is deleted from the NERC

Glossary shall not, as of the effective date of such deletion, be a Reserve Service

unless the parties to a transaction otherwise agree.

Reserve Sharing Group: has the meaning given in the NERC Glossary.

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.

Second Party: As defined in Section 27 of this Agreement.

Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement and the applicable Confirmation.

Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement on file with FERC as part of this Agreement.

Standard Confirmation Provisions: Provisions setting forth: Seller, Purchaser, period of delivery, schedule, delivery rate, delivery points, type of service (e.g. Service Schedule A, B, C or other), contract quantity, price, transmission path (if any), date, and certain additional information for physically settled options (option type,

option style, exercise date or period, premium, premium payout date, and method for providing notice of exercise).

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.

Terminated Transaction: As defined in Section 22.2 of this Agreement.

Termination Payment: As defined in Section 22.2 of this Agreement.

Trading Day: As defined in Section 38.2 of this Agreement.

Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation.

Unit Commitment Service: A capacity and/or associated scheduled energy transaction or a Physically-Settled Option under 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.

WSPP: WSPP Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

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

WSPP Homepage: WSPP's internet web site, [www.wspp.org](http://www.wspp.org).

## 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 Membership in WSPP and status as ~~Being~~ a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Balancing Authority and any Party which operates ~~a Control Area and any other Party which operates~~ within that Balancing Authority's Balancing Authority Area~~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 WSPP incurred hereunder.

16.5 In addition to requirements set forth elsewhere in this Agreement imposed on Parties as part of their membership in the WSPP, each Party shall abide by the following requirements:

16.5.1 Each Party shall maintain updated information regarding its Executive Committee and Operating Committee representatives on the WSPP Homepage and shall submit changes within a reasonable time period.

16.5.2 With regard to disputes involving transactions under this Agreement or other agreements, no Party shall seek to conduct discovery of the WSPP or issue or seek to obtain the issuance of any subpoena to the WSPP or WSPP officers acting in their capacities as officers of the WSPP or of the WSPP's attorneys or consultants with regard to their work for the WSPP or their opinions regarding the construction or interpretation of any clause of the Agreement, provided that the foregoing prohibition shall not apply in proceedings brought against the WSPP. In the event a Party seeks to compel discovery or testimony in violation of this Section, that Party shall be deemed to have consented to the quashing of the subpoena or other process providing therefor. Notwithstanding any other provision in this Agreement, a Party that seeks to conduct discovery or issue or seek to obtain the issuance of any subpoena in breach of this provision shall compensate the WSPP and its officers, attorneys, and consultants, as applicable, for all out-of-pocket costs incurred.

16.6 An entity shall become a Party to this Agreement and a member of the WSPP upon satisfaction of the requirements in this Section 16 and on the date allowed

by FERC if it is a FERC public utility or upon the date of satisfaction of the requirements in this Section 16 if it is not a FERC public utility.

**30. CONFIDENTIALITY:**

30.1 The terms of any transaction under this Agreement 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 federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, ~~regional—Regional reliability—Reliability Organization~~ouncil, or successor organization requirements; (6) necessary to obtain transmission service; or (7) to a developer of an index of electric power prices in accordance with Section 30.2. 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).

30.2 A Party may disclose the terms of transactions under this Agreement, excluding the identities of parties, to any developer of any index of electric power prices without violation of the confidentiality obligations under Section 30.1 if: (1) the disclosing Party and the index developer have entered into a written agreement, prior to the disclosure, under which the developer has agreed to use the information solely for the development of an index of electric power prices for publication and not for any other purpose; and (2) the index with respect to which disclosure is made is an aggregation of terms of transactions and does not identify terms of single transactions or the identities of parties to transactions.

**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 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. 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.

C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. A firm capacity sale or exchange is a commitment, in accordance with the terms and conditions specified in the Confirmation, of capacity resources.

C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy between Parties in accordance with the terms and conditions specified in the Confirmation.

C-3.5 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-3.6 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).

C-3.6 Except as provided for in Section C-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 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. 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. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

C-3.7 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within any recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule, as may be 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; provided, however, this paragraph (c) shall not be used to allow interruptions for reasons other than

reliability of service to native load. If service under this Service Schedule is interrupted under Section C-3.7(a) or (b), neither Seller nor Purchaser shall be obligated to pay any damages under this Agreement or Confirmation. If service under this Service Schedule is interrupted for any reason other than pursuant to Section C-3.7(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-3.8 Each Party that is a FERC regulated public utility as defined in Section C-3.5 shall file the Confirmation 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 or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.9 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~~ Regional ~~reliability~~ Reliability Organization ~~council~~.

