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February 1, 2013

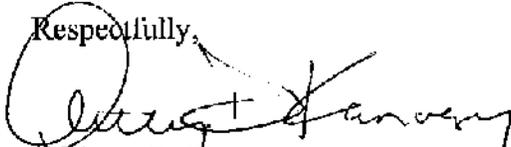
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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400 North Street, 2nd Floor North
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**Re: Petition of Duquesne Light Company for Approval of Default Service Plan for the
Period June 1, 2013 Through May 31, 2015
Docket No. P-2012-2301664**

Dear Secretary Chiavetta:

Attached for electronic filing is Duquesne Light Company's Petition for Clarification of the Pennsylvania Public Utility Commission's Order Entered January 25, 2013 in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully,



Anthony D. Kanagy

ADK/skr
Attachment

cc: Honorable Katrina L. Dunderdale
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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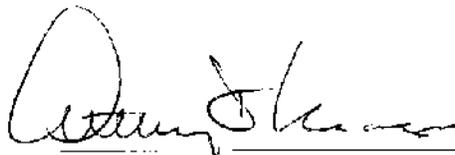
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Date: February 1, 2013



Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company :
For Approval of Default Service Plan :
For The Period June 1, 2013 : Docket No. P-2012-2301664
Through May 31, 2015 :

**DUQUESNE LIGHT COMPANY'S PETITION FOR
CLARIFICATION OF THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION'S ORDER ENTERED JANUARY 25, 2013**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.572, Duquesne Light Company ("Duquesne Light" or the "Company") hereby petitions the Pennsylvania Public Utility Commission ("Commission") for clarification of its Order entered on January 25, 2013 ("*January 25 Order*") in the above-captioned proceeding. In this Petition, Duquesne Light seeks clarification from the Commission regarding the issues that must be addressed in order for Duquesne Light to procure default supplies for customers beginning June 1, 2013. These issues are:

- (1) Moving the Residential procurement proposed in the Company's Default Service Plan ("DSP VI") for November 2012 to March 2013; and
- (2) Moving the Small Commercial and Industrial ("Small C&I" - default service customers with monthly metered demands less than 25 kW) procurement proposed in DSP VI for November 2012 to March 2013.
- (3) Approving the revisions to the Supply Master Agreement ("SMA") set forth in the Commission's Order; and

(4) Authorizing Duquesne Light to use the long-form PJM
Declaration of Authority.

In order to allow sufficient time to conduct two separate procurements for both the Residential and Small C&I customer classes prior to June 1, 2013 (one procurement in March 2013 and one procurement in April 2013 for each customer class), Duquesne Light must obtain Commission approval of the clarifications requested in this Petition by the Public Meeting scheduled for February 28, 2013. If Duquesne Light does not obtain Commission approval by this date, the Company would be required to obtain 100% of Residential default supplies for June 1, 2013 through May 31, 2014 through a single procurement in April 2013 and to obtain 100% of Small C&I default supplies for June 1, 2013 through November 30, 2013 through a single procurement in April 2013. The Company prefers to conduct two separate procurements for each customer class to mitigate against potential wholesale market price disruptions. That said, if approval is not received, both procurements will be conducted in April 2013.

Duquesne Light will address other changes to its proposed DSP VI plan required by the Commission's *January 25 Order*, after conducting the collaborative processes required by the Order in its compliance filing that is due on March 26, 2013. Duquesne Light is limiting the scope of matters presented in this Petition in order to expedite approval so that the Company can conduct default supply procurements in March 2013.¹

In support of this Petition, Duquesne Light states as follows:

¹ Duquesne Light is filing this Petition for Clarification in advance of the 15-day deadline provided under 52 Pa. Code § 5.572(c) in order to expedite approval of the procurement related matters described herein. Duquesne Light is continuing to evaluate other matters presented in the Commission's *January 25 Order* and reserves its right to seek further clarification or reconsideration within the 15-day deadline provided for under the regulations through filing a separate pleading.

II. BACKGROUND

1. On April 27, 2012, Duquesne Light filed the above-captioned Petition which requested that the Commission approve a Default Service Plan for (1) Residential default service customers, (2) Small C&I default service customers, (3) Medium Commercial and Industrial (“Medium C&I”) default service customers with monthly metered demands equal to or greater than 25 kW and less than 300 kW, and (4) Large Commercial and Industrial (“Large C&I”) default service customers with monthly metered demands equal to or greater than 300 kW. Duquesne Light proposed to procure supplies for Residential, Small C&I and Medium C&I default service customers through fixed-price full requirements contracts with varying terms for each class. Duquesne Light proposed to continue to procure supplies for Large C&I default service customers through the day-ahead spot market.

2. In addition, the Company proposed to implement several retail market enhancement programs, including a Retail Opt-In EGS Service Program (“ROI Program”) and a Standard Offer Customer referral Program (“SO Program”) (collectively “RME Programs”) to enhance competition in its service territory.

