

I. EXECUTIVE SUMMARY

The IA, which is modeled after the Commission's *pro forma* Large Generator Interconnection Agreement ("LGIA"), provides Ginna with Network Resource Interconnection Service ("NRIS"), and obligates RGE to interconnect the Robert E. Ginna Nuclear Power Plant ("Facility") to the RGE transmission system. The IA provides that the entire output of the Facility, up to 590 MW, can be transmitted into the New York State energy market under system normal operating conditions and under contingency conditions set forth in Appendix H of the IA. The IA obligates RGE to provide NRIS for Ginna's full output of 590 MW and Appendix H codifies the parties' agreement as to what constitutes performance of that obligation. Specifically, Appendix H provides that no planned or unplanned outage of any single 115 kV line exiting the Ginna switchyard at Substation 13A, will impact the operating levels of the Facility up to 590 MW. Appendix H further provides that reductions below 590 MW would only be needed for the loss of three of the five transmission lines that exit Substation 13A. Finally, Appendix H expressly provides for unrestricted generation operation up to 590 MW during periods of any planned maintenance of any single 115 kV line or a double circuit tower structure.

In early March 2007, RGE informed Ginna that, due to load growth and resultant system changes, in order to prevent RGE from violating certain

transmission reliability criteria during outages required for planned maintenance, RGE would apply operating procedures to Ginna that are inconsistent with those codified in Appendix H to the IA. As a result, Ginna has been required to substantially reduce its output on two occasions to date for planned outages of only a single line, and it is Ginna's understanding that it will be required to do so on an ongoing basis to accommodate RGE's planned maintenance activities. RGE effectively is degrading Ginna's 590 MW of NRIS and its actions, if left to stand, would destroy the nature of NRIS service and undermine the economics of the Facility. The very purpose of the IA and the LGIA after which it is patterned, is to define the level and quality of interconnection service on which a facility can rely in structuring its commercial arrangements. Uncertainty with respect to the quality of Ginna's service threatens its ability to deliver reliable power to the grid, and fundamentally undermines its ability to participate fully in the capacity and energy markets of its choosing. RGE's position—that it is free to unilaterally modify the nature of the service, essentially at will as system conditions warrant—strips Ginna's NRIS service of its value and, if adopted by other transmission providers, would threaten the quality and reliability of service to *all* generators.

To date, Ginna has complied with RGE's requests that Ginna reduce Facility output to prevent RGE from violating its reliability requirements and

Ginna will continue to do so in the future to the extent needed to maintain system reliability. However, RGE cannot maintain system reliability at the expense of its contractual obligations under the IA. Put simply, it must do both. Consequently, Ginna requests that the Commission find that RGE has failed to comply with the terms of the IA by requiring the Facility to reduce substantially its output in a manner directly at odds with operating criteria specified in the IA and that, by so requiring, RGE has violated and, unless corrected, will continue to violate, its FERC-approved rate schedule, as fully discussed below.

Specifically, Ginna requests that the Commission:

- (1) direct RGE to comply with the express terms of the IA and cease any further directives requiring Ginna to reduce its output in a manner inconsistent with Appendix H;
- (2) to the extent RGE is unable to comply with item (1) without violating applicable reliability standards, direct RGE to modify its transmission system, at its sole expense, to restore the generation operating levels required by the IA, or confirm that RGE's currently planned Rochester Transmission Project ("RTP") will, upon its completion, enable RGE to comply with the requirements of Appendix H to the IA;
- (3) direct RGE and Ginna jointly to develop interim operating procedures that will minimize reductions in Ginna's output pending completion of needed system upgrades;
- (4) direct RGE to compensate Ginna for its lost revenues resulting from RGE's violation of the IA because its violation effectively shifts costs to Ginna that are expressly allocated to RGE under the IA; and
- (5) establish the earliest possible refund effective date, which would be the date of the filing of this Complaint.

II. COMMUNICATIONS

Ginna respectfully requests that all pleadings, correspondence and other communications concerning this proceeding be directed to the following persons, and their names and addresses be placed on the official service list for this docket:⁴

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III. PARTIES TO THE PROCEEDING

A. Complainant

Ginna owns the approximately 590 MW Facility located in Ontario, New York. The Facility is interconnected with the transmission system of RGE. Ginna is a wholly owned, indirect subsidiary of Constellation Energy Group, Inc. ("Constellation"). The Commission has granted Ginna market-based rate

⁴ Ginna respectfully requests waiver of Section 385.203(b)(3) of the Commission's regulations, 18 C.F.R. § 385.203(b)(3), to permit the designation of more than two persons for service in this proceeding.

authority⁵ and Ginna is a participant in the markets operated by the New York Independent Transmission System Operator (“NYISO”).

B. Respondent

RGE is a combination utility with a 2,700 square-mile service territory. RGE’s principal business office is located in Rochester, New York. RGE is engaged principally in the business of production, purchase, transmission, distribution and sale of electricity and the purchase, distribution, sale and transportation of natural gas in New York State. RGE’s electric system is directly interconnected with Niagara Mohawk Power Corporation (“Niagara Mohawk”), New York State Electric & Gas Corporation (“NYSEG”) and New York Power Authority (“NYPA”). RGE transferred operational control over its transmission facilities to NYISO upon NYISO startup on November 18, 1999.⁶

IV. COMPLAINT

A. Statement of Pertinent Facts

1. Acquisition of Facility and Negotiation of IA

The Facility was owned by RGE prior to its acquisition by Ginna in 2004. In conjunction with Ginna’s purchase of the Facility from RGE, RGE and

⁵ *R.E. Ginna Nuclear Power Plant, LLC*, Docket No. ER04-485-000 (Mar. 24, 2004) (unpublished letter order).

⁶ *Central Hudson Gas & Elec. Corp.*, 83 FERC ¶ 61,352 (1998), *reh’g*, 87 FERC ¶ 61,135 (1999).

Constellation Generation Group LLC (“CGG,” the parent company of Ginna) negotiated the IA, which was executed on November 24, 2003. RGE filed the IA with the Commission on January 12, 2004 in Docket No. ER04-395-000.⁷ By an Assignment and Assumption Agreement between CGG and Ginna dated April 8, 2004, CGG assigned and Ginna assumed all of CGG’s right, title and interest in and to the IA.⁸

2. Interconnection to RGE’s Transmission System

The Facility is interconnected to RGE’s transmission system through five 115 kV transmission lines that are owned by RGE:

Line number 908 that ties Substation 13A to Substation 121;
Line number 909 that ties Substation 13A to Substation 216, 230 and 424;
Line number 911 that ties Substation 13A to Substation 42;
Line number 912 that ties Substation 13A to Substation 122; and
Line number 913 that ties Substation 13A to Substation 124.⁹

3. NRIS

The IA requires that RGE provide Ginna NRIS and specifies that this service is the same interconnection service provided to the Facility under RGE’s

⁷ The IA was accepted for filing by letter order dated February 25, 2004, with an effective date of November 24, 2003.

⁸ *Rochester Gas and Elec. Corp.*, Docket No. ER04-1006-000 (Aug. 18, 2004) (unpublished letter order).

⁹ Exhibit A, IA, App. H.

ownership.¹⁰ NRIS allows the Facility “to be designated . . . as a Network Resource, up to the Generating Facility’s full output, on the same basis as all other existing Network Resources interconnected to the Transmission Owner’s Transmission System. . . .”¹¹ The IA specifically states that, once Ginna satisfies the requirements for obtaining NRIS “delivery from the Generating Facility . . . up to the amount [590 MW] initially studied, will not require . . . any further upgrades. . . .”¹² This is consistent with the requirements of Order No. 2003 and the LGIA, on which the IA is based:

[The purpose of NRIS] is to provide the Network Upgrades needed to integrate the Interconnection Customer’s Generating Facility into the Transmission System in a manner that is comparable to that in which the Transmission Provider integrates its own resources or other Network Resources. . . . [O]nce the Interconnection Customer has paid for the Network Upgrades needed to integrate its Generating Facility, it cannot be charged again for any additional upgrades that may be needed to continue to qualify as a Network Resource.¹³

¹⁰ Exhibit A, IA § 4.1.1.

¹¹ Exhibit A, IA § 4.1.1.2.

¹² Exhibit A, IA § 4.1.1.2.

¹³ *Standardization of Generator Interconnection Agreements*, Order No. 2003, 68 Fed. Reg. 49846, at PP 778–779 (Aug. 19, 2003), *reh’g*, Order No. 2003-A, 69 Fed. Reg. 15932 (Mar. 26, 2004).

4. Appendix H of the IA

The IA obligates that RGE provide NRIS for Ginna's full output of 590 MW and Appendix H codifies the parties' agreement as to what constitutes performance of that obligation. The IA requires RGE to interconnect the Facility to the RGE transmission system and provides that "[t]he entire output of the Facility (up to 590 MW net) can be transmitted into the New York State energy market . . . under system normal operating conditions, and under certain contingency conditions" set forth in Appendix H of the IA. Importantly, Appendix H provides that "no planned or unplanned outage of any single 115 kV transmission line will impact the operating levels of the . . . Facility up to 590 MW net."¹⁴ Appendix H further provides that reductions below 590 MW are only needed for the loss of three of the five transmission lines that exit Substation 13A.¹⁵

Upon the occurrence of certain operating contingencies, including the outage of one of the 115 kV transmission lines, or the outage of a double circuit

¹⁴ Exhibit A, IA, Appendix. H.

¹⁵ "The Generating Facility has demonstrated its capability of reducing its electric output at an emergency ramp rate in the event of certain operating contingencies. This rate of response capability *would only be needed for the loss of three of the five transmission lines that exit Substation 13A.*" Exhibit A, IA, Appendix H (emphasis added).

tower structure, Ginna is required to confirm, upon RGE's request, that the Facility is *capable* of ramping down to designed output levels within minutes following "the loss of any additional transmission facilities that result in three transmission facilities being out of service."¹⁶ Importantly, such confirmation "will allow for unrestricted generation operation up to 590 MW net, for all planned maintenance of any single Transmission Owner 115 kV transmission line, or a double circuit tower structure."¹⁷ In other words, upon the loss of one circuit, Ginna must stand ready to ramp down on short notice, but is *not* required to reduce Facility output to ensure that RGE's system is unharmed as a result of electric thermal overload or over voltage conditions caused by the Facility's output until "a subsequent *unplanned outage of a third of the five 115 kV transmission facilities that exit Substation 13A.*"¹⁸ These operating procedures are codified in the IA, constitute contractual obligations on deliverability and define the very nature of the NRIS service that is crucial to Ginna's ability to access the NYISO markets into which it sells its capacity and energy.

¹⁶ Exhibit A, IA, Appendix H.

¹⁷ Exhibit A, IA, Appendix H.

¹⁸ Exhibit A, IA, Appendix H (emphasis added).

5. Rochester Transmission Project

Ginna understands that RGE currently is undertaking the RTP as an overall upgrade of RGE's 115 kV transmission system. It entails the upgrading of a number of facilities throughout RGE's service territory, including the addition of new substations and upgrading existing transformers, transmission lines, capacitor banks, and associated controls and protection. According to RGE, the benefits will be greater transmission capabilities in and around the Rochester area, and better voltage support on the system.

As part of the RTP, RGE has done (and intends to do) work at Substation 13A, which includes taking a single transmission line exiting that substation out of service. RGE required Ginna to downpower at the Facility in May and again in June when it took one such line out of service.

All transmission users will presumably benefit from the RTP and RGE's work at Substation 13A is not being performed specifically to meet RGE's obligations under the IA. And although Ginna understands that aspects of the RTP will mitigate the severity of future downpower requests, RGE has not performed definitive studies needed to inform Ginna of the extent to which, upon completion of the RTP, RGE still would direct Ginna to reduce Facility output outside of the parameters set forth in Appendix H. Nor has RGE

committed to restoring the system to enable it to comply with the Appendix H criteria.

6. The Dispute

According to RGE, it has recently performed transmission studies that identify scenarios that require Ginna to power down when only one of the transmission lines that exits Substation 13A fails or is taken out of service for maintenance. Despite the restrictions on RGE's ability to require that Ginna reduce the output of the Facility set forth in Appendix H, RGE maintains that, in circumstances where one of the transmission lines is out, the failure of an additional line would cause RGE to exceed its reliability limits if Ginna is operating at its full 590 MW, and, therefore, it may order Ginna to reduce output when only a single line is out. According to RGE, unless Ginna reduces its output, certain facilities on the transmission system will exceed their Short Time Electrical ("STE") rating upon the next subsequent loss of a line and, that to prevent this from occurring, RGE requires Ginna to reduce power pre-contingency.

On two recent occasions dealing with planned outages, RGE has contacted the Ginna control room and required Ginna to reduce its output substantially below 590 MW—in one case by as much as 213 MW. Ginna understands from RGE that to the extent transmission work at Station 13A resumes in the future,

RGE again will require Ginna to power down. Although RGE has coordinated with Ginna to minimize the impact of such outages on the Facility, RGE has been unwilling to commit to system improvements to restore the generation operating levels required by the IA.

7. Attempted Informal Resolution of the Dispute

Ginna's understanding is that failure to comply with RGE dispatch instructions would have caused, or contributed to causing, RGE to exceed its transmission system reliability limits on two occasions. Accordingly, Ginna has acquiesced to RGE's requests to allow RGE to meet its system reliability requirements, with the expectation that RGE would perform the system upgrades needed for RGE to come into compliance with its obligations under the IA. To mitigate the adverse consequences of these and any future reductions in plant output during RGE's scheduled system maintenance, the parties have engaged in various discussions over the course of several weeks to both define the scope of the problem and to consider alternative workarounds.

In addition, pursuant to Section 27.1 of the IA, Ginna sent a letter dated May 4, 2007 to RGE setting forth its objections to the orders to power down the Facility, its position that RGE is violating the IA, and requesting that RGE

comply with the IA (“Ginna May 4 Letter”).¹⁹ On May 24, 2007, RGE responded to Ginna’s letter arguing that it had the unilateral right to deviate from the terms of the IA whenever system conditions changed (“RGE May 24 Letter”).²⁰ Ginna participated in such discussions solely to minimize and mitigate the reductions in its output without waiving its rights to pursue this complaint, and without releasing RGE from its obligation to comply fully with the terms of the IA. Ginna responded to the RGE May 24 Letter on June 1, 2007.²¹

As specifically set forth herein, the IA, and Appendix H in particular, specify the conditions under which Ginna can be required to reduce the output of its Facility. RGE has failed to meet those conditions and the parties have been unable to resolve their differences informally. Herein, Ginna responds to arguments RGE raised in the RGE May 24 Letter.

B. RGE Has Violated the IA and the Filed Rate Doctrine

The IA is a rate schedule on file with the Commission. The filed rate doctrine prohibits a public utility from charging rates or exposing customers to

¹⁹ Ginna May 4 Letter , attached hereto as Exhibit B.

²⁰ RGE May 24 Letter , attached hereto as Exhibit C.

²¹ See Exhibit D, E-mail from Joseph Pacher, Engineering Manager, Ginna Facility, to James Laurito at RGE (June 1, 2007).

terms and conditions of service other than those properly filed with FERC,²² and therefore, RGE must abide by the terms of the IA. However, RGE is requiring the Facility to reduce its output in a manner directly at odds with its obligations under Appendix H of the IA.

Section 4.1.1.2 of the IA obligates RGE to provide NRIS for Ginna's full output of 590 MW with no further upgrades and Appendix H codifies the parties' agreement as to what constitutes performance of that obligation, i.e., generally that the Facility will not be required to reduce its output unless three of the five lines exiting Substation 13A are out of service. Despite this obligation, RGE is requiring Ginna to downpower the Facility when only one of the transmission lines existing Substation 13A is out for planned maintenance. By so requiring, RGE not only is failing to provide the NRIS as required by the IA and Appendix H, but is also shifting cost responsibility to Ginna for maintaining RGE's transmission system reliability.

Section 10.5 of the IA clearly provides that RGE must, at its sole expense, maintain its transmission system to ensure that it is capable of reliably accepting delivery from Ginna of up to 590 MW under system normal operating

²² *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577, 581–82 (1981) (finding that “no rate other than the one on file may be charged”).

conditions, and under certain contingency conditions in accordance with Appendix H to the IA:

*Transmission Owner shall be responsible for all reasonable expenses, including overheads, associated with owning, operating, maintaining, repairing and replacing Transmission Owner Interconnection Facilities, Distribution Upgrades and Network Upgrades existing as of the Closing Date, which facilities are sufficient to permit the Generating Facility to operate . . . at a net capacity of up to 590 MW.*²³

Section 11.3 confirms that, “[a]s of the Closing Date, there are no . . . Network Upgrades associated with the Generating Facility or the Transmission System.”²⁴ Because the IA was an integral component of an asset purchase, the IA confirmed that 590 MW of NRIS required no network upgrades at closing and that RGE is responsible for all expenses in maintaining 590 MW of NRIS going forward.

Thus, RGE must plan and operate its transmission system so as to maintain the generation operating levels specified in Appendix H. To the extent repairs, replacements or further upgrades are needed to meet the requirements of NRIS and Appendix H, RGE must undertake such activities and bear the cost of doing so. In this regard, the IA is no different than the LGIA on which it is modeled.

²³ Exhibit A, IA § 10.5 (emphasis added).

²⁴ Exhibit A, IA § 11.3.

At present, RGE is unable to both meet its IA obligations and meet its system reliability requirements,²⁵ because it has failed to make the upgrades to its transmission system needed to accommodate its IA obligations reliably. RGE has instead caused Ginna to bear such costs by way of substantial reductions in Facility output. This is directly contrary to Appendix H, NRIS and the cost allocation provision in Section 10.5 of the IA.