## SERVICE SCHEDULE D

### RESERVE SERVICES

SERVICE SCHEDULE D-1 NON-SPINNING RESERVE

SERVICE SCHEDULE D-2 SPINNING RESERVE

SERVICE SCHEDULE D-3 REGULATING RESERVE

SERVICE SCHEDULE D-4 OPERATING RESERVE - SPINNING

SERVICE SCHEDULE D-5 OPERATING RESERVE SUPPLEMENTAL

#### D-1 PURPOSE

This Service Schedule specifies procedures, terms and conditions pursuant to which the Seller provides one or more Reserve Services specified in the Confirmation, to enable the Designated Authority to meet a reserve obligation or for other purposes consistent with the definition of the specified Reserve Service.

#### D-2 DEFINITIONS

D-2.1 Terms used in this Service Schedule with initial capitalization which are not defined in the Agreement or this Service Schedule shall have the meanings given to them in the NERC Glossary.

D-2.2 In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule D.

D-2.2.1 “Applicable Standards” means the NERC Reliability Standards and the respective reliability standards and criteria of NERC, and any applicable Regional Reliability Organization, Balancing Authority, and Reserve Sharing Group, applicable to the Seller’s provision and Designated Authority’s use of the Reserve Services specified in the Confirmation.

D-2.2.2 “Damages Multiplier” means the applicable multiplier specified in

the Confirmation, to be applied in the calculation of damages under Section D-5, which multiplier shall not exceed five (5).

D-2.2.3 “Designated Authority” means the Regional Reliability Organization, Balancing Authority, Reserve Sharing Group or other entity designated in the Confirmation, and which shall have a right to apply the applicable Reserve to the quantity of Reserve it is required to maintain, and to use such Reserve, in each case in accordance with the Applicable Standards. The Designated Authority and the Purchaser may be a single entity or two respective entities. If the Designated Authority and the Purchaser are a single entity, then the Designated Authority shall also be the Purchaser for all purposes under the Agreement.

D-2.2.4 “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the applicable time period in the applicable region, 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 in question was made, could have been expected to accomplish the desired result in a manner that: (a) is consistent with the Applicable Standards; (b) gives due consideration to reliability, safety and protection of equipment and the public welfare; and (c) is consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, or

the exclusion of all other practices, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

D-2.2.5 “NERC Glossary” means the NERC Glossary of Terms Used in Reliability Standards, as it may be amended or restated from time to time.

D-2.2.6 “Non-Spinning Reserve” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to (a) that generating reserve not connected to the system but capable of serving demand within a specified time and (2) interruptible load that can be removed from the system in a specified time, as it may be further defined in the NERC Glossary of Terms and the Applicable Standards. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.7 “Operating Reserve – Spinning” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to the portion of Operating Reserve consisting of (a) Generation synchronized to the system and fully available to serve load within the Disturbance Recovery Period following the contingency event; or (b) load fully removable from the system within the Disturbance Recovery Period following the contingency event. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any

inconsistency with the foregoing.

D-2.2.8 “Operating Reserve – Supplemental” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to the portion of Operating Reserve consisting of (1) generation (synchronized or capable of being synchronized to the system) that is fully available to serve load within the Disturbance Recovery Period following the contingency event; or (2) load fully removable from the system within the Disturbance Recovery Period following the contingency event. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.9 “Regulating Reserve” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to an amount of reserve responsive to Automatic Generation Control, which is sufficient to provide normal regulating margin. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.10 “Reserve” means any of non-spinning reserve, spinning reserve, regulating reserve, operating reserve – spinning and operating reserve supplemental, sold and purchased in accordance with the Confirmation.

D-2.2.11 “Reserves Non-Performance” shall mean with respect to Seller, Seller’s failure to fulfill its obligation to deliver energy to the

Designated Authority when and as required by Section D-3.3.1 and the Confirmation during the Contract Term, that is not excused under Section D-4, and shall mean with respect to Buyer, Seller's delivery of energy to a Designated Authority or reduction of load to provide energy associated with Reserves(s) under this Service Schedule during the Contract Term, upon the request of a Designated Authority that does not conform to Section D-3.3.2, and that is not excused under Section D-4.