3. Various parties intervened in the proceeding. Parties conducted discovery and submitted several rounds of testimony, Main Briefs and Reply Briefs. The Recommended Decision of Administrative Law Judge (“ALJ”) Katrina L. Dunderdale was issued on November 15, 2012. Certain parties filed Exceptions and Replies to Exceptions. On January 25, 2013, the Commission issued its Order approving in part and modifying in part the Company’s proposed default service plan.

4. In the *January 25 Order*, the Commission directed the Company to make changes to its procurement dates, such that no procurement be made more than five months prior to the time that the Company is scheduled to first provide service under the procurement. *January 25*

Order, p. 46. In addition, the Commission noted that this would require modification to certain RFPs and further stated that it would allow Duquesne Light to determine the appropriate timing for its default service procurements, subject to the 5-month rule discussed above. *January 25 Order*, p. 46.

5. The Commission also directed the Company to make certain revisions to its SMA, as agreed to by the parties.

6. In addition, the Commission directed the Company to conduct a collaborative process with interested Parties to address certain unresolved issues regarding: (1) cost recovery of the RME programs, (2) ROI Program details, and (3) ROI and SO Program Agreement details. The Commission further directed the Company to develop a plan to allow its CAP customers to purchase their electric supply from EGSs by January 1, 2014 and to work with the Office of Competitive Market Oversight to ensure that, to the extent possible, ROI and SO Programs are available to CAP customers and provide a path that allows both CAP credits and LIHEAP Funds to be used by customers that choose an EGS to supply their generation service.

7. As explained above, Duquesne Light is only seeking clarification and Commission approval of the matters necessary for Duquesne Light to conduct procurements for default supply for Residential and Small C&I customer classes beginning June 1, 2013. Duquesne Light will address the collaborative issues with the interested parties and make the appropriate filings to address these issues by March 11, 2013 and March 26, 2013, as directed by the Commission. In addition, Duquesne Light will develop a plan to allow CAP customers to shop by January 1, 2014.

III. LEGAL STANDARDS FOR REQUESTS FOR CLARIFICATION

8. The decision whether to grant a petition for clarification is guided by the application of the standards set forth in *Duick v. Pa. Gas & Water Co.*, Docket No. C-120597001, et al., 56 Pa. P.U.C. 553, 559 (1982).

Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Application of PPL Electric Utilities Corporation, Docket Nos. A-2009-2082652 et al., 2010 Pa. P.U.C. LEXIS 1707 *3-*4, Order entered April 23, 2010.

9. In particular, Duquesne Light is seeking Commission approval to move certain default supply procurement dates for Residential and Small C&I default service procurements from November 2012 to March 2013. The specific procurement dates were not addressed by the Commission. Therefore, it is appropriate to seek clarification as to the procurement dates to provide certainty to parties. In addition, Duquesne Light seeks Commission approval of changes to the SMA and the PJM Declaration of Authority to provide certainty to Duquesne Light, bidders and the Company’s third-party monitor that these documents have been approved by the Commission and the Request for Proposal (“RFP”) process can proceed.

IV. REQUESTS FOR CLARIFICATION

A. REVISIONS TO THE PROCUREMENT SCHEDULE

10. In the *January 25 Order*, the Commission ordered Duquesne Light to conduct its default supply procurements no more than 5 months prior to the time that the Company was scheduled to first provide service under those procurements. *January 25 Order*, p. 46. The

Commission noted that this would require modifications to certain procurement dates. However, the Commission did not direct Duquesne Light to adopt specific procurement dates but allowed the Company to determine the appropriate timing for its procurements. *January 25 Order*, p. 46.²

11. Through this Petition, Duquesne Light is requesting Commission approval to:

- (1) move the Residential procurement proposed in DSP VI for November 2012 to March 2013; and
- (2) move the Small C&I procurement proposed in DSP VI for November 2012 to March 2013.

12. Moving the Residential and Small C&I procurements to March 2013 will allow the Company to conduct two separate procurements (in March 2013 and April 2013) for both the Residential and Small C&I customer classes for default supplies to be delivered beginning June 1, 2013. Duquesne Light would prefer to conduct two separate solicitations for each customer class to mitigate against potential wholesale market price disruptions.

13. The changes to the procurement schedules for Residential and Small C&I customers are further detailed in Appendix A hereto. The revisions that Duquesne Light is seeking Commission approval of are listed as note 1 on page 1 of Appendix A, Residential Procurement Plan and note 1 on page 2 of Appendix A, Small C&I Procurement Plan.