C. Contrary to RGE's Contentions, Appendix H Contains Well-Defined and Explicit Operating Parameters

In response to Ginna's request for RGE to come into compliance with the IA terms, RGE informed Ginna that RGE disagrees that Appendix H is controlling and that operating protocols and procedures affecting the Facility's operation "may change from time to time."²⁶ Contrary to RGE's contentions, Appendix H is not a free-floating operating parameter. It is, in fact, a specific and well-defined operating parameter that contains no element of discretion or flexibility. Appendix H provides that no planned or unplanned outage of any single 115 kV line will impact the operating levels of the Facility up to 590 MW

²⁵ Exhibit C, RGE May 24 Letter at 3.

²⁶ Exhibit C, RGE May 24 Letter at 2.

and that reductions below 590 MW are only needed for the loss of *three* of the five transmission lines that exit Substation 13A.

Despite these very clear and explicit requirements, RGE contends that Appendix H does not obligate RGE to deliver the full 590 MW under the conditions stated in Appendix H, and claims that the Appendix H operating parameters are subject to change in accordance with good utility practice. RGE is simply wrong.

1. Good Utility Practice Does Not Give RGE the Right To Deviate From or Change Appendix H

Under the IA, “Good Utility Practice” means:

[A]ny of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, including those set forth in the Bulletin, the NRC Requirements and Commitments, E-Star, *and Appendix H*, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to acceptable practices, methods, or acts generally accepted in the region.²⁷

²⁷ Exhibit A, IA, Definitions (emphasis added).

RGE contends Appendix H can be modified because it is a subset of “Good Utility Practice,” which allows RGE the discretion to take actions as needed for reliability.

RGE’s position is without merit, and turns on its head the purpose of codifying specific operating parameters in the IA. The IA defines “Good Utility Practice” to include any of the many practices and methods engaged in or approved by a significant portion of the electric industry, and these certainly change over time. However, Appendix H is listed as a specific good utility practice of RGE that has been reduced to writing and included in the IA—a FERC-approved rate schedule. Appendix H contains no element of flexibility or discretion and, therefore, cannot be changed absent an appropriate filing under FPA § 205. Consequently, the mere fact that Appendix H is a “Good Utility Practice” provides no support for RGE’s premise that the operating parameters of Appendix H can be changed at will and RGE cannot deviate from such parameters without violating the filed rate. In fact, “Good Utility Practice” requires that RGE maintain its transmission system such that Ginna is not required to reduce its output when only one line is out for maintenance.

2. Section 9.3 of the IA Does Not Authorize RGE To Deviate From Appendix H

Section 9.3 of the IA provides that RGE’s and Ginna’s facilities must be operated in a safe and reliable manner, and allows RGE to provide operating

instructions to Ginna consistent with RGE's operating protocols and procedures as they may change from time to time. Specifically, Section 9.3 provides:

Transmission Owner shall cause the Transmission System and the Transmission Owner's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner *and in accordance with Good Utility Practice and this IA*. Transmission Owner may provide operating instructions to Interconnection Customer *consistent with this IA* and Transmission Owner's operating protocols and procedures as they may change from time to time.²⁸

RGE contends that Appendix H is subject to change as needed to ensure safe and reliable operation.²⁹ However, nothing in Section 9.3 gives RGE the right to deviate from Appendix H without an appropriate filing at FERC. The fact that RGE is required to comply with its own operating protocols and procedures does not override the specific requirements of Appendix H, or RGE's general obligation to plan and maintain its transmission system to meet such requirements. Indeed, RGE's interpretation would render the Section 9.3 requirement to comply with the IA meaningless because RGE could unilaterally change the specific requirements of the IA at any time.

²⁸ Exhibit A, IA § 9.3 (emphasis added).

²⁹ Exhibit C, RGE May 24 Letter at 2.

3. Section 9.7 Must Be Implemented in a Manner Consistent with the Contractual Obligations of the IA

RGE contends that Section 9.7.1.1 allows RGE to remove facilities from service as needed to perform maintenance, and that Section 9.7.2 allows RGE to interrupt or reduce deliveries if such deliveries could adversely affect RGE's ability to perform activities needed for safe and reliable operation of its system.³⁰

Specifically, IA § 9.7 contains provisions dealing with outage scheduling and coordination. Section 9.7.1.1 provides that:

[e]ach Party may, in accordance with Good Utility Practice and in coordination with the other Party, remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment.³¹

Section 9.7.2 also provides:

If required by Good Utility Practice to do so, Transmission Owner may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Owner's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System.³²

While RGE can interrupt deliveries to maintain safety and reliability, it cannot use this right to degrade the quality of service required by the IA. RGE

³⁰ Exhibit C, RGE May 24 Letter at 2.

³¹ Exhibit A, IA § 9.7.1.1.

³² Exhibit A, IA § 9.7.2.

has assumed an obligation in Appendix H that Ginna will not be required to reduce output unless three of the five lines that exit Substation 13A are out. If RGE now plans to routinely interrupt when only one or two lines are lost, it is violating Appendix H, i.e., it is maintaining safe and reliable system operations, but doing so at Ginna's expense by failing to perform its contractual obligations under the IA.

4. The Emergency Provisions of Section 13.4 of the IA Are Not Relevant

RGE contends that Section 13.4 allows RGE to take whatever actions are needed in an emergency, including requiring shut-down or disconnection, even if these actions are inconsistent with Appendix H. Section 13.4 provides that:

Consistent with Good Utility Practice, Transmission Owner or Transmission Provider may take whatever actions or inactions with regard to the Transmission System, the Transmission Owner's Interconnection Facilities, or the Joint Use Facilities it deems necessary during an Emergency Condition. . . .³³

Appendix H does not pertain to emergencies, but to normal operating conditions and certain identified contingencies. Therefore, Section 13.4 is simply irrelevant to the operation of Appendix H. Moreover, the transmission line outages and resultant requests to reduce Facility output were unrelated to any

³³ Exhibit A, IA § 13.4.

emergency; rather, these were planned outages for system maintenance and modifications.

In any event, while Section 13.4 permits RGE to reduce interconnection service or disconnect the Facility to mitigate an emergency, Section 13.4 requires that RGE minimize the effect of any action and schedule any reduction or disconnection during periods of least impact to both RGE and Ginna. Section 13.4 does not authorize RGE to self-declare system emergencies to mask its failure to maintain its transmission system in a manner required by the IA. In short, RGE cannot rely on the emergency provisions of IA § 13.4.1 to avoid its contractual obligations and degrade interconnection service.

D. Changed Circumstances Do Not Allow RGE To Unilaterally Deviate From Its Obligations Under the IA

RGE states that load growth in the Rochester area has been robust and warrants operating restrictions for even a single line outage to maintain reliability criteria and avoid emergency conditions:

A number of developments since the execution of IA, including load growth and resultant system changes and revised practices, warrant the establishment of Facility operating restrictions with a single transmission line outage. Load growth in the Rochester area in which the Facility is located has been robust over the last several years, thereby placing additional strains on the RGE transmission

system, particularly on the balance of flows over the five transmission lines serving the Facility through Substation 13A.³⁴

Section 4.1.1.2 of the IA provides for NRIS and explicitly states that no further upgrades are needed for delivery up to 590 MW.³⁵ As the Commission made clear in Order No. 2003-A:

Under [NRIS], the Transmission Provider builds all the Network Upgrades needed to allow the Interconnection Customer to designate the Generating Facility as a Network Resource and obtain Network Integration Transmission Service. Thus, once the Interconnection Customer has obtained [NRIS], requests for Network Integration Transmission Service from the Generating Facility to points inside the Transmission Provider's Transmission System *will not require additional Interconnection Studies or additional upgrades.*³⁶

As such, RGE must plan its system to meet both its reliability requirements in the face of load growth *and* its obligations to Ginna under the IA, including Appendix H. Appendix H provides a specific level of interconnection reliability that RGE is obligated to include in its transmission system planning. The operating parameters established under Appendix H define the system conditions that RGE must model when planning its system. Clearly, RGE either has failed to properly model Ginna's full output, failed to consider all operating

³⁴ Exhibit C, RGE May 24 Letter at 3.

³⁵ Exhibit A, IA § 4.1.1.2.

³⁶ Order No. 2003-A at P 501 (emphasis added).

limitations, or simply failed to expand its system in accordance with models that appropriately include Ginna and the requirements of Ginna's IA.³⁷ RGE may not unilaterally modify an essential term of a FERC rate schedule as a substitute for system planning.

E. The Commission Should Direct RGE To Comply with the IA, Require RGE To Upgrade its System and Order RGE To Reimburse Ginna for Lost Revenue, Which Represent Costs That RGE Shifted to Ginna

The Commission should direct RGE to comply with the IA and cease any further directives requiring Ginna to reduce its output in a manner inconsistent with Appendix H. As discussed below, to the extent that RGE is unable to comply with Appendix H, the IA places direct cost responsibility squarely on RGE.

Taken together Sections 4.1.1.2, 10.5 and 11.3 of the IA require that RGE plan and operate its transmission system so as to meet the generation operating levels required by the IA and that RGE bear all reasonable expenses of doing so, without assessing Ginna the cost of any further system improvements.

³⁷ RGE's self-imposed operating restrictions have required Ginna to reduce Facility output during May, which is one of the lightest load months. In fact, the downpower on May 14–15, 2007, required that output be reduced by 36%, or 208 MW. This indicates that the need for such restrictions is not driven solely by load growth on the RGE system.

Specifically, Section 4.1.1.2 states that, once Ginna has satisfied the requirements for obtaining NRIS, delivery from the Facility up to the 590 MW amount initially studied will not require any further upgrades,³⁸ and Section 11.3 confirms that, as of the closing date for Ginna's purchase of the Facility, no network upgrades are associated with the Facility or the transmission system.³⁹ Section 11.3 is clear that Ginna cannot be allocated further costs unless they are required to permit generation operating levels above 590 MW. To maintain the specified operating levels, Section 10.5 makes RGE responsible for all reasonable expenses needed to permit the Facility to operate at a net capacity of up to 590 MW, including repairing and replacing transmission owner interconnection facilities, distribution upgrades, and network upgrades.⁴⁰

RGE has failed to plan its system to meet this performance obligation. RGE is, therefore, pursuant to the cost allocation provisions of Section 10.5, responsible for all costs attendant to this failure, including the costs of upgrading its system, the costs RGE has shifted to Ginna to date, as well as any additional costs it shifts to Ginna in the interim until RGE upgrades its system.

³⁸ Exhibit A, IA § 4.1.1.2; *see also* Order No. 2003, at PP 755, 778–779; Order No. 2003-A, at P 501.

³⁹ Exhibit A, IA § 11.3.

⁴⁰ Exhibit A, IA, § 10.5.

Accordingly, the Commission should direct RGE to upgrade its transmission system as needed to meet its performance obligations under the IA, or confirm that the RTP will enable RGE to meet such obligations. The Commission also should direct RGE to reimburse Ginna for its lost revenues resulting from RGE's violation of the IA because its violation effectively shifts costs to Ginna that are expressly allocated to RGE under the IA. These consist of the opportunity costs Ginna has and will incur pending completion of the system modifications needed to allow RGE to comply with the generation operating levels required by the filed rate. To comply with RGE's directives, Ginna has been forced to reduce its output on two recent occasions. On May 14, 2007, Ginna was required to reduce its output between the hours ending at 4:00 a.m. and 10:00 p.m. On June 6, 2007, Ginna was required to reduce its output between the hours ending at 4:00 a.m. and 9:00 p.m.

Ginna sells 90% of its energy output to RGE under a Power Purchase Agreement at energy charges that reflect on-peak (the hours between 7:00 a.m. and 11:00 p.m., inclusive, Monday through Friday, except NERC-defined holidays) and off-peak (the hours between 11:00 p.m. and 7:00 a.m, inclusive, Monday through Friday, and all hours on Saturday, Sunday and NERC-defined holidays) differentials. The remaining 10% of Ginna's energy output is sold into the NYISO market at the relevant Locational Marginal Price in the applicable

hour. The opportunity costs which Ginna incurred consist of the revenues lost from these sales forgone in each hour less Ginna's fuel and variable operation and maintenance expenses in each hour. To date, Ginna has incurred opportunity costs of approximately \$295,192 on May 14, 2007 and approximately \$111,108 on June 6, 2007, for a total of approximately \$406,300.

V. ALTERNATIVE DISPUTE RESOLUTION

Ginna appreciates the efforts RGE has taken to mitigate the impact of planned outages of Line 911. However, RGE apparently is not presently able to meet the contractual requirements of Appendix H and it is Ginna's understanding that RGE intends to resume planned maintenance in the near future. Therefore, it is imperative that concrete and specific interim operating procedures and related compensation be developed over the next few months so that they can be in place before Ginna may again be requested to reduce its output. This is critical in order to minimize the impact on Ginna pending completion of whatever system upgrades are needed to restore the level of service required by the IA. Ginna requests that, in addition to directing RGE to restore the generation operating levels required by the IA, FERC appoint a FERC Settlement Judge to assist the parties in developing such interim measures.

VI. REFUND EFFECTIVE DATE

The Commission should establish the earliest possible refund effective date for the prospective relief requested herein. Under FPA § 206, in the case of a proceeding instituted on a complaint, “the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint.”⁴¹ The Commission’s policy is to establish the earliest possible refund effective date in complaint proceedings to provide the “maximum protection to customers.”⁴² Thus, to ensure the maximum protection against RGE’s violation of the IA, the Commission should set the refund effective date under the Complaint to be the date of its filing.

While Ginna is requesting the establishment of a refund effective date, it is independently requesting that it be compensated for the costs it has already incurred pursuant to the provisions of Section 10.5 of the IA. Section 10.5 places direct cost responsibility on RGE and, therefore, enforcing such contractual

⁴¹ 16 U.S.C. § 824e(b), as amended by the Energy Policy Act of 2005 § 1285, Pub. L. No. 109-58, 119 Stat. 594 (2005).

⁴² *City of Burbank v. Calpine Energy Services, L.P.*, 102 FERC ¶ 61,268, at P 24 (2003); see also *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh’g denied*, 47 FERC ¶ 61,275 (1989) (establishing “the refund effective date at the earliest date allowed”).

provisions does not require the establishment of a refund effective date.⁴³

VII. SPECIFIC RELIEF REQUESTED

Given the discussion above, Ginna respectfully requests that the Commission:

- (1) direct RGE to comply with the express terms of the IA and cease any further directives requiring Ginna to reduce its output in a manner inconsistent with Appendix H;
- (2) to the extent RGE is unable to comply with item (1) without violating applicable reliability standards, direct RGE to modify its transmission system, at its sole expense, to restore the generating operating levels required by the IA, or confirm that RGE'S currently planned RTP will, upon its completion, enable RGE to comply with the requirements of Appendix H to the IA;
- (3) direct RGE and Ginna jointly to develop interim operating procedures that will minimize reductions in Ginna's output pending completion of needed system upgrades;
- (4) direct RGE to compensate Ginna for its lost revenues resulting from RGE's violation of the IA because its violation effectively shifts costs to Ginna that are expressly allocated to RGE under the IA; and
- (5) establish the earliest possible refund effective date, which would be the date of the filing of this Complaint.

⁴³ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator*, 93 FERC ¶ 61,121, at 61,381 (2000); see also *DTE Energy Trading, Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,062, at P 28, *reh'g*, 113 FERC ¶ 61,214 (2005).

VIII. OTHER PROCEEDINGS

Ginna is not aware of any pending proceeding before the Commission or any other forum where the issues addressed in this Complaint have been presented.

IX. FORM OF NOTICE

Pursuant to Rule 206(a)(10) of the Commission's Rules of Practice and Procedure,⁴⁴ included in Attachment 1 is a form of notice suitable for publication in the *Federal Register*. Ginna is also submitting a diskette containing a copy of the form of notice.

X. CONCLUSION

Wherefore, Ginna requests that the Commission grant this Complaint and order the relief requested, as set forth above.

Respectfully submitted,

/s/ Deborah A. Carpentier

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**Attorneys for
R.E. Ginna Nuclear Power Plant, LLC**

June 25, 2007

⁴⁴ 18 C.F.R. § 385.206(a)(10).

Certificate Of Service

I hereby certify that in accordance with Rules 206(c) and 2010(h) of the Commission's Rules of Practice and Procedure, I have served a copy of the foregoing document upon the following contacts for the Respondent as listed on the Commission's list of Corporate Officials:

Marjorie L. Perlman
Senior Regulatory Analyst
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649-0001
Telephone: 716-771-4690
Fax: 716-724-8818
Email: marjorie_perlman@rge.com

New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Dated at Washington, DC this 25th day of June, 2007.

/s/ Deborah A. Carpentier
Deborah A. Carpentier

Exhibit A

Interconnection Agreement

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under New York Independent System Operator, Inc.
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Original Sheet No. 1.