D-2.2.12 "Spinning Reserve" shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards. The term refers to unloaded generation that is synchronized and ready to serve additional demand. The Definition in the NERC Glossary of Terms and the Applicable Standards shall control in the event of any inconsistency with the foregoing.

D-2.2.13 In the event any of the Reserve Services identified in sections D-2.2.6 (Non-Spinning Reserve), D-2.2.7 (Operating Reserve), D-2.2.8 (Operating Reserve – Supplemental), D-2.2.9 (Regulating Reserve) or D-2.2.12 (Spinning Reserve) is deleted from the NERC Glossary, as of the effective date of such deletion and unless the parties to a transaction otherwise agree, the deleted service shall not be a Reserve Service under this Service Schedule.

### D-3 TERMS OF SERVICE

D-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the

Parties agree.

(a) At the top of the first page of the Confirmation, one or more of the following

Service Schedule designations:

<u>Service Schedule D-1</u>	<u>Non-Spinning Reserve</u>
<u>Service Schedule D-2</u>	<u>Spinning Reserve</u>
<u>Service Schedule D-3</u>	<u>Regulating Reserve</u>
<u>Service Schedule D-4</u>	<u>Operating Reserve - Spinning</u>
<u>Service Schedule D-5</u>	<u>Operating Reserve Supplemental</u>

(b) The Designated Authority and if the Designated Authority is not a Regional

Reliability Organization, the Regional Reliability Organization within which

the Designated Authority is electrically located;

(c) Contract Quantity(ies), Contract Price(s), and Contract Term(s);

(d) Any additional attributes of the Reserve Service, as the Parties may agree,

consistent with the Applicable Standards;

(e) Transmission particulars, including Contract Path, any provisions regarding

responsibility to arrange transmission and the party responsible for transmission

costs, and any other requirements with respect to transmission;

(f) The means by which requests for energy required to be delivered under the

Service Schedule shall be communicated;

(g) Any conditions to the effectiveness of the Confirmation, including, for example,

the completion of arrangements or agreements between the Seller and the

Designated Authority or among the Seller, Designated Authority, and Purchaser;

and

(h) The Damages Multiplier (which shall not exceed five (5)). If a Damages

Multiplier is not specified then the Damages Multiplier shall be one (1). The

Parties may agree to respective Damages Multipliers to apply to damages paid to

the Purchaser and damages paid to the Seller.

D-3.2 Seller shall provide the specified Reserve Service(s) to the Designated Authority in conformity with the Applicable Standards and any additional attributes specified in the Confirmation. Seller shall provide Reserve Service from (a) one or more generation resources, or (b) electrical load(s) to which Seller is authorized to reduce or interrupt the supply of electricity, which are, in each case, physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by the Applicable Standards for the applicable Reserve Service, and as required to conform to any additional attributes stated in the Confirmation. The Designated Authority shall use the capacity provided by Seller under this Service Schedule for the sole purpose of satisfying the Designated Authority's Reserve obligation as specified in the Applicable Standards and in accordance with Section D-3.3.2.

D-3.3 Obligations Concerning Requests for and Delivery of Energy

D-3.3.1 Seller shall deliver energy associated with Reserve Service, in quantities up to the applicable capacity(ies) specified in the Confirmation for the applicable hour(s), as and when the Designated Authority requests such delivery in the manner of request specified in the Confirmation and in accordance with Section D-3.3.2.

D-3.3.2 Purchaser shall ensure that the Designated Authority shall not require Seller to deliver energy under this Service Schedule except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with Good Utility Practice or such other criteria as may be stated in the Confirmation, that such energy is

required to enable it to respond to a Contingency or other event for which the Reserve specified in the Confirmation is permitted to be utilized under the Applicable Standards or as otherwise stated in the Confirmation.

D-3.4 Inspection and Audit. The Purchaser or Designated Authority shall have the right, to conduct such inspections and audits of Seller's records as are reasonably to assure that the Seller's provision of Reserve(s) conforms to the Applicable Standards and the Confirmation. The Seller shall have the right to conduct such inspections and audits of the Designated Authority's records as are reasonably required to assure that any use of Reserve by the Designated Authority conformed to Section 3.3.2 and the Confirmation. The Parties may state further details and conditions in the Confirmation concerning these rights, including, for example, to protect confidentiality, provisions that inspections and audits may be conducted only by an agreed third-party auditor.

#### D-3.5 Contract Price

D-3.5.1 The Contract Price for Reserve Service(s) may include separately stated charges for capacity and energy. If the terms and conditions of the transaction provide that Seller is to procure or provide transmission (and Seller has such authority), the transmission charge may be separately stated.

D-3.5.1.1 If the Contract Price includes separately stated capacity charge(s) and energy charge(s), then, except as provided in Section D-4, the Purchaser shall be obligated to pay such charges to the Seller at all times during the Contract Term.

D-3.5.1.2 The Contract Price may state separate on-peak and off-peak prices for capacity and energy.

D-3.5.1.3 The periodic energy charge for Reserve Service shall be the amount(s) equal to the product of the quantity of energy delivered by Seller to Purchaser during the period multiplied by the applicable price(s) for such period.

D-3.5.2 Price Caps. 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). In each transaction under this Service Schedule in which the Seller (i) is a FERC-regulated public utility that is subject to market power mitigation in an area that encompasses one or more points of delivery for such transaction, or (ii) otherwise does not have authority to sell power like that provided for under this Service Schedule at market-based rates, the rates for Reserve Service(s) shall not exceed the applicable rates set forth in the Seller's rate schedule incorporated, at Seller's request, into Schedule Q of the Agreement.

#### D-4 UNCONTROLLABLE FORCES

D-4.1 Reserve Service shall be interruptible only if the interruption is due to an Uncontrollable Force as provided in Section 10 of the Agreement, and in the event of such an interruption, Seller shall not be obligated to pay any damages as a consequence thereof under the Agreement, this Service Schedule, or the Confirmation. If Reserve Service is interrupted for any reason other than an Uncontrollable Force, the Seller shall be responsible for payment of damages as

provided in Section D-5.

D-5 DAMAGES AND TERMINATION.

D-5.1 Section 21.3(a)(1) and (2) of the Agreement shall not apply to any event(s) of Reserves Non-Performance under this Service Schedule. The remedies set out in this Section D-5 and in the parts of Section 21.3 that are not excluded by the preceding sentence shall be the sole and complete remedy available to the Parties for Reserves Non-Performance under this Service Schedule. All other damages or remedies are hereby waived.

D-5.2 The Parties acknowledge and agree that, because Reserve Service is to support the reliable operation of the regional electric transmission system, the Performing Party's actual damages due to Reserves Non-Performance by the other Party will be difficult or impossible to quantify. The Parties also acknowledge that because NERC and FERC, under certain circumstances and as provided and limited by applicable law, may have authority to impose penalties in connection with Reserves Non-Performance, it is reasonable to limit the amount of actual damages the Performing Party may recover hereunder due to the other Party's Reserves Non-Performance. The Parties stipulate to the damages amounts recoverable under this Section D-5, and agree that such stipulated amounts are exclusive and in lieu of the actual losses the performing Party could sustain, and further agree that such stipulated damages are not themselves a penalty assessed against the Non-Performing Party by or on behalf of the Performing Party.

### D-5.3 Seller Reserves Non-Performance

D-5.3.1 Purchaser Entitlement to Damages. In the event of Reserves Non-Performance by Seller, Seller shall pay damages to Purchaser in an amount equal to the sum of:

- (a) The product of the total charge for capacity for the Contract Term multiplied by the Damages Multiplier, provided, that if the Contract Term exceeds thirty (30) days, then the capacity charge for the single month in which non-performance occurred shall be substituted in this calculation for the total charge for capacity for the Contract Term; plus
- (b) the product of the quantity of energy Seller failed to deliver during each hour of non-performance, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier; plus
- (c) any transmission service charge incurred by the Purchaser for each hour of non-performance (if Purchaser arranged transmission, the charge incurred by the Purchaser, and if Seller passes a transmission charge through to Purchaser under Section D-3.5.1, the amount of the passed-through charge).

D-5.3.2 Purchaser Option to Terminate. In the event Seller is required to pay damages under Section D-5.3.1 arising from a single instance of Seller's Reserves Non-Performance (or such other parameter to which the Parties may agree), then Purchaser shall have an option to terminate the transaction that was not performed and, concurrently with the exercise of such option, a further option to terminate all other transactions under this

Service Schedule D between the Purchaser and Seller. This Section D-5.3.2 shall not be construed to diminish a Party's rights or obligations under the WSPP Agreement regarding an Event of Default.