Docket No.: *ER06-1514-001*
Company: *New York ISO*
Service Agreement No.: *329*
Under FERC EI, Tariff No. *1*
Filing Date: *12/15/06*
Effective Date: *9/23/06*

INTERCONNECTION AGREEMENT

BETWEEN

R.E. GINNA NUCLEAR POWER PLANT, LLC

AND

ROCHESTER GAS AND ELECTRIC CORPORATION

DATED AS OF

NOVEMBER 24, 2003

Effective: September 23, 2006

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INTERCONNECTION AGREEMENT

THIS INTERCONNECTION AGREEMENT ("Agreement" or "IA") is made and entered into this as of this 24th day of November, 2003, by and between Constellation Generation Group, LLC, a Delaware limited liability company organized and existing under the laws of the State of Delaware ("Interconnection Customer"), and Rochester Gas and Electric Corporation, a corporation organized and existing under the laws of the State of New York ("Transmission Owner"). Interconnection Customer and Transmission Owner each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Transmission Owner owns the Transmission System and Transmission Provider operates the Transmission System;

WHEREAS, Interconnection Customer and Transmission Owner have entered into an Asset Purchase Agreement, dated as of November 24, 2003 (the "Asset Purchase Agreement" or "APA"), pursuant to which Transmission Owner has agreed to sell to Interconnection Customer, and Interconnection Customer has agreed to purchase from Transmission Owner, all of the interests of Transmission Owner in certain assets identified therein with respect to an electric energy generation station which is commonly known as the Robert E. Ginna Nuclear Power Plant (the "Generating Facility");

WHEREAS, after the Closing Date, Interconnection Customer will operate the Generating Facility as the holder of the NRC licenses for the Generating Facility and in accordance with the terms of this Agreement;

WHEREAS, Interconnection Customer's ability to deliver and sell Electricity from the Generating Facility is contingent upon the Generating Facility being interconnected to the Transmission System;

WHEREAS, Interconnection Customer desires that the Generating Facility be interconnected with the Transmission System and Transmission Owner has agreed to such interconnection on certain terms and conditions; and

WHEREAS, Interconnection Customer and Transmission Owner have agreed to enter into this Agreement for the purpose of interconnecting the Generating Facility with the Transmission System.

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NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used.

ARTICLE 1. DEFINITIONS

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of an electric system.

Affected System shall mean an electric system other than the Transmission Owner's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint stock company, trust or other unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term "control" shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Owner's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of the NRC, NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

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Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

Breaching Party shall mean a Party that is in Breach of this Agreement.

Bulletin shall mean Transmission Owner's Bulletin 86-01 "Requirements For Independent Power Producers of Electricity", as amended or superseded. The Bulletin is attached hereto as Appendix J.

Business Day shall mean Monday through Friday, excluding federal holidays.

Calendar Day shall mean any day including Saturday, Sunday or a federal holiday.

Closing Date shall mean the date as defined in the Asset Purchase Agreement, on which all of the Transmission Owner's interests with respect to the Generating Facility are transferred from the Transmission Owner to Interconnection Customer pursuant to the Asset Purchase Agreement.

Commercial Operation Date of a unit shall mean the date on which the Generating Facility is turned over for central dispatch by the NYISO or a Control Area operator.

Commission shall mean the Federal Energy Regulatory Commission ("FERC"), or its successor.

Confidential Information shall mean any confidential, proprietary or trade secret information with respect to a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

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Decommission or Decommissioning shall have the same meaning as in the Asset Purchase Agreement.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of this Agreement.

Delivery Point(s) shall mean the point(s) at which Electricity is delivered from the Generating Facility to the Transmission System, as indicated on the one-line diagram attached hereto as Appendix A.

Distribution System shall mean the Transmission Owner's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Owner's Distribution System at or beyond the Points of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Electric Switching and Tagging Applications and Rules or "E-STAR" shall mean the Electric Switching and Tagging Applications and Rules, as amended or superseded. The E-STAR is attached hereto as Appendix K.

Electricity shall mean electric capacity as measured in MW or kW, energy as measured in MWh or kWh, and ancillary services.

Emergency Condition shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; (2) that, in the case of a Transmission Owner, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, Transmission Owner's Transmission System, Transmission Owner's Interconnection Facilities or the electric systems of others; (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security or safety of, or damage to,

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the Generating Facility or Interconnection Customer's Interconnection Facilities; or (4) any abnormal system condition that requires automatic or immediate manual action to prevent or limit loss of transmission facilities or generation supply that could adversely affect the reliability of the electric system. System restoration and black start shall be considered Emergency Conditions; provided, however, that Interconnection Customer is not obligated by this Agreement to possess black start capability.

Environmental Law shall mean Applicable Laws and Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. § 791a et seq.

FERC shall mean the Federal Energy Regulatory Commission, or its successor.

Final Safety Analysis Report or FSAR shall mean the report, as updated, that is required to be maintained for the Generating Facility in accordance with the requirements of 10 C.F.R. § 50.71(e).

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean the Robert E. Ginna Nuclear Power Plant, excluding the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility. For purposes of this Agreement, the net capacity of the Generating Facility shall be deemed to be up to or equal to 590 MW. As of the Effective Date, the actual net capacity of the Generating Facility is 500 MW. If Interconnection Customer elects to increase the actual net capacity of the Generating Facility during the term of this Agreement, then the Interconnection Customer shall not be liable for any modifications to the Transmission Owner's Interconnection Facilities or for any Network Upgrades necessitated by such increase, provided that such increase does not result in a net capacity for the Generating Facility of greater than 590 MW. Should the Interconnection Customer increase the net capacity of the Generating Facility to above 590 MW, then the Interconnection Customer shall be required to comply with the applicable terms of this Agreement, including the obligation to pay for the construction, installation, modification, operation and maintenance of any Transmission Owner's Interconnection

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Facilities and/or Network Upgrades necessitated by the increase in net capacity above 590 MW.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, including those set forth in the Bulletin, the NRC Requirements and Commitments, E-STAR, and Appendix H, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Owner, or any Affiliate of either of them.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or terms of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Owner's Interconnection Facilities to obtain Off-Site Power Service, which for purposes of this Agreement shall be the Closing Date under the Asset Purchase Agreement.

Interconnection Customer shall mean R.E. Ginna Nuclear Power Plant, LLC ("Ginna").

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Interconnection Customer's Interconnection Facilities shall mean those facilities and equipment, identified in Appendices A and G of this Agreement, that are located between the Generating Facility and the Points of Interconnection, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Owner's Transmission System. Interconnection Customer's Interconnection Facilities are only those that are owned, operated or leased by Interconnection Customer, and include the portions of the Joint Use Facilities that are owned by Interconnection Customer, as set forth in Appendix G of this Agreement.

Interconnection Facilities shall mean the Transmission Owner's Interconnection Facilities, the Interconnection Customer's Interconnection Facilities, and the Joint Use Facilities, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Owner's Transmission System. Interconnection Facilities shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Owner, the Transmission Provider, or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Owner's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect any additional capacity of the Generating Facility with the Transmission Owner's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Owner's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in

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accordance with the Tariff, to interconnect a new generating facility, or, in the case of the Generating Facility, to increase the capacity of, or make a Material Modification to the operating characteristics of the Generating Facility.

Interconnection Service shall mean the service provided by the Transmission Owner associated with interconnecting the Generating Facility to the Transmission Owner's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Points of Interconnection, pursuant to the terms of this Agreement and, if applicable, the Tariff.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Owner's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if a new generating facility, or an increase in the Generating Facility Capacity, were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from the Interconnection Customer and the Transmission Owner to coordinate operating and technical considerations of Interconnection Service, as more fully described in Article 29.

Joint Tag List means the list of personnel approved from time to time by Transmission Owner in accordance with Good Utility Practice, who meet Transmission Owner's requirements to switch, tag, and ground electrical equipment.

Joint Use Facilities shall mean facilities and equipment which are identified as Joint Use Facilities in Appendix G hereto, as amended from time to time, which are

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owned by either the Transmission Owner or the Interconnection Customer and which contribute to the operational reliability of the Transmission System and are, therefore, operated jointly by the Transmission Owner and the Interconnection Customer.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to this Agreement at the metering points, including, but not limited to, instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal units, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council, or its successor.

Network Customer shall mean a transmission customer that has qualified for Network Resource Interconnection Service pursuant to the terms of the Tariff.

Network Resource shall mean that portion of the Generating Facility that is integrated with the Transmission Owner's Transmission System, designated as a Network Resource pursuant to the terms of the Tariff, and subjected to redispatch directives as ordered by the Transmission Owner in accordance with the Tariff.

Network Resource Interconnection Service (NR Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Generating Facility with the Transmission Owner's Transmission System (1) in a manner comparable to that in which the Transmission Owner integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Owner's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Owner's Transmission System to accommodate the interconnection of the Generating Facility to the Transmission Owner's Transmission System.

New York Independent System Operator or "NYISO" shall mean the organization formed as an Independent System Operator for the New York State

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transmission system in accordance with FERC order(s) in Docket Nos. ER97-1523-000, et al., or its successor.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with this Agreement or its performance.

NRC shall mean the Nuclear Regulatory Commission, or its successor.

NRC Maintenance Rule shall mean the NRC rules and regulations governing the maintenance of the Generating Facility and, as applicable, the Interconnection Facilities, at 10 C.F.R. § 50.65, as amended from time to time, and commitments relating thereto to which Interconnection Customer is subject.

NRC Requirements and Commitments shall mean all the requirements, obligations, duties, and commitments required to be followed and honored by Interconnection Customer pursuant to the Atomic Energy Act of 1954, the regulations of the NRC, the Generating Facility's operating license and nuclear materials licenses, and all other laws, regulations, licenses, and commitments to which Interconnection Customer is or may become subject from time to time, as amended or superseded.

Off-Site Power Service shall mean all services necessary to permit the supply of Electricity (excluding ancillary services) to the Generating Facility in accordance with the terms of this Agreement.

Off-Site Power Supply Points shall mean the points at which Off-site Power Service is supplied to the Interconnection Customer as indicated on the one-line diagram attached hereto as Appendix A.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Point(s) of Interconnection shall mean the point(s), as set forth in Appendix C to this Agreement, where the Interconnection Facilities connect to the Transmission Owner's Transmission System. The Points of Interconnection shall be the Delivery Points and the Off-Site Power Supply Points set forth in Appendix C.

Reasonable Efforts shall mean, with respect to an action required to be

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attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Owner conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Owner and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to this Agreement.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility (greater than 20 MW) that are included in the Tariff.

System Operator shall mean any of the following or its successor or equivalent: (a) the Transmission Owner's energy control center staff, or the energy control staff of any Affiliate of Transmission Owner with responsibility for the Transmission Owner's Transmission System, (b) the energy control center staff as provided in the Tariff, which staff are responsible for central dispatch, or (c) the energy control staff of a satellite control area operator.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect: (1) the Transmission Owner's Transmission System from faults or other electrical disturbances occurring at the Generating Facility; and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Owner's Transmission System or on other delivery systems or other generating systems to which the Transmission

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Owner's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's NYISO Open Access Transmission Tariff ("OATT") through which open access transmission service and Interconnection Service are offered or, to the extent applicable, the NYISO Market Administration and Control Area Services Tariff, as each is filed with the Commission, and as each may be amended or supplemented from time to time, or any successor tariff to either of them.

Transmission Owner shall mean the entity specified in the first paragraph of this Agreement, that owns the Transmission System at the Points of Interconnection and is a Party to this Agreement.

Transmission Owner's Interconnection Facilities shall mean those facilities and equipment owned, controlled or operated by the Transmission Owner located from the Points of Interconnection as identified in Appendix C to this Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Owner's Interconnection Facilities shall include the portions of the Joint Use Facilities that are owned by the Transmission Owner as set forth in Appendix G of this Agreement, but shall exclude Distribution Upgrades, Stand Alone Network Upgrades and Network Upgrades.

Transmission Provider shall mean the NYISO, or its successor.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to commercial operation.

ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION

2.1 Effective Date. This IA shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. The obligations of the Parties hereunder shall only become effective on the Closing Date, except as otherwise provided under this Agreement. Transmission Owner shall promptly file this IA with FERC upon execution in accordance with Article 3.1.

2.1.1 The execution of the Asset Purchase Agreement shall be a condition precedent to the effectiveness of the obligations of the Parties under

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this Agreement. Notwithstanding any other provision of this Agreement, in the event the Asset Purchase Agreement is validly terminated pursuant to its terms prior to the Closing Date, this Agreement shall also terminate as of the date of such termination of the Asset Purchase Agreement.

2.2 Term of Agreement. Subject to the provisions of Articles 2.1.1 and 2.3, this IA shall remain in effect for a period of ten (10) years from the Effective Date, and shall be automatically renewed for each successive one-year period thereafter; provided however, that Transmission Owner shall have the right to file a notice of termination with the Commission if the Interconnection Customer permanently ceases to take Off-Site Power Service from any source for the Generating Facility.

2.3 Termination Procedures. This IA may be terminated as follows:

2.3.1 Written Notice. The Interconnection Customer may terminate this IA after giving the Transmission Owner one hundred eighty (180) Calendar Days advance written notice; or

2.3.2 Default. Either Party may terminate this IA in accordance with Article 17.

Notwithstanding the foregoing, no termination of this IA shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this IA, which notice has been accepted for filing by FERC.

2.4 Termination Costs. If a Party elects to terminate this Agreement pursuant to Article 2.3 above, that Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the terminating Party under this IA. In the event of termination by either Party, both Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this IA, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of the Transmission Owner's Interconnection Facilities that have not yet been constructed or installed, the Transmission Owner shall to the extent possible and with

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Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Transmission Owner shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Owner for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Owner shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by the Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts.

If Interconnection Customer terminates this IA, or if Transmission Owner terminates the IA for Interconnection Customer's Default, in accordance with Article 17, Interconnection Customer shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which the Transmission Owner has incurred expenses and has not been reimbursed by the Interconnection Customer to the extent required under this Agreement.

- 2.4.2** Transmission Owner may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Owner shall be responsible for all costs associated with procuring such materials, equipment, or facilities.
- 2.4.3** With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this IA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 Disconnection. Upon termination of this IA, the Parties will take all appropriate steps to disconnect the Generating Facility from the Transmission System. All

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costs required to effectuate such disconnection, including the costs of site restoration, shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this IA or such non-terminating Party otherwise is responsible for these costs under this IA.

2.6 Survival. This IA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this IA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this IA was in effect; to protect confidential information provided hereunder; and to permit each Party to have access to the lands of the other Party pursuant to this IA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

ARTICLE 3. REGULATORY FILINGS

3.1 Filing. The Transmission Owner shall file this IA (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information that is Confidential Information in accordance with Article 22 shall be maintained by the Transmission Owner and identified as confidential under seal stating that Interconnection Customer asserts such information is Confidential Information and has requested such information be kept under seal. If requested by the Transmission Owner, Interconnection Customer shall provide the Transmission Owner, in writing, with the Interconnection Customer's basis for asserting that the information referred to in this Article 3.1 is competitively sensitive information, and the Transmission Owner may disclose such writing to the appropriate Governmental Authority. Interconnection Customer shall be responsible for the costs associated with affording confidential treatment of such information. If the Interconnection Customer has executed this IA, or any amendment thereto, the Interconnection Customer shall reasonably cooperate with Transmission Owner with respect to such filing and to provide any information reasonably requested by Transmission Owner needed to comply with applicable regulatory requirements. If the Interconnection Customer has executed this Agreement or any amendment thereto, Interconnection Customer shall not protest the filing of this Agreement or any such amendment.

3.1.1 This Agreement is subject to any necessary regulatory acceptance or approval without any material modification or condition. If any Governmental Authority having jurisdiction over this Agreement requires any modification to, or imposes any condition of acceptance or approval of, this Agreement, and such modification or condition could

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reasonably be expected to create a material adverse effect on the business, assets, operations or conditions (financial or otherwise) of Transmission Owner or the Interconnection Customer, then the Parties shall engage in good-faith negotiations for a period of no more than thirty (30) days following the issuance of that acceptance or approval in order to agree to revisions to this Agreement to satisfy, or otherwise address, such modification or condition. If the Parties fail to agree mutually to such changes, Transmission Owner may make a unilateral filing with such Governmental Authority to satisfy the modification or condition, and Interconnection Customer shall have the right to oppose such filing and participate fully in any proceeding established by such Governmental Authority to address such filing.

ARTICLE 4. SCOPE OF SERVICE

4.1 Interconnection Product Options. Interconnection Customer has selected Network Resource Interconnection Service, as described below:

4.1.1 Network Resource Interconnection Service ("NR Interconnection Service").

The product described in this Section 4.1.1 is the same as the interconnection service provided to the Generating Facility under Transmission Owner's ownership of the Generating Facility. Accordingly, as of the Effective Date, the studies referenced in Section 4.1.1.1. are not required, no Network Upgrades are needed for the Generating Facility to receive NR Interconnection Service, and Interconnection Customer satisfies the requirements for and will be provided NR Interconnection Service.

4.1.1.1 The Product. The Transmission Owner must conduct the necessary studies and construct the Network Upgrades needed to integrate the Generating Facility (a) in a manner comparable to that in which the Transmission Owner integrates its generating facilities to serve native load customers; or (b) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. NR Interconnection Service in and of itself does not convey any transmission delivery service.

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4.1.1.2 Transmission Delivery Service Implications. NR
Interconnection Service allows the Interconnection Customer's Generating Facility to be designated by any Network Customer under the Tariff on the Transmission Owner's Transmission System as a Network Resource, up to the Generating Facility's full output, on the same basis as all other existing Network Resources interconnected to the Transmission Owner's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although NR Interconnection Service does not convey a reservation of transmission service, any Network Customer under the Tariff can utilize its network service under the Tariff to obtain delivery of energy from the interconnected Interconnection Customer's Generating Facility in the same manner as it accesses other Network Resources. The Generating Facility receiving NR Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if the Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generating facilities that are similarly situated.

NR Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of the Generating Facility to any particular load on the Transmission Owner's Transmission System without incurring congestion costs. In the event of transmission constraints on the Transmission Owner's Transmission System, the Generating Facility shall be subject to the applicable congestion management procedures in the Transmission Owner's Transmission System in the same manner as all other Network Resources.

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There is no requirement either at the time of study or interconnection, or at any point in the future, that the Generating Facility be designated as a Network Resource by a Network Customer under the Tariff or that the Interconnection Customer identify a specific buyer (or sink). To the extent a Network Customer does designate the Generating Facility as a Network Resource, it must do so pursuant to the Tariff.