(a) In the event of termination under this Section D-5.3.2, the Purchaser shall liquidate the terminated transactions as soon as practicable. A termination payment due to Purchaser from Seller shall be calculated as follows: the payment shall be equal to the present value (calculated with reference to the Present Value Rate) of the Replacement Price that Purchaser incurs, within thirty (30) days from the termination date, for the same quantity and type of Reserve for each transaction, less the total amount remaining to be paid by Purchaser to the Seller under all terminated transactions provided that in no event shall Purchaser owe any amount to Seller resulting from a termination under this Section D-5.3.2. Seller shall pay any termination payment owed pursuant to this Section D-5.3.2 within three (3) Business Days after its receipt of Purchaser's invoice for same.

(b) If the Seller disagrees with the Purchaser's calculation of the termination payment under Section 5.3.2(a) 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 the Agreement.

#### D-5.4 Purchaser Reserves Non-Performance

D-5.4.1 Seller Entitlement to Damages. In the event of Seller's Reserves Non-Performance (the amount of energy provided by Seller in response to the Designated Authority's unauthorized request, the "unauthorized energy"), Purchaser shall compensate Seller in an amount equal to the sum of the amounts described in the following subparagraphs (a) and (b):

(a) The product of the total charge for capacity for the Contract Term multiplied by the Damages Multiplier, provided, that if the Contract Term exceeds thirty (30) days, then the capacity charge for the single month in which non-performance occurred shall be substituted in this calculation for the total charge for capacity for the Contract Term; plus

(b) The product of the quantity of unauthorized energy Seller was required to deliver during each hour, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier.

D-5.4.2 Seller Option to Terminate. In the event Purchaser is required to pay damages under Section D-5.4.1 arising from a single instance of non-performance (or such other parameter to which the Parties may agree), then Seller shall have an option to terminate the transaction that was not performed and, concurrently with the exercise of such option, a further option to terminate all other transactions under this Service Schedule D between the Purchaser and Seller. This Section D-5.4.2 shall not be

construed to diminish a Party's rights or obligations under the WSPP Agreement regarding an Event of Default.

(a) In the event of termination under this Section D-5.4.2, the Seller shall liquidate the terminated transactions as soon as practicable. A termination payment due to Seller from Purchaser shall be calculated as follows: the payment shall be equal to the present value of the capacity charges and any applicable transmission service charges remaining to be paid to Seller under all terminated transactions (calculated with reference to the Present Value Rate) less the present value (calculated in the same manner) of the amount Seller is able to obtain, within thirty (30) days from the termination date, for the same quantity of capacity from the same resource(s), provided that in no event shall Seller owe any amount to Purchaser resulting from a termination in accordance with this Section D-5.4.2. Purchaser shall pay any Termination Payment owed pursuant to this Section D-5.4.2 within three (3) Business Days after its receipt of Seller's invoice for same.

(b) If the Purchaser disagrees with the Seller's calculation of the termination payment under Section 5.3.2(a) 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 the Agreement.

D-5.5 Termination under Section D-5.3.2 or D-5.4.2 shall be effected upon written notice by the Performing Party to the Non-Performing Party, which notice shall

specify the non-performance, such notice of termination to be effective immediately upon receipt. If the Performing Party fails to exercise its termination option within thirty (30) days following the date when the option to terminate arose, then such termination option shall no longer be available to the Performing Party. The Performing Party terminating transaction(s) under this Service Schedule D may do so without making filings at FERC that otherwise may be required.

## SERVICE SCHEDULE E

### INTRA-HOUR SUPPLEMENTAL POWER

#### E-1 PURPOSE

This Service Schedule states procedures, terms and conditions for the Seller's provision of Intra-Hour Supplemental Power ("I-HSP") to, and receipt of such service by, the Purchaser.

#### E-2 DEFINITIONS

In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule E.

E-2.1 "Damages Multiplier" means the multiplier specified in the Confirmation, to be applied in the calculation of damages under Section E-5. The Damages Multiplier shall not exceed five (5). If a Damages Multiplier is not specified then the Damages Multiplier shall be one (1).

E-2.2 "I-HSP Non-Performance" shall mean with respect to Seller, Seller's failure to fulfill its obligation to deliver energy to the Purchaser when and as required under Section E-3.111 or E-3.1.1.2 and the Confirmation, that is not excused under Section E-4, or, if the Parties agreed in the transaction that Purchaser shall have the right to return energy to Seller, Seller's failure to receive returned energy when and as required by Section E-3.3 and 3.3.1 and the Confirmation, that is not excused under Section E-4.

#### E-3 TERMS

E-3.1 Seller agrees to make available to Purchaser the Maximum Capacity (in megawatts) stated in the Confirmation and associated energy for service under,

and subject to the terms of, this Service Schedule for the Contract Term stated in the Confirmation. To the extent as may be stated in the Confirmation, the Maximum Capacity for delivery of energy under this Service Schedule may vary from time to time based, for example, on clock hours or seasons.

E-3.1.1 The purpose of I-HSP is to allow Purchaser to call upon Seller to deliver energy in quantities subject to variation within each hour, up to and including the Maximum Capacity. I-HSP may be made available either on a scheduled basis, as described in Section E-3.1.1.1; or on a dynamic basis, as described in Section E-3.1.1.2. The Confirmation shall state whether I-HSP is scheduled or dynamic.

E-3.1.1.1 Scheduled I-HSP

(a) This Section E-3.1.1.1 applies to transactions for which the parties have agreed to the provision of I-HSP on a scheduled basis. A Purchaser of I-HSP on a scheduled basis shall have the right to request energy from the Seller, at any rate of flow up to and including the Maximum Capacity and, subject to the terms of this Service Schedule, Seller shall be obligated to deliver the energy at the rate of flow requested by Purchaser at the point(s) of delivery stated in the Confirmation.

(b) Purchaser shall transmit its requests for energy associated with I-HSP by electronic communication to Seller and to the applicable Balancing Authority(ies). All such communications

shall conform to applicable scheduling and communications rules and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies).

(c) Purchaser's requests for energy shall be for a rate of flow stated in whole megawatts, and, subject to compliance with applicable scheduling rules and protocols, may be increased or decreased from the previous requests in amounts not exceeding any limits on such changes set forth in the Confirmation, provided that Purchaser's requested rate of flow of energy shall not exceed the Maximum Capacity. Each clock hour shall be divided into equal time periods ("Intervals") which shall be stated in the Confirmation. Unless otherwise provided in the Confirmation, Purchaser shall have the right to make a single request for energy at any time during each Interval.

(d) Seller shall commence providing energy at the rate of flow requested by Purchaser (up to the Maximum Capacity) at the commencement of the first Interval scheduled, and shall continue to provide energy at that same rate until the time Purchaser specified for cessation or pursuant to Purchaser's request for a different rate of flow (the "subsequent request"). Seller shall commence providing energy at the rate of flow stated in a subsequent request (i) in no case sooner than or at a rate faster than, is consistent with the ramp rates or other

constraints stated in the Confirmation, and (ii) no later than the end of the Interval that immediately follows the Interval during which Seller received the subsequent request. Seller shall provide energy to Purchaser in accordance with the subsequent request until the time Purchaser specified for cessation or pursuant to Purchaser's next request for energy at a different rate of flow (a further subsequent request).

E-3.1.1.2 Dynamic I-HSP

(a) This Section E-3.1.1.2 shall apply to transactions for which the parties have agreed to the provision of I-HSP on a dynamic basis. A Purchaser of I-HSP on a dynamic basis shall have the right to request energy from the Seller at a rate of flow up to and including the Maximum Capacity and, subject to the terms of this Service Schedule, Seller shall be obligated to deliver the energy at the rate of flow requested by Purchaser (up to the Maximum Capacity) at the point(s) of delivery stated in the Confirmation.

(b) Purchaser's requests for dynamic I-HSP need not be stated in whole megawatts, and, subject to compliance with applicable scheduling rules and protocols, may be increased or decreased from previous requests in amounts not exceeding any limits on such changes set forth in the Confirmation and up to the Maximum Capacity.

(c) Purchaser shall transmit its requests dynamically for energy associated with I-HSP by electronic communication to Seller and to the applicable Balancing Authority(ies). All such communications shall conform with applicable scheduling and communications rules and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies).