Once an Interconnection Customer satisfies the requirements for obtaining NR Interconnection Service, any future transmission service request for delivery from the Generating Facility within the Transmission Owner's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with the Generating Facility be undertaken, regardless of whether or not the Generating Facility is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the Generating Facility. To the extent the Interconnection Customer enters into an arrangement for long term transmission service for deliveries from the Generating Facility outside the Transmission Owner's Transmission System, such request may require additional studies and upgrades in order for the Transmission Owner to grant such request.

- 4.2 Provision of Service.** Transmission Owner shall provide Interconnection Service for the Generating Facility at the Point of Interconnection. The Point of Interconnection is set forth in Appendix C. Interconnection Customer acknowledges that any generator balancing arrangement it desires to enter shall be governed by the Tariff and not this Agreement.
- 4.3 Performance Standards.** Each Party shall perform all of its obligations under this IA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required to take or is prevented from taking or limited in taking any action by such

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Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, such Party shall not be deemed to be in Breach of this IA for its compliance therewith. If such Party is the Transmission Owner, then the Transmission Owner shall amend this IA and submit the amendment to the Commission for approval.

4.4 Transmission Service. The execution of this IA does not constitute a request for, nor the provision of, any transmission delivery service under the Tariff.

4.5 Interconnection Customer Provided Services. The services provided by Interconnection Customer under this IA are set forth in Article 9.6 and Article 13.4.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

**ARTICLE 5. INTERCONNECTION FACILITIES ENGINEERING,
PROCUREMENT, AND CONSTRUCTION**

Transmission Owner acknowledges that the Generating Facility is already interconnected to the Transmission System and that Transmission Owner has obtained such approvals as may be required from the Transmission Provider for Transmission Owner to enter into this Agreement and provide the service described herein. Accordingly, except as provided therein, the provisions of this Article 5 are not applicable to the interconnection of the Generating Facility as of the Effective Date, and accordingly, no studies, submissions by Interconnection Customer, new Interconnection Facilities or Network Upgrades are required for the interconnection of the Generating Facility under this Agreement. The Parties agree and acknowledge that the provisions of this Article 5 do apply to, among other circumstances, future modifications to the Generating Facility that may require the installation of new Interconnection Facilities, or the modification of existing Interconnection Facilities and/or Network Upgrades.

5.1 Options. Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date, which dates shall apply to a prospective installation, construction, or modification of the Transmission Owner's Interconnection Facilities and/or Network Upgrades, including such activity as may be necessitated by an uprate in the generating capability of the Generating Facility. If these dates are acceptable to Transmission Owner, Transmission Owner shall elect to proceed under either the Standard Option or Alternate Option set forth in Articles 5.1.1 and 5.1.2 below. If these dates are not

acceptable to Transmission Owner, the Parties shall proceed under Article 5.1.3 below.

5.1.1 Standard Option. If the dates designated by Interconnection Customer are acceptable to Transmission Owner, the Transmission Owner shall so notify Interconnection Customer within thirty (30) Calendar Days of submission of those dates to the Transmission Owner, and the Transmission Owner shall design, procure, and construct the Transmission Owner's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete the Transmission Owner's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. The Transmission Owner shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Owner reasonably expects that it will not be able to complete the Transmission Owner's Interconnection Facilities and Network Upgrades by the specified dates, the Transmission Owner shall promptly provide written notice to the Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 Alternate Option. If the dates designated by Interconnection Customer are acceptable to Transmission Owner, the Transmission Owner shall so notify Interconnection Customer within thirty (30) Calendar Days of submission of those dates to the Transmission Owner, and Transmission Owner shall assume responsibility for the design, procurement and construction of the Transmission Owner's Interconnection Facilities by the designated dates.

If Transmission Owner subsequently fails to complete Transmission Owner's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Owner shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages; provided, however, the dates

Practice and using standards and specifications provided in advance by the Transmission Owner;

- (2) Interconnection Customer's engineering, procurement and construction of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which Transmission Owner would be subject in the engineering, procurement or construction of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades;
- (3) Transmission Owner shall review and approve the engineering design, equipment acceptance tests, and the construction of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades;
- (4) prior to commencement of construction, Interconnection Customer shall provide to Transmission Owner a schedule for construction of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Owner;
- (5) at any time during construction, Transmission Owner shall have the right to gain unrestricted access to the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;
- (6) at any time during construction, should any phase of the engineering, equipment procurement, or construction of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Owner, the Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades;
- (7) the Interconnection Customer shall indemnify the Transmission Owner for claims arising from the Interconnection Customer's construction of Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;
- (8) the Interconnection Customer shall transfer ownership and control of Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Owner; and

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- (9) Transmission Owner shall approve and accept for operation and maintenance the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2.

5.3 Liquidated Damages. The actual damages to the Interconnection Customer, in the event the Transmission Owner's Interconnection Facilities or Network Upgrades are not completed by the dates designated by the Interconnection Customer and accepted by the Transmission Owner pursuant to subparagraph 5.1.2 or 5.1.4 above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Transmission Owner to the Interconnection Customer in the event that Transmission Owner does not complete any portion of the Transmission Owner's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to ½ of 1 percent per day of the actual cost of the Transmission Owner's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Owner has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Transmission Owner's Interconnection Facilities and Network Upgrades for which the Transmission Owner has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Transmission Owner to the Interconnection Customer as just compensation for the damages caused to the Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this IA.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of the Transmission Owner's Interconnection Facilities or Network Upgrades to take the delivery of power for the Generating Facility's Trial Operation or to export power from the Generating Facility on the specified dates, unless the Interconnection Customer would have been able to commence use of the Transmission Owner's Interconnection Facilities or Network Upgrades to take the delivery of power for Generating Facility's Trial Operation or to export power from the Generating Facility, but for Transmission Owner's delay; (2) the Transmission Owner's failure to meet the specified dates is the result of the action or inaction of the Interconnection Customer or any other interconnection customer who has entered into an IA with the Transmission Owner or any cause beyond

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Transmission Owner's reasonable control or reasonable ability to cure; (3) the Interconnection Customer has assumed responsibility for the design, procurement and construction of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

5.4 [RESERVED].

5.5 Equipment Procurement. If responsibility for construction of the Transmission Owner's Interconnection Facilities or Network Upgrades is to be borne by the Transmission Owner, then the Transmission Owner shall commence design of the Transmission Owner's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.5.1 the Transmission Owner has completed the Facilities Study pursuant to the Facilities Study Agreement;

5.5.2 the Transmission Owner has received written authorization to proceed with design and procurement from the Interconnection Customer by the date specified in Appendix B, Milestones; and

5.5.3 the Interconnection Customer has provided security to the Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.6 Construction Commencement. The Transmission Owner shall commence construction of the Transmission Owner's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.6.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Owner's Interconnection Facilities and Network Upgrades;

5.6.3 The Transmission Owner has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix B, Milestones; and

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- 5.6.4 The Interconnection Customer has provided security to the Transmission Owner in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.
- 5.7 **Work Progress.** The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, the Interconnection Customer determines that the completion of the Transmission Owner's Interconnection Facilities will not be required until after the specified In-Service Date, the Interconnection Customer will provide written notice to the Transmission Owner of such later date upon which the completion of the Transmission Owner's Interconnection Facilities will be required.
- 5.8 **Information Exchange.** As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with the Transmission Owner's Transmission System, and shall work diligently and in good faith to make any necessary design changes.
- 5.9 **Limited Operation.** If any of the Transmission Owner's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Generating Facility, Transmission Owner shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Generating Facility and the Interconnection Customer's Interconnection Facilities may operate prior to the completion of the Transmission Owner's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this IA. Transmission Owner shall permit Interconnection Customer to operate the Generating Facility and the Interconnection Customer's Interconnection Facilities in accordance with the results of such studies.
- 5.10 **Interconnection Customer's Interconnection Facilities ("ICIF").** Interconnection Customer shall, at its expense, design, operate, maintain,

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procure, construct, own and install the ICIF, as set forth in Appendix A.

5.10.1 Generating Facility Specifications. Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Owner at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Owner shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Owner and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

5.10.2 Transmission Owner's Review. Transmission Owner's review of Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Owner, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the telemetry, communications, and safety requirements of the Transmission Owner.

5.10.3 ICIF Construction. The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Interconnection Customer shall deliver to the Transmission Owner "as-built" drawings, information and documents for the ICIF, such as: a one-line diagram, a site plan showing the Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Interconnection Customer's step-up transformers, the facilities connecting the Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Generating Facility. The Interconnection Customer shall provide Transmission Owner specifications for the excitation system, automatic voltage regulator, Generating Facility

control and protection settings, transformer tap settings, and communications.

5.11 Transmission Owner's Interconnection Facilities Construction. The Transmission Owner's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Transmission Owner shall deliver to the Interconnection Customer appropriate "as-built" drawings, information and documents for the Transmission Owner's Interconnection Facilities.

The Interconnection Customer will transfer to Transmission Owner ownership and control of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

5.12 Access Rights. In addition to the rights, and obligations set forth in the Reciprocal Easement Agreement, upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party"), except as set forth in Article 5.12.1, any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Generating Facility with the Transmission System; (ii) operate and maintain the Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this IA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.12.1 Any legal and administrative costs Granting Party incurs in complying with Article 5.12 for the benefit of the Access Party shall be reimbursed by Access Party. Transmission Owner shall notify Interconnection Customer before any entry onto Interconnection Customer's property and while on such property shall comply with all reasonable instructions of the Interconnection Customer, including instructions to remove personnel or property from the Station Exclusion Area, as defined in the

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Final Safety Analysis Report. In the event of any conflict between the Reciprocal Easement Agreement and this Agreement, this Agreement shall control.

- 5.13 Lands of Other Property Owners.** If any part of the Transmission Owner's Interconnection Facilities and/or Network Upgrades is, or will be, installed on property owned by persons other than Interconnection Customer or Transmission Owner, the Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property. Upon receipt of a reasonable siting request, Transmission Owner shall provide siting assistance to the Interconnection Customer comparable to that provided to the Transmission Owner's own, or an Affiliate's generation.
- 5.14 Permits.** The Transmission Owner and the Interconnection Customer shall be responsible for their respective costs and expenses to obtain all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations, except if such costs and expenses are incurred due to a Default of this IA by the other Party. The Transmission Owner and the Interconnection Customer shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations. With respect to this paragraph, Transmission Owner shall provide permitting assistance to the Interconnection Customer comparable to that provided to the Transmission Owner's own, or an Affiliate's generation.
- 5.15 Early Construction of Base Case Facilities.** Interconnection Customer may request Transmission Owner to construct, and Transmission Owner shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the Facilities Study for the Interconnection Customer, and which also are required to be constructed for another interconnection customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.
- 5.16 Suspension.** Interconnection Customer reserves the right, upon written notice to Transmission Owner, to suspend at any time all work by Transmission Owner

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associated with the construction and installation of Transmission Owner's Interconnection Facilities and/or Network Upgrades required under this IA with the condition that the Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and the Transmission Owner's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Owner (i) has incurred pursuant to this IA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Owner shall obtain Interconnection Customer's authorization to do so.

Transmission Owner shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Owner required under this IA pursuant to this Article 5.16, and has not requested Transmission Owner to recommence the work required under this IA on or before the expiration of three (3) years following commencement of such suspension, Transmission Owner shall have no further obligation to complete such work and any further work shall be treated as a new Interconnection Request; provided, however, that no such suspension shall effect the continued interconnection of the Generating Facility as configured prior to the new Interconnection Request or the validity of the existing IA.

5.17 Taxes.

5.17.1 Interconnection Customer Payments Not Taxable. The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Owner for the installation of the Transmission Owner's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

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5.17.2 Representations And Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Transmission Owner for the Transmission Owner's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Transmission Owner's Interconnection Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Owner's request, Interconnection Customer shall provide Transmission Owner with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Owner represents and covenants that the cost of the Transmission Owner's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

5.17.3 Indemnification for Taxes Imposed Upon Transmission Owner. Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Owner from income taxes imposed against Transmission Owner as the result of payments or property transfers made by Interconnection Customer to Transmission Owner under this IA, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Owner.

Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer under this IA unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Owner should be reported as income subject to taxation

or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Interconnection Customer to provide security, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to Interconnection Customer's estimated tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Owner for such taxes on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

In the event that the Transmission Owner includes a gross-up upon its own determination that the payments or property transfers should be reported as income subject to taxation, the Interconnection Customer may require the Transmission Owner to provide security, in a form reasonably acceptable to the Interconnection Customer (such as a parental guarantee or a letter of credit) in an amount equal to the Interconnection Customer's estimated tax liability under this Article 5.17.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the 10-year testing period, as contemplated by IRS Notice 88-129, and the applicable statute of limitation, as it may be extended by the Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 Tax Gross-Up Amount. Interconnection Customer's liability for taxes under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Owner, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Transmission Owner as a result of payments or property transfers made by Interconnection Customer to Transmission Owner under this IA (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such

payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$. Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.17.5 Private Letter Ruling or Change or Clarification of Law. At Interconnection Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Owner under this IA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Owner and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Owner shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission

Owner shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request. If the private letter ruling concludes that such transfers or sums are not subject to federal income taxation, or a clarification of or change in law results in Transmission Owner determining in good faith that such transfers or sums are not subject to federal income taxation, Parties' obligations regarding a gross-up or security under this Article 5.17 shall be reduced accordingly.

5.17.6 Subsequent Taxable Events. If, within 10 years from the date on which the relevant Transmission Owner's Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenant contained in Article 5.17.2(i), (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this IA terminates and Transmission Owner retains ownership of the Interconnection Facilities and Network Upgrades, the Interconnection Customer shall pay a tax gross-up for the taxes imposed on Transmission Owner, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

5.17.7 Contests. In the event any Governmental Authority determines that Transmission Owner's receipt of payments or property constitutes income that is subject to taxation, Transmission Owner shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Owner shall file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Owner shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

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Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. Transmission Owner will not be required to appeal or seek further review beyond one level of judicial review. At any time during the contest, Transmission Owner may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Owner, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Owner for the tax at issue in the contest.

5.17.8 Refund. In the event that (a) a private letter ruling is issued to Transmission Owner which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Owner under the terms of this IA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Owner in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Owner under the terms of this IA is not taxable to Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Owner are not subject to federal income tax, or (d) if Transmission Owner receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Owner pursuant to this IA, Transmission Owner shall promptly refund to Interconnection Customer the following:

- (i) any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon;

- (ii) on any amounts paid by Interconnection Customer to Transmission Owner for such taxes which Transmission Owner did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(ii) from the date payment was made by Interconnection Customer to the date Transmission Owner refunds such payment to Interconnection Customer; and
- (iii) with respect to any such taxes paid by Transmission Owner, any refund or credit Transmission Owner receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Transmission Owner for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Owner to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Owner will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Owner has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Transmission Owner's Interconnection Facilities.

The intent of this provision is to leave both Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 Taxes Other Than Income Taxes. Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Interconnection Customer may be required to reimburse Transmission Owner under the terms of this IA. Interconnection Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or

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ARTICLE 6. TESTING AND INSPECTION

- 6.1 **Pre-Commercial Operation Date Testing and Modifications.** Prior to the Commercial Operation Date, the Transmission Owner shall test the Transmission Owner's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Generating Facility and the Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Generating Facility only if it has arranged for the delivery of such test energy. Transmission Owner acknowledges that the Generating Facility is already interconnected to the Transmission System and that the provisions of this Section 6.1 do not apply to the Generating Facility as of the Effective Date.
- 6.2 **Post-Commercial Operation Date Testing and Modifications.** Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.
- 6.3 **Right to Observe Testing.** Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.
- 6.4 **Right to Inspect.** Each Party shall have the right, but shall have no obligation to: (i) observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a

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register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Owner shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 Metering Data. At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Owner and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Generating Facility to the Point of Interconnection.

ARTICLE 8. COMMUNICATIONS

8.1 Interconnection Customer Obligations. Interconnection Customer shall maintain satisfactory operating communications with Transmission Owner's Transmission System dispatcher or representative designated by Transmission Owner. Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Owner as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Generating Facility to the location(s) specified by Transmission Owner. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data. Transmission Owner represents that the communications facilities existing at the Generating Facility as of the Closing Date meet the requirements of this Section 8.1.

8.2 Remote Terminal Unit. Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to both Parties, shall be installed by Interconnection Customer, or by Transmission Owner at Interconnection

Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Owner through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Owner. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Owner. Transmission Owner represents that the Remote Terminal Unit existing at the Generating Facility as of the Effective Date meets the requirements of this Section 8.2.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 No Annexation. Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties in writing.

ARTICLE 9. OPERATIONS

9.1 General. Each Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 Control Area Notification. Interconnection Customer hereby notifies Transmission Owner that the Generating Facility will be located in the NYISO Control Area. If the Interconnection Customer elects to locate the Generating Facility in a Control Area other than the Control Area in which the Generating Facility is physically located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this IA, and remote Control Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Generating Facility in the other Control Area.

9.3 Transmission Owner Obligations. Transmission Owner shall cause the Transmission System and the Transmission Owner's Interconnection Facilities to

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be operated, maintained and controlled in a safe and reliable manner and in accordance with Good Utility Practice and this IA. Transmission Owner may provide operating instructions to Interconnection Customer consistent with this IA and Transmission Owner's operating protocols and procedures as they may change from time to time. Transmission Owner will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

9.4 Interconnection Customer Obligations. Interconnection Customer shall at its own expense operate, maintain and control the Generating Facility and the Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with Good Utility Practice and this IA. Interconnection Customer shall operate the Generating Facility and the Interconnection Customer's Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this IA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this IA.

9.5 Start-Up and Synchronization. Consistent with the Parties' mutually acceptable procedures, the Interconnection Customer is responsible for the proper synchronization of the Generating Facility to the Transmission Owner's Transmission System.