(d) Seller shall commence providing energy at the rate of flow requested by Purchaser (up to the Maximum Capacity) at the earliest time its equipment is capable of responding to the electronic communication conveying Purchaser's request, but in no case sooner than or at a rate faster than is consistent with the ramp rates or other constraints stated in the Confirmation. Seller shall provide energy to Purchaser in accordance with the request until the time Purchaser specified for cessation or pursuant to Seller's next request for energy at a different rate of flow.

E-3.2 The Parties may agree upon which Party is responsible for obtaining and paying for, and (as between Seller and Purchaser) shall bear all risk of unavailability of, any transmission service necessary for Purchaser to receive energy at the point(s) of delivery stated in the Confirmation, and to make use of, I-HSP under this Service Schedule.

E-3.3 In any transaction under this Service Schedule E, the Parties may agree that Purchaser shall have a right, but not an obligation, to return to Seller in kind all or

any quantity of the energy Seller delivers to Purchaser in the transaction. In the event the Parties agree that Purchaser shall have such right, unless otherwise agreed, any energy returned shall be returned at rates of flow not in excess of the Maximum Capacity, the return shall be completed within 168 hours after Purchaser's receipt of energy from Seller, and Seller shall receive the returned energy. Any return of energy shall conform to other terms of agreement stated in the Confirmation including, for example, provisions requiring return of peak energy during peak periods. Return of energy shall be reflected in the billing applicable to the respective days when returns were made. Sections E-3.3.1 and E-3.3.2 shall apply only in the event the Parties agree that Purchaser shall have a right to return energy.

E-3.3.1 The Parties shall state in the Confirmation the point(s) where, and the times when, Purchaser may deliver returned energy to Seller, the type of transmission service Purchaser shall use for such returns, and any other terms reasonably necessary to enable Purchaser to exercise its right to return energy in kind under this Service Schedule.

E-3.3.2 Purchaser shall arrange and be financially responsible for any transmission service it requires to enable it to exercise its right under this Service Schedule to return energy in kind to Seller at the delivery point(s) and times established pursuant to Section E-3.3.1.

E-3.4 By executing a Confirmation for I-HSP,

(a) Seller warrants to Purchaser that Seller's (or, as applicable, Seller's Balancing Authority's) communication and automated control facilities are sufficient, in the absence of Uncontrollable Forces, to enable Seller's

source(s) of energy to receive, and to respond in a timely and accurate manner to, and that Purchaser's electronic communications conveying its requests for energy under this Service Schedule conform with communications criteria stated in applicable standards and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies); and

(b) Purchaser warrants to Seller that Purchaser's (or, as applicable, Purchaser's Balancing Authority's) communication and automated control facilities are sufficient, in the absence of Uncontrollable Forces, to enable Purchaser's system to convey to Seller and to the applicable Balancing Authority(ies) requests for energy in the manner required under the applicable terms of this Service Schedule and to adjust Purchaser's equipment and facilities in an accurate and timely manner as needed to receive deliveries of energy from Seller in accordance with Purchaser's instructions to Seller under this Service Schedule in conformance with communications criteria stated in applicable standards and protocols of the applicable Regional Reliability Organization(s) and Balancing Authority(ies).

### E-3.5 Pricing.

E-3.5.1 Subject to the terms of this Section E-3.5, the price for I-HSP shall be stated in the Confirmation.

E-3.5.2 The Contract Price for I-HSP may include separately stated charges for capacity and energy. If the terms and conditions of the transaction

provide that Seller is to procure or provide transmission (and Seller has such authority), the transmission charge may be separately stated. Unless the Parties agree otherwise, any energy charge shall provide for prices for on-peak periods and for off-peak periods, which prices need not be the same for each day or other portion of the Contract Term.

E-3.5.3 Charges.

E-3.5.3.1 Purchaser shall pay Seller for service under this Service Schedule an amount equal to the sum of the following: (1) the capacity charge stated in the Confirmation, expressed in \$/MW for the calculation period, times the Maximum Capacity; (2) the energy charge determined pursuant to Section E-3.5.3.3; and (3) any agreed transmission service charges.

E-3.5.3.2 Except as provided in Section E-4, the Purchaser shall be obligated to pay to the Seller any capacity charge and any agreed transmission service charge at all times during the Contract Term.

E-3.5.3.3 The energy charge for I-HSP shall be the amount equal to: (i) the product of the quantity of on-peak energy delivered by Seller to Purchaser during the calculation period times the applicable price for such period, plus (ii) the product of the quantity of off-peak energy delivered by Seller to Purchaser during the calculation period times the applicable

price for such period, less the sum of (x) plus (y), where (x) is the product of the quantity of on-peak energy (if any) returned by Purchaser to Seller during the same calculation period times the applicable price for such period, and (y) is the product of the quantity of off-peak energy (if any) returned by Purchaser to Seller during the same calculation period times the applicable price for such period. If the parties have not designated on-peak and off-peak pricing, then the energy charge need not reflect such periodic pricing.

E-3.5.4 Price Caps. 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). In each transaction under this Service Schedule in which the Seller (i) is a FERC-regulated public utility that is subject to market power mitigation in an area that encompasses one or more points of delivery for such transaction, or (ii) otherwise does not have authority to sell power like that provided for under this Service Schedule at market-based rates, the rates for I-HSP shall not exceed the applicable rates set forth in the Seller’s rate schedule incorporated, at Seller’s request, into Schedule Q of the Agreement.

#### E-4 UNCONTROLLABLE FORCES

E-4.1 I-HSP shall be interruptible only if the interruption is due to an Uncontrollable Force

as provided in Section 10 of the Agreement, and in the event of such an interruption, Seller shall not be obligated to pay any damages as a consequence thereof under the Agreement, this Service Schedule, or the Confirmation. If I-HSP is interrupted for any reason other than an Uncontrollable Force, the Seller shall be responsible for payment of damages as provided in Section E-5.

## E-5 DAMAGES

E-5.1 Section 21.3(a)(1) and (2) of the Agreement shall not apply to any event(s) of I-HSP Non-Performance under this Service Schedule. The remedies set out in this Section E-5 and in the parts of Section 21.3 that are not excluded by the preceding sentence shall be the sole and complete remedy available to the Parties for I-HSP Non-Performance of any transaction under this Service Schedule. All other damages or remedies are hereby waived.

E-5.2 The Parties acknowledge and agree that, because I-HSP Service is to support the reliable operation of the regional electric transmission system, the Performing Party's actual damages due to I-HSP Non-Performance by the other Party will be difficult or impossible to quantify. The Parties also acknowledge that because NERC and FERC, under certain circumstances and as provided and limited by applicable law, may have authority to impose penalties in connection with I-HSP Non-Performance, it is reasonable to limit the amount of actual damages the Performing Party may recover hereunder due to the other Party's I-HSP Non-Performance. The Parties stipulate to the damages amounts recoverable under this Section E-5, and agree that such stipulated amounts are exclusive and in lieu of the actual losses the performing Party could sustain, and further agree that such

stipulated damages are not themselves a penalty assessed against the Non-Performing Party by or on behalf of the Performing Party.

E-5.3 In the event of Seller's I-HSP Non-Performance due to failure to deliver energy when and as required, Seller shall compensate Purchaser in an amount equal to the sum of:

- (a) if the Contract Term is for thirty (30) days or less, the capacity charge for the Contract Term or, if the Contract Term exceeds thirty (30) days, a monthly capacity charge calculated for the entire month in which the I-HSP Non-Performance occurred, in each case multiplied by the Damages Multiplier. (If the Contract Term is for a period exceeding a month and a monthly capacity charge is not stated in the Confirmation, then a monthly capacity charge for the month of I-HSP Non-Performance shall be derived by allocation or extension); plus
- (b) the product of the quantity of energy Seller failed to deliver during each hour of I-HSP Non-Performance, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier; plus
- (c) any transmission service charge incurred by the Purchaser for each hour of I-HSP Non-Performance (if Purchaser arranged transmission, the charge incurred by the Purchaser, and if Seller passes a transmission charge through to Purchaser under Section E-3.5.2, the amount of the passed-through charge).

E-5.4 In the event of Seller's I-HSP Non-Performance due to failure to receive returned energy when and as required (provided that the Seller agreed in the transaction to

a Purchaser right to return energy), Seller shall compensate Purchaser in an amount equal to:

- (a) the product of the quantity of energy Seller failed to receive during each hour of I-HSP Non-Performance, multiplied by the energy charge for the applicable hour, multiplied by the Damages Multiplier; plus
- (b) any transmission service charge incurred by the Purchaser for each hour of I-HSP Non-Performance (if Purchaser arranged transmission, the charge incurred by the Purchaser, and if Seller passes a transmission charge through to Purchaser under Section E-3.5.2, the amount of the passed-through charge).