9.6 Reactive Power.

9.6.1 Generating Facilities Participating in Voltage Control as an Ancillary Service Under the Tariff. Unless otherwise agreed to by the Parties, Interconnection Customer shall operate the Generating Facility with automatic voltage regulation equipment in service at all times. Transmission Owner acknowledges that the voltage regulation equipment in service on the Effective Date meets the voltage regulation requirements of this Agreement. The voltage regulation equipment will control voltage at the Point of Interconnection to the nominal system voltage, as determined by the System Operator. From time to time, and in accordance with the Tariff, Transmission Owner or the System Operator may require Interconnection Customer, at no charge to Transmission Owner, to raise or lower the voltage at the Point of Interconnection, which may result in providing reactive power to the

Transmission System or absorbing reactive power from the Transmission System. Interconnection Customer shall be compensated for such reactive power pursuant to the applicable provisions of the Tariff.

9.6.2 Generators not Participating in Voltage Control as an Ancillary Service Under the NYISO Tariff. Interconnection Customer shall operate the Generating Facility to provide or receive VARs as necessary to maintain the voltage schedule directed by the Transmission Owner, the NYISO, or the System Operator at the Points of Interconnection, and at no charge to Transmission Owner. Interconnection Customer shall be required to maintain at least the capability of providing or receiving VARs of plus or minus 100 MVARs at full load as measured at the Generator Facility terminals.

9.6.3 Voltage Limits. Interconnection Customer shall notify the System Operator, to the extent required by the System Operator, if the Generating Facility reaches the limit of its VAR capabilities, if there is any deviation from the assigned voltage schedule, or if any automatic voltage regulator is removed from or restored to service. The Transmission Owner shall maintain switchyard 13-A voltage limits within the values required by the station design basis for Off-Site Power Supply as described in the Final Safety Analysis Report.

9.6.4 Restoration. In addition to voltage regulation, Interconnection Customer shall adhere to the System Operator's service restoration plan, as amended, which plan shall be provided to Interconnection Customer by Transmission Owner upon Interconnection Customer's request. The Transmission Owner shall have written procedures for prompt restoration of Off-Site Power to the Generating Facility.

9.7 Outages and Interruptions.

9.7.1 Outages.

9.7.1.1 Outage Authority and Coordination. Each Party may, in accordance with Good Utility Practice and in coordination with the other Party, remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to

perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both Parties. In all circumstances any Party planning to remove such facility(ies) from service shall provide seven (7) Calendar Days notice of any scheduled outage and use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.7.1.2 Outage Schedules. In accordance with the Tariff, the Transmission Provider will post scheduled outages of its transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Generating Facility to Transmission Owner for a minimum of a rolling twenty-four (24) month period. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Owner or Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System. In accordance with the Tariff, Transmission Provider will compensate Interconnection Customer for any additional direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Interconnection Customer would have incurred absent the Transmission Provider's request to reschedule maintenance.

9.7.1.3 Outage Restoration. If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the condition causing the outage, an estimated time of

restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage. In the event of an unscheduled outage, Transmission Owner will take all necessary and reasonable actions, in accordance with applicable emergency plans and black start restoration procedures, to cause Off-Site Power to be restored for the Generating Facility promptly and as a matter of priority over non-nuclear stations.

9.7.2 Interruption of Service. If required by Good Utility Practice to do so, Transmission Owner may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Owner's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

9.7.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all Generating Facilities directly connected to the Transmission System;

9.7.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Owner shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Owner shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Owner shall coordinate with the Interconnection Customer using Good

Utility Practice to schedule the interruption or reduction during periods of least impact to the Interconnection Customer and the Transmission Owner;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Generating Facility, Interconnection Facilities, and the Transmission System to their normal operating state, consistent with system conditions and Good Utility Practice.

9.7.3 Under-Frequency and Over Frequency Conditions. The Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Council in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Generating Facility as required by the Applicable Reliability Council to ensure "ride through" capability of the Transmission System. Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the Transmission Owner in accordance with Good Utility Practice. The term "ride through" as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice.

9.7.4 System Protection and Other Control Requirements.

9.7.4.1 System Protection Facilities. Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Generating Facility or the Interconnection Customer's Interconnection Facilities. Transmission Owner shall, at its expense, install, operate and maintain any System Protection Facilities that may be required on the Transmission Owner's Interconnection Facilities or the Transmission System as a result of the interconnection of the Generating Facility and the Interconnection Customer's Interconnection Facilities. Transmission Owner represents that the System Protection Facilities installed at the Generating Facility as of the Effective Date meet the system protection requirements of

this Agreement.

- 9.7.4.2 Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.
- 9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.
- 9.7.4.4 Each Party's protective relay design shall incorporate the necessary test switches or sliding terminal decks to perform the tests required in Article 6. The required test switches or sliding terminal decks will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Interconnection Customer's units.
- 9.7.4.5 Each Party will test, operate and maintain its respective System Protection Facilities in accordance with Good Utility Practice.
- 9.7.4.6 At intervals consistent with Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.7.5 Requirements for Protection. In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Owner's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Generating Facility and the Transmission System at a site selected upon mutual agreement (not to

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be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Generating Facility. Transmission Owner acknowledges that the protective devices installed at the Generating Facility as of the Effective Date meet the requirements of this Section.

9.7.6 Power Quality. Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry or NRC standard. In the event of a conflict between ANSI Standard C84.1-1989, or any applicable superseding electric industry standard, ANSI Standard C84.1-1989, or the applicable superseding electric industry or NRC standard, shall control.

9.8 E-STAR Compliance. Interconnection Customer shall comply with the E-STAR. Transmission Owner shall have the right to modify the E-STAR unilaterally, consistent with Good Utility Practice, and in a non-discriminatory fashion. Transmission Owner will notify Interconnection Customer of any changes to the E-STAR.

9.8.1 Except with respect to Transmission Owner's equipment and facilities on Interconnection Customer's side of the Point of Interconnection, Interconnection Customer shall be responsible for all switching, tagging and mark-ups on Interconnection Customer's side of the Point of Interconnection, as such point is set forth in Appendix C to this Agreement. Transmission Owner shall maintain and be responsible for all switching, tagging, and mark-ups at the Point of Interconnection and on Transmission Owner's side of the Point of Interconnection. Transmission Owner shall also perform all switching, tagging and mark-ups with respect to Transmission Owner's equipment and facilities located on Interconnection Customer's side of the Point of Interconnection.

9.8.2 Interconnection Customer, in accordance with the E-STAR, shall be

responsible, at its own expense, for training and testing its operators for inclusion on a Joint Tag List.

9.9 Use of Interconnection Facilities by Third Parties. If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Transmission Owner's Interconnection Facilities, or any part thereof, or if Transmission Owner uses the Transmission Owner's Interconnection Facilities, or any part thereof (other than those Transmission Owner Interconnection Facilities existing as of the Effective Date), for purposes other than providing Interconnection Service for the Generating Facility, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Owner, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or, if Interconnection Customer agrees, upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Owner, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or, if Interconnection Customer agrees, upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.10 Disturbance Analysis Data Exchange. The Parties will cooperate with one another in the analysis of disturbances to either the Generating Facility or the Transmission Owner's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

ARTICLE 10. MAINTENANCE

10.1 Transmission Owner Obligations. Transmission Owner shall maintain the Transmission System and the Transmission Owner's Interconnection Facilities in a safe and reliable manner and in accordance with Good Utility Practice and this IA. Transmission Owner shall maintain these facilities in a manner that supports Interconnection Customer's compliance with the NRC Maintenance Rule or NRC

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Requirements and Commitments and will take no action that would result in non-compliance with the NRC Maintenance Rule or NRC Requirements and Commitments. Interconnection Customer shall be responsible for the incremental costs incurred by Transmission Owner in ensuring that the maintenance of these facilities complies with the immediately preceding sentence beyond those costs that otherwise are customary and reasonable for a non-nuclear facility.

10.2 Interconnection Customer Obligations. Interconnection Customer shall maintain the Generating Facility and the Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with Good Utility Practice and this IA.

10.3 Coordination. The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Generating Facility and the Interconnection Facilities.

10.4 Secondary Systems. Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 Operating and Maintenance Expenses. Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with owning, installing, operating, maintaining, repairing, and replacing Interconnection Customer's Interconnection Facilities, and Transmission Owner shall be responsible for all reasonable expenses, including overheads, associated with owning, operating, maintaining, repairing and replacing Transmission Owner Interconnection Facilities, Distribution Upgrades and Network Upgrades existing as of the Closing

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Date, which facilities are sufficient to permit the Generating Facility to operate, at Interconnection Customer's election, at a net capacity of up to 590 MW. The allocation of cost responsibility between Interconnection Customer and Transmission Owner for owning, installing, operating, maintaining, repairing and replacing Transmission Owner Interconnection Facilities, Distribution Upgrades and/or Network Upgrades that may be required after the Closing Date to permit the Generating Facility to operate above 590 MW shall be governed by the cost allocation rules set forth in the applicable Commission-jurisdictional tariff or Commission policy in place as of the date that the Transmission Owner Interconnection Facilities, Distribution Upgrades and/or Network Upgrade are determined to be needed by the applicable Governmental Authority, including the NYISO.

10.6 NRC Maintenance Rule and NRC Requirements and Commitments.

10.6.1 Interconnection Customer's Obligations and Authority.

10.6.1.1 In furtherance of Interconnection Customer's obligation to comply with the NRC Maintenance Rule and NRC Requirements and Commitments, Transmission Owner agrees that Interconnection Customer has the authority, control and obligation to: (a) review and modify, as appropriate, Transmission Owner's identification of any structures, systems, and components covered under the NRC Maintenance Rule and NRC Requirements and Commitments, regardless of ownership, and require Transmission Owner to modify, as appropriate, the scope of such structures, systems, and components so as to meet NRC requirements; (b) in cooperation with Transmission Owner and in accordance with NRC guidance, to establish and approve availability and reliability performance criteria and improvement goals for all such structures, systems, and components, regardless of ownership, to permit Interconnection Customer to comply with the NRC Maintenance Rule and NRC Requirements and Commitments; and (c) in cooperation with Transmission Owner and in accordance with NRC guidance, to approve all improvements, maintenance, inspections, monitoring, operational procedures, or any other activity affecting such

structures, systems, and components, regardless of ownership, to permit Interconnection Customer to comply with the NRC Maintenance Rule and NRC Requirements and Commitments.

- 10.6.1.2** Transmission Owner agrees that it will cooperate with Interconnection Customer to facilitate Interconnection Customer's compliance with the NRC Maintenance Rule and NRC Requirements and Commitments as applicable to the structures, systems, and components of the Transmission Owner's Interconnection Facilities or the Transmission System. Interconnection Customer shall reimburse Transmission Owner for the incremental costs to Transmission Owner to facilitate Interconnection Customer's compliance with the NRC Maintenance Rule and NRC Requirements and Commitments beyond those costs that otherwise are customary and reasonable for a non-nuclear facility.
- 10.6.1.3** Any incremental costs or expenses Transmission Owner incurs as a result of a Interconnection Customer request to Transmission Owner for additional or different action other than those required under Article 10.6.1.2 above, arising from such compliance by Interconnection Customer with any amendment or modification to, or any change in interpretation of, the NRC Maintenance Rule and NRC Requirements and Commitments after the Closing Date, shall be borne by Interconnection Customer.
- 10.6.1.4** Transmission Owner, at Interconnection Customer's expense, shall perform any aging management programs or related actions for the Interconnection Facilities as may be required to comply with NRC Requirements and Commitments in connection with the NRC's renewal of the NRC operating license for the Generating Facility.
- 10.6.2 Schedule of Components.** Appendix I to this Agreement sets forth the substation components that, as of the Closing Date, are necessary to fulfill those functions covered by the NRC Maintenance Rule, together with the schedule, to be provided as of the Closing Date, for maintenance, inspection and testing of such components. All other

substation components will be maintained, inspected and tested in accordance with Transmission Owner's standard procedures for substation maintenance, inspection and testing. In the event the Parties agree that a component not identified in Appendix I should have been included in Appendix I, the Parties may, by their mutual agreement, add substation components to Appendix I. In order to comply with the NRC Maintenance Rule, Interconnection Customer may add new substation components to Appendix I as appendices to Appendix I, and also may change schedules for maintenance, inspection and testing of such components, subject to Interconnection Customer's payment of additional costs or expenses in accordance with Article 10.6.1.3.

10.6.3 Notice. To the extent Transmission Owner become aware of any failure of any substation component identified in Appendix I, Transmission Owner shall provide immediate notice thereof to Interconnection Customer.

10.6.4 Analysis. As required by the NRC Maintenance Rule, Interconnection Customer shall, at its discretion and with Transmission Owner's reasonable cooperation, conduct risk assessments as required when maintenance is performed on equipment within the scope of the NRC Maintenance Rule and conduct an analysis of a failure of any substation component identified in Appendix I, and any personnel error leading to the failure of any such component. Transmission Owner will cooperate with Interconnection Customer and promptly, upon Interconnection Customer's request, provide Interconnection Customer with all information under Transmission Owner' control and, consistent with Good Utility Practice, necessary for Interconnection Customer to: (a) perform such risk assessment as required; (b) determine whether the failure was a functional failure of equipment or the result of personnel error; (c) determine whether the failure, if a functional failure, was maintenance preventable; and (d) conduct root cause analyses of those failures as Interconnection Customer deems appropriate. At the request of Interconnection Customer, and at Interconnection Customer's expense, Transmission Owner shall assist in the performance of a root cause analysis for any substation component, and the investigation of any personnel error which may have led to the failure of any such component, as Interconnection Customer deems necessary.

10.6.5 Testing. As necessary, in accordance with Good Utility Practice, or at

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Interconnection Customer's request, Transmission Owner will arrange for independent testing of any failed component identified in Appendix I, subject to Interconnection Customer's payment of additional costs or expenses in accordance with Article 10.6.1.3.

- 10.6.6 Performance Improvement Plan.** Interconnection Customer shall analyze data supplied by Transmission Owner concerning a failure of a substation component identified in Appendix I, and investigate any personnel error which may have led to the failure of any such component, and shall notify Transmission Owner if a performance improvement plan is required in accordance with the NRC Maintenance Rule. Interconnection Customer and Transmission Owner will cooperate to develop and implement any such performance plan, the cost of which shall be borne by Interconnection Customer.
- 10.6.7 Records.** For the term of this Agreement, Transmission Owner shall provide Interconnection Customer with complete and accurate records concerning all preventative and corrective maintenance activities performed by Transmission Owner on all Transmission Owner substation components identified in Appendix I.
- 10.6.8 Inspections.** During this Agreement, the Transmission Owner shall provide Interconnection Customer with the access, in accordance with the Reciprocal Easement Agreement to the extent applicable, necessary to inspect all Transmission Owner facilities and records within the scope of the NRC Maintenance Rule and NRC Requirements and Commitments, in order to satisfy any NRC request.
- 10.6.9 System Monitoring.** Transmission Owner agrees to monitor, by use of the State Estimator, for the contingency alarm simulating a loss of coolant accident at the Generating Facility coincident with a trip of the Generating Facility's generator, to notify Interconnection Customer's plant operator upon receipt of a validated alarm, as specified in Article XI of the OA, to inform the Interconnection Customer's plant operator of post contingency voltage, as specified in Article XI of the OA, and to maintain the EMS in support thereof (the "Service").
- 10.6.9.1** Provided that Interconnection Customer complies with this Agreement, including the payment provisions of this Section 10.6.9, Transmission Owner shall provide the Service to Interconnection Customer commencing on April 15, 2006

(the "Commencement Date"). Interconnection Customer shall pre-pay Transmission Owner the sum of \$12,000 (the "Service Amount") per year escalated annually at 3% for each year for which Transmission Owner is scheduled to provide the Service, and such amount must be paid within twenty (20) days after Transmission Owner provides an invoice to Interconnection Customer. Transmission Owner shall endeavor to provide that invoice no later than thirty days prior to each anniversary of the Commencement Date. Transmission Owner shall have the right to suspend the provision of Service if timely payment is not received and to terminate the Service for failure to timely pay.

- 10.6.9.2** Transmission Owner will not provide any hardware, software, or software support required by Interconnection Customer for analysis of the data or to translate, edit, interpret or otherwise process or utilize data received from the Service.
- 10.6.9.3** Transmission Owner will not be required to modify or otherwise alter the software program, support or hardware other than to the extent required to provide the service. However, if Interconnection Customer requests additional modifications to the software and/or hardware, and Transmission Owner agrees, in its sole and absolute discretion to make such additional modifications, then Interconnection Customer shall pay an additional reasonable fee to Transmission Owner for such modifications.
- 10.6.9.4** If disputes arise regarding Transmission Owner's interpretation of whether a contingency alarm was received, the Parties will agree to review the Transmission Owner's data and mutually determine whether Interconnection Customer should have been notified pursuant to this Section 10.6.9.
- 10.6.9.5** Planned and unplanned outages of EMS, EMS Remote Terminal Unit, State Estimator network applications, and outages of telephone company communication facilities, and NYISO equipment may result in Transmission Owner being unable to provide the Service. Transmission Owner will

provide Interconnection Customer advance notice of scheduled outages, and with notice as soon as practicable of unscheduled outages which last one hour or longer, of such systems and facilities. Interconnection Customer acknowledges that such outages will occur. Interconnection Customer hereby releases Transmission Owner, its officers, directors, employees, contractors, agents, and representatives, including New York State Electric & Gas Corporation, from any and all liability under this Agreement, including direct damages, and liabilities related to claims by third parties, arising from or related to Transmission Owner's negligence under this Section 10.6.9.

- 10.6.9.6** Transmission Owner will maintain EMS equipment, including the State Estimator, under its control within the accuracy specifications of that equipment. Transmission Owner will investigate all reasonable issues brought to its attention and rectify legitimate issues related to data accuracy for EMS equipment within its control. Upon completion of an investigation, if it is determined that Transmission Owner data was, in fact, accurate, Interconnection Customer agrees to pay reasonable actual costs associated with Transmission Owner's investigation of such alleged data accuracy problems.
- 10.6.9.7** Repair of the EMS hardware and other related equipment, data and/or software, which results in the loss of the Service, will be completed during normal business hours. Reasonable effort will be made to repair equipment and software in a timely fashion.
- 10.6.9.8** Transmission Owner shall provide the Service for five (5) years beginning on the Commencement Date. The Services shall automatically renew for additional five year terms unless Transmission Owner provides Interconnection Customer notice of non-renewal at least twelve (12) months prior to the termination date of the initial term or any renewal term. Notwithstanding the foregoing, Transmission Owner may terminate the service immediately at any time if Transmission Owner is required to terminate pursuant to law, order, rule, regulation or similar government process, or

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failure by Interconnection Customer to pay resulting in a suspension lasting 30 days or more because Interconnection Customer has failed to cure. In the event the Service is terminated or not renewed, Transmission Owner agrees, at Interconnection Customer's sole cost and expense, to provide reasonable assistance to Interconnection Customer with respect to finding a replacement party to provide the Service. Such assistance in no way obligates Transmission Owner to continue to provide the Service if a replacement cannot be found.

10.7 Decommissioning.

10.7.1 Interconnection Customer, at its own expense, will Decommission the Generating Facility in accordance with NRC Requirements and Commitments and the Asset Purchase Agreement.

10.7.2 In furtherance of the Parties' mutual objective to preserve and maintain the reliability of the Transmission Owner's Interconnection Facilities and the Transmission System, Interconnection Customer and Transmission Owner agree to coordinate the planning and scheduling of Decommissioning in a manner so as to maintain the reliability of, and to minimize the effect on, the Transmission Owner's Interconnection Facilities and the Transmission System.

ARTICLE 11. PERFORMANCE OBLIGATION

11.1 Interconnection Customer's Interconnection Facilities. Interconnection Customer shall own and/or control the Interconnection Customer's Interconnection Facilities described in Appendix A at its sole expense.

11.2 Transmission Owner's Interconnection Facilities. Transmission Owner shall own and/or control the Transmission Owner's Interconnection Facilities described in Appendix A, Network Upgrades and Distribution Upgrades, at its sole expense, except as the expense of such ownership and/or control may be otherwise expressly allocated by the Parties.

11.3 Network Upgrades and Distribution Upgrades. As of the Closing Date, there are no Distribution Upgrades or Network Upgrades associated with the Generating Facility or the Transmission System. Consistent with Section 10.5, the allocation of cost responsibilities for installing Transmission Owner Interconnection Facilities, Distribution Upgrades and Network Upgrades to permit

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Upgrades through the date on which the Interconnection Customer receives a refund of such payment pursuant to this subparagraph. Interconnection Customer may assign such refund rights to any person.

11.4.3 Notwithstanding any other provision of this IA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades to Affected Systems, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Generating Facility.

11.5 Provision of Security. At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Owner's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Owner, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Owner and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Transmission Owner's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner under this IA during its term. The provisions of this Section 11.5 do not apply to the initial interconnection of Generating Facility because all of the Interconnection Facilities are already in place and no System Upgrades or new Interconnection Facilities are required due to the change in ownership of the Generating Facility.

In addition:

11.5.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Owner, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably

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acceptable to Transmission Owner and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner and must specify a reasonable expiration date.

11.6 Interconnection Customer Compensation. If Transmission Owner or Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power), or 13.4.1 of this IA, Transmission Provider will compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb any Reactive Power under this IA, the Transmission Provider will compensate the Interconnection Customer in such amount as would have been due the Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition. Transmission Provider will compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with this Article 11.6.

ARTICLE 12. INVOICE

12.1 General. Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this IA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

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Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Generating Facility; implementing a reduction or disconnection pursuant to Article 13.4.2; directing the Interconnection Customer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Generating Facility and the Interconnection Customer's Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Owner's or Transmission Provider's operating instructions concerning Generating Facility real power and reactive power output within the manufacturer's design limitations of the Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.4.2 Reduction and Disconnection. Transmission Owner or Transmission Provider may reduce Interconnection Service or disconnect the Generating Facility or the Interconnection Customer's Interconnection Facilities, when such reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of the Transmission Provider pursuant to the Tariff. When the Transmission Owner or Transmission Provider can schedule the reduction or disconnection in advance, Transmission Owner or Transmission Provider shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Owner and Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the Interconnection Customer and the Transmission Owner. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties and Transmission Provider shall cooperate with each other to restore the Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.5 Interconnection Customer Authority. Consistent with Good Utility Practice and this IA, the Interconnection Customer may take whatever actions or inactions with regard to the Generating Facility or the Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Generating Facility or

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the Interconnection Customer's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and the Transmission Owner's Interconnection Facilities. Transmission Owner shall use Reasonable Efforts to assist Interconnection Customer in such actions.

- 13.6 Limited Liability.** Except as otherwise provided in Article 11.6.1 of this IA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW

- 14.1 Regulatory Requirements.** Each Party's obligations under this IA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. If an obligation under this IA requires Interconnection Customer to take any action that is imminently likely to jeopardize its status under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended, Interconnection Customer and Transmission Provider shall negotiate in good faith an equitable amendment to this Agreement which protects both Parties' interests.

14.2 Governing Law.

- 14.2.1** This Agreement and all rights, obligations, and performances of the Parties hereunder are subject to all applicable federal and state laws, and to all duly-promulgated orders and other duly-authorized action of any Governmental Authority.
- 14.2.2** When not in conflict with or preempted by federal law, this Agreement, and the rights and obligations of the Parties to this Agreement, shall be governed by and construed in accordance with the law of the State of New York, without giving effect to the conflict of laws of the State of New York, without giving effect to the conflict of laws principles thereof.
- 14.2.3** Except as expressly provided in this Agreement, each Party expressly reserves the right to seek changes in appeal, or otherwise contest any

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laws, orders, rules, or regulations, of a Governmental Authority relating to this Agreement. Except for those matters that are jurisdictional to FERC or the appellate courts having jurisdiction over FERC matters, any action arising out of or concerning this Agreement must be brought in the federal or state courts of the State of New York. The Parties agree to submit to the exclusive jurisdiction of the courts in the State of New York for the purposes of hearing and determining any action not preempted by federal law and not within the jurisdiction of FERC.

ARTICLE 15. NOTICES

15.1 General. Unless otherwise provided in this IA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by facsimile transmission, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F to this Agreement. Addresses for Delivery of Notices and Billings.

Either Party may change the notice information in this IA by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 Billings and Payments. Billings and payments shall be sent to the addresses set out in Appendix F to this Agreement.

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out in Appendix F to this Agreement.

15.4 Operations and Maintenance Notice. Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

ARTICLE 16. FORCE MAJEURE

16.1 Force Majeure.

16.1.1 Economic hardship is not considered a Force Majeure event.

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16.1.2 Neither Party shall be considered to be in Breach or Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall use Reasonable Efforts to continue to perform its obligations under this Agreement despite the Force Majeure, exercise due diligence to remove the event or condition giving rise to the Force Majeure with reasonable dispatch, and provide notice to the other Party of the cessation of the Force Majeure, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 17. DEFAULT

17.1 Default.

17.1.1 General. No Breach or Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this IA or the result of an act or omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the Breaching Party. Except as provided in Article 17.1.2, the Breaching Party shall have thirty (30) Calendar Days from receipt of the Breach notice within which to cure such Breach; provided however, that, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Breach notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

17.1.2 Right to Terminate. If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided

for herein, a Default shall have occurred and the non-defaulting Party shall have the right to terminate this IA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this IA, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article shall survive termination of this IA.

ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

18.1 Indemnity. Each Party shall at all times indemnify, defend, and save the other Party harmless from, any and all liabilities, damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the indemnifying Party's performance (or nonperformance) of its obligations under this IA, except to the extent of any negligence or intentional wrongdoing by the indemnified Party (collectively, for the purposes of Article 18.1.2 below, the "Loss.").

18.1.1 Indemnified Party. If an indemnified Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

18.1.2 Indemnifying Party. If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article 18, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual Loss.

18.1.3 Indemnity Procedures. Promptly, but in no event later than twenty (20) Calendar Days, after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

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The indemnifying Party shall have the right to assume the defense thereof with counsel designated by such indemnifying Party and reasonably satisfactory to the indemnified Party. If the defendants in any such action include one or more indemnified parties and the indemnifying Party and if the indemnified Party reasonably concludes that there may be legal defenses available to it and/or another indemnified party which are different from or additional to those available to the indemnifying Party, the indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the indemnifying Party shall only be required to pay the fees and expenses of one additional law firm to represent the indemnified Party or indemnified parties having such differing or additional legal defenses.

The indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the indemnifying Party. Notwithstanding the foregoing, the indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the indemnified Party, or there exists a conflict or adversity of interest between the indemnified Party and the indemnifying Party, in such event the indemnifying Party shall pay the reasonable expenses of the indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the indemnified Party, which consent shall not be reasonably withheld, conditioned or delayed.

18.1.4 Consequential Damages. Other than the Liquidated Damages heretofore described and indemnity obligations arising under Article 5.2(7), Article 5.17.3 (to the extent that tax-related interest and penalties may be deemed to be consequential damages), and the payment for liabilities and costs incurred as a result of third-party claims, in no event shall either Party be liable under any provision of this IA for any liabilities, losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment,

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cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, and strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder. The provisions of this Section 18.1.4 shall survive termination of this IA.

18.2 Insurance. Each Party shall, at its own expense, maintain in force throughout the period of this IA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Points of Interconnection are located:

18.2.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Points of Interconnection are located. The minimum limits for the Employers' Liability insurance shall be One Million Dollars (\$1,000,000) each accident bodily injury by accident, One Million Dollars (\$1,000,000) each employee bodily injury by disease, and One Million Dollars (\$1,000,000) policy limit bodily injury by disease.

18.2.2 Commercial General Liability Insurance, including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/Ten Million Dollars (\$10,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

18.2.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

18.2.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile

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Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence/Twenty Million Dollars (\$20,000,000) aggregate.

- 18.2.5** The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this IA against the Other Party Group and provide thirty (30) days advance written notice to the Other Party Group prior to cancellation or any material change in coverage or condition.
- 18.2.6** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.
- 18.2.7** The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this IA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.
- 18.2.8** The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this IA.
- 18.2.9** Within ten (10) days following execution of this IA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter,

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each Party shall provide certification of all insurance required in this IA, executed by each insurer or by an authorized representative of each insurer.

18.2.10 Notwithstanding the foregoing, each Party may self-insure to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.2.1 through 18.2.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.2.10, it shall not be required to comply with the insurance requirements applicable to it under Articles 18.2.1 through 18.2.9.

18.2.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this IA.

18.2.12 Interconnection Customer covenants, represents and warrants:

- A. That it has entered into an agreement of indemnification with the NRC as provided under Section 170 of the Atomic Energy Act of 1954, as amended;
- B. That it shall provide and maintain nuclear liability insurance in such amounts and form as required by Section 170 of the Atomic Energy Act of 1954, as amended;
- C. That it shall provide and maintain nuclear property insurance in an amount not less than the coverage required by NRC regulations;
- D. That it shall extend protection against a Nuclear Incident (as "Nuclear Incident" is defined in the Atomic Energy Act of 1954, as amended), as provided for in (B) and (C) above, for the benefit of Transmission Owner and its consultants, contractors, subcontractors, agents, invitees and employees; and
- E. That it shall indemnify, defend and hold harmless, Transmission Owner, its parent, Affiliates, and successors,

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and their respective officers, directors, employees, agents, contractors, subcontractors, and successors, from and against any and all claims, demands, liabilities, costs, losses, judgments, damages, and expenses (including litigation costs and reasonable attorneys' fees) resulting from any Nuclear Incident (as "Nuclear Incident" is defined in the Atomic Energy Act of 1954, as amended).

In addition, Interconnection Customer covenants, represents and warrants that if the nuclear liability protection system in effect on the effective date of this IA expires or is repealed, changed, or modified, it shall, without cost to Transmission Owner, maintain nuclear liability protection, to the extent that it is reasonably available, for the protection of Transmission Owner, through governmental indemnity, limitation of liability and/or insurance.

ARTICLE 19. ASSIGNMENT

19.1 Assignment. This IA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this IA without the consent of the other Party to any Affiliate of the assigning Party or to an entity that acquires all or substantially all of the assigning Party's assets, which Affiliate or acquiring entity has the legal authority and operational ability to satisfy the obligations of the assigning Party under this IA; and provided further that the Interconnection Customer shall have the right to assign this IA, without the consent of the Transmission Owner, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will require any secured party, trustee or mortgagee to notify the Transmission Owner of any such assignment. Any financing arrangement entered into by the Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Owner of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article is void and ineffective. No assignment under this IA shall relieve a Party (including the assigning Party) of its obligations without the consent of the other Party, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent under this Article 19 to assignment will not be unreasonably withheld, conditioned or delayed.

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ARTICLE 20. SEVERABILITY

20.1 Severability. If any provision in this IA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this IA; provided that if the Interconnection Customer (or any third party, but only if such third party is not acting at the direction of the Transmission Owner) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

ARTICLE 21. COMPARABILITY

21.1 Comparability. The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

ARTICLE 22. CONFIDENTIALITY

22.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this IA.

Unless otherwise set forth in this Agreement, information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

22.1.1 Term. During the term of this IA, and for a period of three (3) years after the expiration or termination of this IA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

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- 22.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this IA; or (6) is required, in accordance with Article 22.1.7 of this IA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this IA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.
- 22.1.3 Release of Confidential Information.** Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this IA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.
- 22.1.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 22.1.5 No Warranties.** By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or

completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

- 22.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this IA or its regulatory requirements.
- 22.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this IA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be afforded any Confidential Information so furnished.
- 22.1.8 Termination of Agreement.** Upon termination of this IA for any reason, and to the extent consistent with applicable laws and regulations, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.
- 22.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted

without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 Disclosure to FERC or its Staff. Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this IA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this IA prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Party to this IA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this IA ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) 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 litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this IA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability

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organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

22.1.12 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).

ARTICLE 23. ENVIRONMENTAL RELEASES

23.1 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four (24) hours after such Party becomes aware of the occurrence or, in the event of planned asbestos or lead abatement activities or remediation activities, at least seven (7) Calendar Days prior to commencement of such activities; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

ARTICLE 24. INFORMATION REQUIREMENTS

24.1 Information Acquisition. Transmission Owner and the Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.

24.2 Information Submission by Transmission Owner. The initial information submission by Transmission Owner shall occur no later than thirty (30) Calendar

Days after the Effective Date and shall include Transmission System information necessary to allow the Interconnection Customer to meet any system protection and stability requirements, unless otherwise mutually agreed to by both Parties. On a monthly basis Transmission Owner shall provide Interconnection Customer a status report on the construction and installation of Transmission Owner's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 Updated Information Submission by Interconnection Customer. The updated information submission by the Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Generating Facility data requirements contained in Appendix 1 to the LGIP. It shall also include any additional information provided to Transmission Owner for the Feasibility and Facilities Study. Information in this submission shall be the most current Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Owner standard models. If there is no compatible model, the Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Interconnection Customer's data is materially different from what was originally provided to Transmission Owner pursuant to the Interconnection Study Agreement between Transmission Owner and Interconnection Customer, then Transmission Owner will conduct appropriate studies to determine the impact on the Transmission Owner Transmission System based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

24.4 Information Supplementation. Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all "as-built" Generating Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Generating Facility as required by Good Utility Practice such as an open circuit "step voltage" test on the Generating Facility to verify proper operation of the Generating Facility's automatic voltage regulator.

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24.5 Unless otherwise agreed, the test conditions shall include: (1) Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent (5 percent) change in Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Generating Facility terminal or field voltages is provided. Generating Facility testing shall be conducted and results provided to the Transmission Owner for each individual generating unit in a station.

Subsequent to the Effective Date, the Interconnection Customer shall provide Transmission Owner with any information changes due to equipment replacement, repair, or adjustment and Transmission Owner shall provide the Interconnection Customer with any information changes due to equipment replacement, repair or adjustment in the directly connected substation or with any adjacent Transmission Owner-owned substation that may affect the Interconnection Customer's Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS

25.1 Information Access. Upon the reasonable request of the other Party, a Party (the "disclosing Party") shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this IA; and (ii) carry out its obligations and responsibilities under this IA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this IA.

25.2 Reporting of Non-Force Majeure Events. Each Party (the "notifying Party") shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this IA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration,

reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this IA.

25.3 Audit Rights. Subject to the requirements of confidentiality under Article 22 of this IA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this IA. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, the Transmission Owner's efforts to allocate responsibility for the provision of reactive support to the Transmission System, the Transmission Owner's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this IA. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods.

25.4.1 Audit Rights Period for Construction-Related Accounts and Records. Accounts and records related to the design, engineering, procurement, and construction of Transmission Owner's Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Owner's issuance of a final invoice in accordance with Article 12.2.

25.4.2 Audit Rights Period for All Other Accounts and Records. Accounts and records related to either Party's performance or satisfaction of all obligations under this IA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four (24) months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four (24) months after the

event for which the audit is sought.

25.4.3 Audit Parameters. The Party seeking to audit pursuant to Article 25.4 (the "Auditing Party") shall provide the other Party fifteen (15) days prior written notice of a request to audit. Any data collection for such audit shall be performed continuously until complete and the Auditing Party shall utilize Reasonable Efforts to complete the data collection for such audit within thirty (30) Calendar Days, however, in no event shall any data collection for such audit continue for more than sixty (60) Calendar Days. Each Party reserves the right to assess a reasonable fee to compensate for the use of its personnel in assisting any inspection or audit of its books, records or accounts by the Auditing Party.

25.5 Audit Results. If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

ARTICLE 26. SUBCONTRACTORS

26.1 General. Nothing in this IA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this IA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this IA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this IA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Owner be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under Article 5 of this IA. Any applicable obligation imposed by this IA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 No Limitation by Insurance. The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

ARTICLE 27. DISPUTES

27.1 Submission. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this IA or its performance, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this IA.

27.2 External Arbitration Procedures. Any arbitration initiated under this IA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or ISO/RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this IA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having

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jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

27.4 Costs. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS

28.1 General. Each Party makes the following representations, warranties and covenants:

28.1.1 Good Standing. Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Generating Facility, Interconnection Facilities and Network Upgrades owned or operated by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this IA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this IA.

28.1.2 Authority. Such Party has the right, power and authority to enter into this IA, to become a party hereto and to perform its obligations hereunder. This IA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 No Conflict. The execution, delivery and performance of this IA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license,

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permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this IA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this IA, and it will provide to any Governmental Authority notice of any actions under this IA that are required by Applicable Laws and Regulations.

ARTICLE 29. JOINT OPERATING COMMITTEE

29.1 Joint Operating Committee. Transmission Owner shall create a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service. Within thirty (30) days after the Effective Date, Interconnection Customer and Transmission Owner shall each appoint one representative and one alternate to the Joint Operating Committee. The Interconnection Customer shall notify the Transmission Owner of its appointment in writing. Such appointments may be changed at any time by similar notice. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Joint Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Joint Operating Committee shall perform all of its duties consistent with the provisions of this IA. Each Party shall cooperate in providing to the Joint Operating Committee all information required in the performance of the Joint Operating Committee's duties. All decisions and agreements, if any, made by the Joint Operating Committee shall be evidenced in writing. The duties of the Joint Operating Committee shall include the following:

- 29.1.1** Establish data requirements and operating record requirements.
- 29.1.2** Review the requirements, standards, and procedures for data acquisition equipment, protective equipment, and any other equipment or software.
- 29.1.3** Annually review the one (1) year forecast of maintenance and planned outage schedules of Transmission Owner's and Interconnection Customer's facilities at the Point of Interconnection.
- 29.1.4** Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Generating Facility and other facilities

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that impact the normal operation of the interconnection of the
Generating Facility to the Transmission System.

- 29.1.5 Ensure that information is being provided by each Party regarding equipment availability.
- 29.1.6 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

ARTICLE 30. MISCELLANEOUS

- 30.1 **Binding Effect.** This IA, and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties hereto.
- 30.2 **Conflicts.** In the event of a conflict between the body of this IA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this IA shall prevail and be deemed the final intent of the Parties.
- 30.3 **Rules of Interpretation.** This IA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this IA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this IA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article or Section of this IA or such Appendix to this IA, or such Section to the LGIP or such Appendix to the LGIP, as the case may be, unless the context requires otherwise; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this IA as a whole and not to any particular Article, Section or other provision hereof or thereof; (7) "including" (and, with correlative meaning, "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through"

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means "through and including".

30.4 Entire Agreement. Except as may be otherwise expressly provided herein, this IA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this IA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this IA.

30.5 No Third-Party Beneficiaries. This IA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

30.6 Waiver. The failure of a Party to this IA to insist, on any occasion, upon strict performance of any provision of this IA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this IA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this IA. Termination or Default of this IA for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Owner. Any waiver of this IA shall, if requested, be provided in writing.

30.7 Headings. The descriptive headings in this IA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this IA.

30.8 Multiple Counterparts. This IA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 Amendment. The Parties may by mutual agreement amend this IA, and any such amendment shall only be made through, a written instrument duly executed by both of the Parties.

30.10 Modification by the Parties. The Parties may by mutual agreement amend the

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Appendices to this IA, and any such amendment shall only be made through, a written instrument duly executed by both of the Parties. Such amendment shall become effective and a part of this IA upon satisfaction of all Applicable Laws and Regulations.

30.11 Reservation of Rights. Transmission Owner shall have the right to make a unilateral filing with FERC to modify this IA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this IA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this IA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

30.12 No Partnership. This IA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

30.13 Safety. Each Party shall be solely responsible for the safety and supervision of its own employees, agents, representatives, and contractors. The Parties shall observe all applicable safety standards, procedures and practices of the Occupational Safety and Health Act of 1970 and of the National Electric Safety Code.

30.14 Specific Performance. Each Party acknowledges and agrees that the other Party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each Party agrees that the other Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States having jurisdiction over the Parties and the matter in addition to any other remedy to which it may be entitled at law or in equity.

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30.15 Good Faith Covenant. The Parties agree that their actions and dealings with each other under this Agreement shall be subject to an express covenant of good faith and fair dealing.

IN WITNESS WHEREOF, the Parties have executed this IA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

ROCHESTER GAS AND ELECTRIC CORPORATION

By: _____
Joseph J. Syta
Controller and Treasurer

Date:

CONSTELLATION GENERATION GROUP, LLC

By: _____
Michael J. Wallace
President

Date:

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Appendices to IA

Appendix A Interconnection Facilities, Network Upgrades and Distribution Upgrades

Appendix B Milestones

Appendix C Interconnection Details

Appendix D Security Arrangements Details

Appendix E Commercial Operation Date

Appendix F Addresses for Delivery of Notices and Billings

Appendix G Joint Use Facilities

Appendix H Operating Parameters

Appendix I Substation Components

Appendix J Transmission Owner's Bulletin 86-01

Appendix K Electric Switching and Tagging Applications and Rules

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Appendix A To IA

Interconnection Facilities, Network Upgrades and Distribution Upgrades

1. Interconnection Facilities:

(a) Interconnection Customer's Interconnection Facilities:

Station 13A Equipment

All equipment in Station 13A will be retained by Transmission Owner, as the Transmission Owner's Interconnection Facilities, except the following to be sold with the generating facility:

1. 115kV Oil Pipe cable to the GSU.
2. Control house for 115kV Oil Pipe cable.
3. Disconnect Switch 6T13A74.
4. 3 – 121kV surge arresters on #6 Transformer.
5. #6 Transformer.
6. 3-30kV surge arresters on #6 Transformer.
7. Disconnect Switches 76704, 76705 and 76706.
8. 767 Voltage Regulator.
9. Motor-operated disconnect switch 1G13A71.
10. 115kV circuit breaker 1G13A72.
11. Disconnect switch 1G13A73.
12. 3 – 96kV surge arresters between disconnect switches 9X13A71 and 1G13A73.
13. Disconnect switch 9X13A71.
14. 115kV circuit breaker 9X13A72.
15. Motor-operated disconnect switch 9X13A73.
16. Duplex panels 1F, 1R, 2F and 10F.
17. Dual Unit 1 (1G pipe cable sec relays cabinet).
18. Tone equipment cabinet.
19. Pilot wire cabinet.
20. Isolation cabinet.
21. 34kV Power cable for circuit 767.
22. Grounding, conduit, foundations, structures, conductor, junction boxes, cable and miscellaneous equipment associated with the equipment listed above.
23. Plant process computer rack MUX 6.
24. Disconnect Switch 7T13A71.

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- 25. 115kV circuit breaker 7T13A72.
- 26. #7 Transformer.
- 27. 3 – 96kV surge arresters on #7 Transformer.
- 28. 3 – 30kV surge arresters on #7 Transformer.
- 29. Service Transformer on #7 Transformer.
- 30. Disconnect switch 7T13A53.
- 31. 34kV Power cable for Circuit 7T.
- 32. Protective relays located at Station 13A:

Equip./IEEE	Circuit/Position	Owner
94BB/1G13A72	1 GEN Breaker	Ginna Equipment
94BU/1G13A72	1 GEN Breaker	Ginna Equipment
86BB/1G13A72	1 GEN Breaker	RGE & Ginna Equipment
62BBS/1G13A72	1 GEN Breaker	Ginna Equipment
62BBP/1G	1 GEN Breaker	Ginna Equipment
5/1G13A72/OPERATE/RESET	1 GEN Permissive	Ginna Equipment
2/87L/1G	1 GEN Primary	Ginna Equipment
83/87LC	1 GEN Primary	Ginna Equipment
87P/PC/1G	1 GEN Primary	Ginna Equipment
51N/BUS1	1 GEN Primary	RGE Equipment
87LC/1G	1 GEN Primary	Ginna Equipment
50FD/87P/PC	1 GEN Primary	Ginna Equipment
86P/PC/1G	1 GEN Primary	Ginna Equipment
2X/87L/1G	1 GEN Primary	Ginna Equipment
50BBP/1G13A72	1 GEN Primary	Ginna Equipment
1C/1T/1G13A72	1 GEN Remote	Ginna Equipment

Effective: September 23, 2006

Filed to comply with order of the Federal Energy Regulatory Commission Docket No. ER06-1514-000,
 issued November 16, 2006.

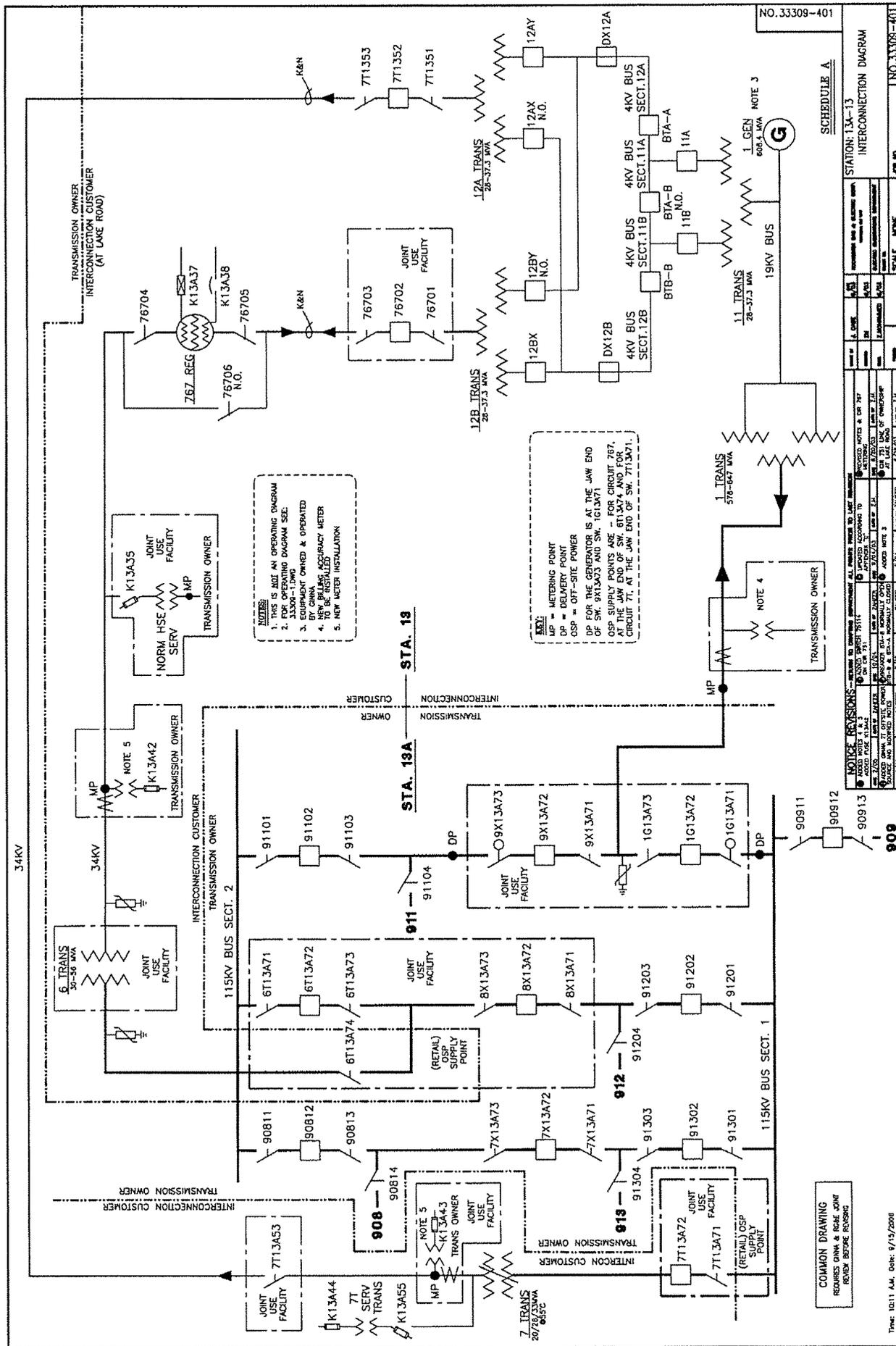
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Equip. / IEE	Circuit / Position	Operates
2X/87L/767	767	Ginna Equipment
86L/767	767	Ginna Equipment
87L/767	767	Ginna Equipment
87LC/767	767	Ginna Equipment
83/87LC	767	Ginna Equipment
83/79	9X13A72	Ginna Equipment
79BR/OPERATE/RESET	9X13A72	Ginna Equipment
52AX/9X13A72	9X13A72	RGE Equipment
1C/1T/9X13A72	9X13A72	Ginna Equipment
50BBS/9X13A72	9X13A72	RGE & Ginna Equipment
50BBP/9X13A72	9X13A72	RGE & Ginna Equipment
25/9X72	9X13A72	Ginna Equipment
79	9X13A72	Ginna Equipment
62BBP/9X13A72	9X13A72 Breaker Backup	Ginna Equipment
62BBS/9X13A72	9X13A72 Breaker Backup	Ginna Equipment
94BB/9X13A72	9X13A72 Breaker Backup	Ginna Equipment
94BU/9X13A72	9X13A72 Breaker Backup	Ginna Equipment
86BB/9X13A72	9X13A72 Breaker Backup	RGE & Ginna Equipment
RE94/9X13A73	9X13A73	Ginna Equipment
51TBU/7T	7 TRANS	Ginna Equipment
86TBU/7T	7 TRANS	Ginna Equipment
87L/7T	Circuit 7T	Ginna Equipment
11C/7T	7T13A72 Breaker Backup	Ginna Equipment
86L/7T	Circuit 7T	Ginna Equipment
86T/7T	7 TRANS	Ginna Equipment
86BB/7T13A72	7T13A72 Breaker Backup	RGE & Ginna Equipment

Effective: September 23, 2006

Filed to comply with order of the Federal Energy Regulatory Commission Docket No. ER06-1514-000,
 issued November 16, 2006.



Clear Copy of Original Sheet No. 99

COMMON DRAWING
REQUIRES DINA & ROSE JOINT
REVIEW BEFORE REVISION

Drawn: 10/11 A.M. Date: 6/19/2006

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APPENDIX H To IA

Operating Parameters

The entire output of the Generating Facility (up to 590 MW net) can be transmitted into the New York State energy market through Transmission Owner's 115kV connections to the Transmission System under system normal operating conditions, and under certain contingency conditions in accordance with this Appendix H. This is true for both summer and winter operating conditions.

The Generating Facility output is interconnected to the Transmission System through five 115kV transmission lines that are owned and operated by Transmission Owner:

- Line number 908 that ties Substation 13A to Substation 121;
- Line number 909 that ties Substation 13A to Substation 216, 230 and 424;
- Line number 911 that ties Substation 13A to Substation 42;
- Line number 912 that ties Substation 13A to Substation 122; and
- Line number 913 that ties Substation 13A to Substation 124;

Transmission line number 912 (Substation 13A to Substation 122) is an express feed from the Generating Facility to the Transmission System, through a 345kV/115kV transformer at Substation 122. The other four 115kV lines intersect with other Transmission Owner substations that feed the Greater Rochester Area load, or other Transmission Owner 115kV and 34.5kV transmission lines before electrically connecting with the Transmission System.

Transmission lines 908 and 913 are constructed on a double circuit tower structure for about a 3.5-mile portion of their length. Lines 911 and 912 also share a double circuit tower structure configuration for about a 3.6-mile portion of their length.

While no planned or unplanned outage of any single 115kV transmission line will impact the operating levels of the Generating Facility up to 590MW net, there are certain unique maintenance and contingency conditions on the two double circuit sections of the Transmission Owner's transmission lines, which are included in the five 115kV transmission lines that exit Substation 13A, that may require operating restrictions at the Generating Facility.

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Appendix H

The Generating Facility has demonstrated its capability of reducing its electric output at an emergency ramp rate in the event of certain operating contingencies. This rate of response capability would only be needed for the loss of three of the five transmission lines that exit Substation 13A. Upon the occurrence of certain operating contingencies (including (a) the outage of one of the 115kV transmission lines described above, or (b) the outage of a double circuit tower structure), Transmission Owner will request (each, a "Request for Certification") that the Interconnection Customer certify, first verbally by telephone to the Transmission Owner system operator, and then, within fifteen (15) minutes, in writing, the Generating Facility's capability to ramp down to the designated output level identified by Transmission Owner within fourteen (14) minutes following Interconnection Customer's receipt of telephonic notice of the occurrence of the loss of any additional facilities that result in three transmission facilities being out of service. Upon a request for Certification, Interconnection Customer's verbal certification ("Verbal Certification"), followed by written certification within fifteen (15) minutes ("Written Certification"), will allow for unrestricted generation operation up to 590MW net, for all planned maintenance of any single Transmission Owner 115kV transmission line, or a double circuit tower structure, under Good Utility Practice and the contingency loss of any additional facility, or structure, that removes three of Transmission Owner's five 115kV transmission lines that exit Substation 13A. Interconnection Customer will provide Written Certification in accordance with the foregoing, via the "Form of Written Certification" set forth below in this Appendix H. If Interconnection Customer fails to provide such Verbal Certification and/or Written Certification, then Interconnection Customer shall be required to reduce the output of the Generating Facility immediately to the designated output level identified by Transmission Owner until Interconnection Customer receives written notice from Transmission Owner that the first contingency no longer exists. This generator output reduction would be required to ensure that Transmission Owner's transmission, distribution, and substation facilities would be unharmed as a result of electric thermal overload or over voltage conditions caused by Generating Facility's electric output during a subsequent unplanned outage of a third of the five 115kV transmission facilities that exit Substation 13A.

Interconnection Customer's failure to comply with this Appendix H shall constitute a breach under Article 17 of this Agreement.

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Appendix H

Form of Written Certification

_____ [Insert Legal Name of Interconnection Customer] _____ hereby certifies that, in response to Transmission Owner's Request for Certification of _____ [insert date and time] _____, (1) the Generating Facility is capable of ramping down its electrical output to _____ MW over a 14 minute period; and (2) Interconnection Customer shall immediately begin such ramp down upon telephonic notification by Transmission Owner to Interconnection Customer's system operator that an operating condition requiring such a reduction has occurred.

Certified by _____ [name] _____, an authorized representative of Interconnection Customer, this _____ [insert day and time _____]:

[Name]
[Title]

Effective: September 23, 2006

Exhibit B

Ginna May 4 Letter

J. M. Heffley
Senior Vice President and Chief Nuclear Officer

Constellation Generation Group
1997 Annapolis Exchange Parkway
Suite 310
Annapolis, MD 21401
410-897-5020



May 4, 2007

James P. Laurito, President and CEO
Rochester Gas & Electric Corporation
89 East Avenue
Rochester, NY 14649

John D. Hauber, Manager of System Operations
Rochester Gas & Electric Corporation
89 East Avenue
Rochester, NY 14649

Dear Messrs Laurito and Hauber:

Pursuant to Section 27.1 of the Interconnection Agreement ("IA") by and between R.E. Ginna Nuclear Power Plant, LLC ("Ginna") and Rochester Gas and Electric Corporation ("RGE") dated November 24, 2003, and amended on September 23, 2006, Ginna provides this notice of dispute with respect to RGE's failure to adhere to the requirements of the IA.

The IA obligates RGE to interconnect the Robert E. Ginna Nuclear Power Plant ("Facility") to the RGE transmission system and provides that the entire output of the Facility, up to 590 MW, can be transmitted into the New York State energy market under system normal operating conditions and under certain contingency conditions set forth in Appendix H of the IA. Specifically, Appendix H provides that no planned or unplanned outage of any single 115 kV line will impact the operating levels of the Facility up to 590 MW. Appendix H further provides that reductions below 590 MW would only be needed for the loss of three of the five transmission lines that exit Substation 13A. Finally, Appendix H expressly provides for unrestricted generation operation up to 590 MW during periods of any planned maintenance of any single 115 kV line or a double circuit tower structure.

Contrary to the express requirements of the IA, Ginna has been informed that, due to upcoming planned work, including one or more outages of a single 115 kV line, RGE intends to require Ginna to reduce the Facility output substantially below 590 MW. In several of the proposed scenarios, the requested reduction will be to 377 MW (*i.e.*,

approximately 64% of the facility's full power). As you know, RGE cannot deviate from the terms of its FERC-filed rate schedule, and RGE has not proposed to amend the IA. Ginna site personnel have repeatedly communicated to RGE personnel its concerns over RGE's failure to comply with the express requirements of the IA.

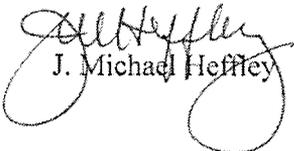
Notwithstanding such concerns, Ginna has also expressed its willingness to reasonably accommodate RGE's planned system maintenance, provided that RGE takes appropriate steps to minimize the impacts on Ginna due to the planned outage, including conducting the maintenance around the clock in order to reduce the revenue losses that Ginna will face during periods when it is prevented from delivering its full 590 MW output to the New York markets. Please note that when the Ginna generating facility is off-line during both planned and unplanned outages due to generation-related causes, work proceeds on an around-the-clock basis to restore our obligations to you under the IA, as we have interpreted the IA's definitions of "Good Utility Practice" and specifically the definition of "Reasonable Efforts." However, RGE personnel have been unwilling: 1) to engage in substantive discussions to address Ginna's long-term solutions regarding RGE compliance with the express terms of the IA; 2) to commit to expedite the scheduled maintenance in order to reduce the outage period; or, 3) to compensate Ginna for its costs and lost revenues associated with any requested reduced output.

As you know, the IA was negotiated in conjunction with the purchase of the Ginna Facility from RGE. Those provisions in the IA that confirm the ability of Ginna to deliver the full output of 590 MW as long as there has not been a loss of three of the five transmission lines exiting Substation 13A codify representations concerning deliverability that were made by RGE, as both the owner of the Facility and owner of the interconnecting transmission system, as part of the June 10, 2004, sale of the Facility to Constellation (now Ginna). To the extent that those representations were erroneous, the value of the Facility is diminished.

We had hoped that RGE would take seriously our requests to address and mitigate the damages that Ginna will incur as a result of RGE's failure to adhere to the requirements of the IA. To date, there has been some degree of consolidating work items to limit the number of outages; however, it appears as if RGE remains unwilling to commit to taking steps needed to meet its obligations under the IA or to adequately mitigate Ginna's damages in the alternative. Ginna would prefer to work with RGE to resolve any and all issues surrounding the continued ability of the Facility to deliver its full 590 MW output and issues surrounding the planned outage, and requests that RGE

immediately initiate serious discussions with Ginna to do so. If RGE fails to do so, Ginna intends to exercise its rights and remedies in equity or law, including, but not limited to, seeking FERC enforcement of the IA and/or claims for damages in an appropriate judicial forum.

Sincerely,



J. Michael Heffley

cc: Laura S. Conklin (RGE VP Technical Services)
Irving Yoskowitz, Esq.
Michael J. Wallace
Steven L. Miller, Esq.

Exhibit C

RGE May 24 Letter

MAY-25-2007 09:41

RG&E ADMIN-89-10TH

585 724 8285 P.02/06



James P. Laurito
President & CEO

May 24, 2007

VIA CERTIFIED MAIL AND FACSIMILE

J. M. Heffley
Senior Vice President and Chief Nuclear Officer
Constellation Generation Group
1997 Annapolis Exchange Parkway
Suite 310
Annapolis, MD 21401

R. E. Ginna Nuclear Power Plant, LLC
750 East Pratt Street, 17th Floor
Baltimore, MD 21202
Attn: Managing Attorney - Generation

Joseph Pacher
R.E. Ginna Nuclear Power Plant, LLC
1517 Lake Road
Ontario, NY 14519-9364

Re: Interconnection Agreement ("IA") between R.E. Ginna Nuclear Power Plant, LLC ("Ginna") and Rochester Gas And Electric Corporation ("RGE")

Dear Mr. Heffley:

RGE hereby responds to your letter of May 4, 2007 (the "May 4 Letter") instituting a dispute resolution process under the IA. The May 4 Letter indicates that Ginna disputes RGE's interpretation of certain sections of the IA, particularly Appendix H. For purposes of that process, the designated senior representative for RGE shall be Laura Conklin. Pursuant to Section 27.1, the parties have until June 3, 2007 to resolve this dispute.

While it remains willing to continue working cooperatively and in good-faith with Ginna to resolve this dispute, RGE is compelled to respond to several inaccurate representations and misinterpretations of the IA reflected in the May 4 Letter. RGE believes that Ginna, and in fact the dispute resolution process, will benefit from RGE's clarification and correction of these matters.

The IA reflects the terms and conditions pertinent to the interconnection of the Robert E. Ginna nuclear power plant (the "Facility") to the RGE transmission system. Appendix H, one of the several sections of the IA that pertains to the operation parameters applicable to the Facility, provides for the transmission of the entire output of the Facility (up to 590 MW net) into

An equal opportunity employer

89 East Avenue | Rochester, NY 14649-0001
tel (585) 724-8077 | fax (585) 724-8286
NYC632421.5
www.nyseg.com | www.rge.com



J.M. Heffley
May 24, 2007
Page 2

the New York State energy market through RGE's transmission system "under system normal operating conditions."

Appendix H does not represent a warranty or guaranty by RGE that the Facility would be capable of delivering up to 590 MW under all conditions for the term of IA. Indeed, there is no language in Appendix H that supports such a warranty or guarantee. Rather, Appendix H represents an operating parameter that is subject to change due to, among other factors, changing system conditions and utility practices. What is more, Appendix H is subject to RGE's express rights under the IA to modify the operating parameters applicable to the Facility to ensure the safe and reliable operation of its transmission system, including the avoidance of electric thermal overload and over-voltage conditions.

That Appendix H is subject to changing conditions and practices is amply demonstrated by the terms of the IA. The definition of "Good Utility Practice" includes Appendix H, but it is clear that Good Utility Practice is an evolving concept based on utility practices "during the relevant time period" and reasonable practices "at the time the decision is made." Appendix H is also subject to various provisions of the IA affecting the Facility's operation. For example, section 9.3 of the IA permits RGE to provide binding operating instructions to Ginna consistent with the IA and RGE's operating protocols and procedures "as they may change from time to time." Therefore, Appendix H cannot be interpreted, alone or in the context of the other provisions of the IA, as a set of fixed operating parameters.

Section 9.7.1.1 permits RGE to remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance and testing or to install or replace equipment. Section 9.7.2 permits RGE to require Ginna to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect RGE's ability to perform such activities as are necessary to safely and reliably operate and maintain its transmission system. Under section 13.4, RGE has the right, in order to address an Emergency Condition, to take steps to mitigate such a condition, including the right to require Ginna to "shut-down, start-up, increase or decrease the real or reactive power output" of the Facility. There is no language in Appendix H that attempts to nullify, dilute, qualify, etc. any other provision of the IA, including the non-exhaustive list of provisions cited in this paragraph.

The language of Appendix H also underscores the fact that these operating parameters are not fixed. Appendix H provides that it is applicable under "system normal operating conditions," which necessarily implies that conditions other than system normal operating conditions could affect the Appendix H operating parameters. Moreover, Appendix H states that certain unique maintenance and contingency conditions on the two double-circuit sections of RGE's transmission lines (Lines 908/913 and Lines 911/912) may "require operating restrictions" at the Facility. Indeed, the two anticipated outages of Line 911 (as discussed more fully below) necessitate operating restrictions on the Facility due precisely to contingency

J.M. Heffley
May 24, 2007
Page 3

conditions involving the outages of lines 908 and 913, one of the double-circuit sections of RGE's transmission lines.¹

A number of developments since the execution of IA, including load growth and resultant system changes and revised practices, warrant the establishment of Facility operating restrictions with a single transmission line outage. Load growth in the Rochester area in which the Facility is located has been robust over the last several years, thereby placing additional strains on the RGE transmission system, particularly on the balance of flows over the five transmission lines serving the Facility through Substation 13A. In fact, the NYISO's 2007 Reliability Needs Assessment ("RNA") shows a loss-of-load expectation ("LOLE") for Zone B (Rochester) of .13 for 2014, whereas the 2006 RNA showed no LOLE for 2014 for that zone. Additionally, RGE and Ginna modified the IA in 2006, at Ginna's request, to implement a state estimator and contingency analysis protocol (the "State Estimator"). The implementation of the State Estimator has changed the operating procedures under which RGE plans to take portions of the transmission system out of service.

With the State Estimator, it is now clear that a single line outage could cause remaining transmission lines to exceed their STE thermal rating in the event of the next contingency. Since the exceedance of the STE thermal rating would pose an Emergency Condition, RGE must take precautionary action now to limit the Facility's generation output during the line 911 outages planned for 2007 (one of which was concluded on May 15th).

Given the terms of the IA and developments since the execution of the IA, it is unfortunate that Ginna has sought to characterize RGE as deviating from the IA and a FERC-filed rate schedule. In actuality, RGE has properly exercised its rights in accordance with the IA, and with proper notice to, and coordination with, Ginna to modify the operating parameters of the Facility to maintain the reliability of its system. In RGE's view, there is no need to amend the IA to accommodate RGE's right to take these actions.

Equally unhelpful are Ginna's incorrect assertions that RGE personnel have been unwilling to engage in substantive discussions to address Ginna's long-term solutions regarding the issue of RGE's right to restrict the Facility's generation, and to commit to expedite the scheduled maintenance in order to reduce the outage periods of the Facility. RGE and Ginna senior representatives have in fact discussed the steps that may be taken to possibly minimize the need to restrict the Facility's operations, including a meeting on April 12, 2007 and numerous telephone conferences. The parties have discussed in great detail RGE's planned Rochester Transmission Project ("RTP") and the extent to which the completion of the RTP will mitigate the need to restrict the Facility's operation. As you know, the planned outages of line 911 (as

¹ The May 4 Letter refers to unspecified representations concerning deliverability that were allegedly made by RGE as part of the sale of the Facility. Please note that the IA contains a clause in section 30.4 which provides that, apart from what is contained in the IA, there are "no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this IA."

J.M. Heffley
May 24, 2007
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discussed below) are related to the completion of the RTP. Indeed, RGE has performed, at its own cost, an analysis for Ginna to show the impact of the RTP project on the need to restrict the Facility's generation.

A simple review of the two 2007 outages requiring an output reduction at the Facility will demonstrate that, contrary to Ginna's assertion, RGE has been extremely cooperative and instrumental in reducing the outage periods. The planned outage of line 911 scheduled for May 14 – May 16 was originally scheduled by the RTP contractor to take five days. RGE personnel worked with the RTP contractor to reduce the anticipated outage duration to 59 hours. RGE mitigated the duration of the outage by, among other steps:

- Planning work in much greater detail than normal
- Prefabricating bus components
- Preparing for potential contingencies by procuring additional hardware and material and providing redundant tooling
- Optimizing its work force by relocating additional electricians from another project site
- Working extended hours from sunup to sunset
- Relocating and dedicating the most experienced electrician to provide oversight of contractor work
- Providing switchmen at three diverse locations to expedite switching

The above outage has been completed and due to RGE's efforts, the actual duration of the outage was 36.5 hours, significantly below the already reduced duration of 59 hours.

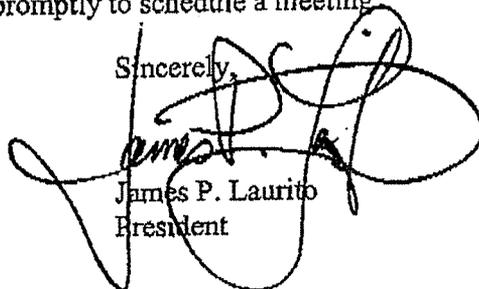
A similar pattern is developing with respect to the outage of line 911 planned for June 6th. As of today, the anticipated duration of that outage is 10 hours. As with the May outage, RGE has taken, and will take, reasonable steps to minimize the impact of the outage on the Facility's operation without taking unnecessary risks that could impact the operational reliability of the Facility and the RGE transmission system. No other transmission line outages are presently planned for 2007 that could have an impact on the Facility's operation, but changing system conditions and other factors may necessitate a change to those plans.

Even though it is well within its rights to direct the Facility to operate at reduced levels, RGE has not ignored its responsibility to ensure that those time periods of reduced output are as limited as possible, consistent with the terms of the IA, good utility practice, and the need to treat all generators connected to the RGE system in a fair and not unduly discriminating manner.

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RGE takes seriously your request to work cooperatively to mitigate the periods of time that the Facility's output may be restricted, and we are ready to continue serious discussions to do so with full reservation of our rights and remedies under the IA. In order to proceed, please indicate the designated Ginna senior representative for these dispute resolution discussions and we would be happy to contact that person promptly to schedule a meeting.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'James P. Laurito', is written over the typed name and title.

James P. Laurito
President

cc: Laura Conklin
Nicholas A. Giannasca
Mark V. Dolan
John Hauber
Jeff McKinney

Exhibit D

Ginna June 1, 2007 E-mail

From: Pacher, Joseph
Sent: Friday, June 01, 2007 7:10 PM
To: 'James_Laurito@rge.com'
Cc: 'Laura_Conklin@rge.com'; Korsnick, Maria; Swift, Paul; Fleming, Carey W.
Subject: Ginna Station

This e-mail acknowledges receipt of RGE's letter to Mike Heffley, dated May 25, 2007. On behalf of Mr. Heffley, I am responding to inform you that the designated representative (per Art. 27 of the IA) for Constellation/Ginna is Maria Korsnick, Site VP - Ginna Nuclear Plant.

While we do not agree with many points in the 5/25 letter, we welcome any exchange with you regarding resolution of the issue we set forth in our 5/4 letter to RGE. For example, we appreciate your minimizing the generation impact during the recent outage, but we still seek additional information and planned actions regarding post-RTP impacts. As such, we look forward to additional discussions with RGE. The first of these meetings occurred on Thursday of this week.

Should you need additional information, please contact me at (585) 771-5208

Joseph Pacher
Engineering Manager, Ginna Station

Attachment 1

Form of Notice

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

R.E. Ginna Nuclear Power Plant, LLC)	
)	
v.)	Docket No. EL07-____-000
)	
Rochester Gas and Electric Corporation)	

NOTICE OF COMPLAINT

()

Take notice that on June 25, 2007, R.E. Ginna Nuclear Power Plant, LLC (“Ginna”) filed a formal complaint against Rochester Gas and Electric Corporation (“RGE”) pursuant to FPA §§ 206 and 306, alleging that RGE is violating its interconnection agreement with Ginna.

Ginna certifies that copies of the complaint were served on the contacts for RGE as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive

email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary

Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary

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