14. As noted in Appendix A, there are several other procurement dates that must be modified to accommodate the Commission's directive that procurements be conducted no more

² The Company could have interpreted the Commission's Order to allow the Company to have discretion to choose new procurement dates without obtaining Commission approval. However, the Company seeks Commission approval of these dates to make the Commission aware that the Company is proposing to conduct procurements in back-to-back months for both the Residential and Small C&I customer classes and to provide clarity to the Company, other parties, potential bidders and the market monitor that the procurement dates have been approved by the Commission. In addition, Duquesne Light could not wait until its March 26, 2013 filing to propose new procurement dates because that would not allow enough time to conduct the procurements in March 2013.

than 5 months before delivery. In addition, several product terms must be modified to avoid delivery of supply after May 31, 2015. Duquesne Light is not seeking approval of these procurement dates and product terms in this filing as such changes can be addressed in its compliance filing. See *January 25 Order*, pp. 80-81. See notes 2 and 3 listed on page 1 of Appendix A, Residential Procurement Plan and note 2 listed on page 2 of Appendix A, Small C&I Procurement Plan. Duquesne Light is only seeking Commission approval in this Petition to move the November Residential and Small C&I procurements to March 2013 in order to limit any potential controversy and expedite approval of this Petition.

15. Duquesne Light will seek Commission approval for modifying the other procurement dates and to adjust the product terms to avoid procuring products with delivery beyond May 31, 2015 in its revised Default Service Plan to be filed by March 26, 2013.

B. REVISIONS TO THE SMA

16. In the *January 25 Order*, the Commission directed Duquesne Light to make certain revisions to its SMA that had been agreed upon by the parties in this proceeding. *January 25 Order*, p. 235.

17. Duquesne Light has made the revisions to the SMA as agreed to by the parties and directed by the Commission. Duquesne Light has attached a clean and red-lined version of the changes to the SMA in Appendix B hereto.³

18. In order to provide additional certainty, Duquesne Light respectfully requests that the Commission approve the SMA, as revised by the Company.

³ The revisions to the SMA also include a correction to Section 2.3 regarding allocation of grid management charges to make it consistent with Exhibit D to the SMA. This correction was explained in the Rebuttal Testimony of Mr. Pfrommer, Duquesne Light St. No. 4-R, p. 35 and also was provided as an Exhibit to the Rebuttal Testimony of Ms. Creahan, Exhibit EC-1. No party disputed this correction.

C. PJM DECLARATION OF AUTHORITY

19. In this proceeding, an issue arose regarding whether Duquesne Light should continue to use the short-form PJM Declaration of Authority or the long-form PJM Declaration of Authority. Duquesne Light St. No. 10-R, p. 3.

20. In this proceeding, Duquesne Light stated that it saw no reason to change the form of Declaration of Authority because PJM recognized both the short-form and long-form. Duquesne Light St. No. 10-R, p. 3.

21. After the record closed in this proceeding, in November of 2012, PJM advised Duquesne Light that it would no longer accept the short form Declaration of Authority to accommodate the Billing Line Item Transfers that occur as a result of the Duquesne Light competitive solicitations.

22. Therefore, in order to be compliant with PJM, and to smoothly effectuate any necessary charge transfers between the parties, Duquesne Light seeks clarification from the Commission authorizing Duquesne Light to use the long-form PJM Declaration of Authority. For the convenience of the Commission and the Parties, Duquesne Light has provided a long-form Declaration of Authority as Exhibit H to the SMA which is provided as Appendix B hereto.

V. REQUEST FOR EXPEDITED APPROVAL

23. In order to conduct the default service procurements on the dates proposed herein, Duquesne Light respectfully requests that the Commission grant this Petition at its Public Meeting scheduled for February 28, 2013.

24. Duquesne Light requires approximately 30 days after Commission approval to conduct its Residential and Small C&I procurements. If the Commission grants this Petition at its February 28, 2012 Public Meeting, this allows just enough time to conduct the RFP process for the proposed March 2013 RFPs for Residential and Small C&I customers.

25. In the event that the Commission does not grant this Petition by its February 28, 2013 Public Meeting, Duquesne Light will likely be required to combine the March and April solicitations for Residential customers and also to combine the March and April solicitations for Small C&I customers. The result would be to require Duquesne Light to procure 100% of default supplies for Residential customers for June 1, 2013 through May 31, 2013 through a single solicitation. In addition, this would require Duquesne Light to procure 100% of default supplies for Small C&I customers for the delivery period of June 1, 2013 through November 30, 2013 through a single solicitation.

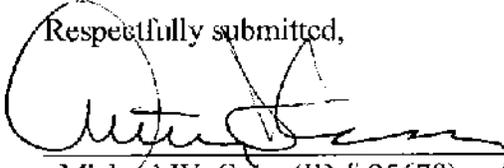
VI. CONCLUSION

WHEREFORE, for the foregoing reasons, Duquesne Light Company respectfully requests that the Pennsylvania Public Utility Commission grant this Petition for Clarification of the *January 25 Order* to allow the Company to procure default supplies for Residential and Small C&I customers in March 2013 for delivery beginning June 1, 2013.

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Appendix A

Residential Procurement Plan

Differences Between the Original Filing and the Revised Plan

- (1) The November 2012 solicitation has been rescheduled for March 2013.
- (2) The 12-month products with June 2014 - May 2015 deliveries are now to be procured in equal quantities in two separate solicitations, one in January 2014 and one in April 2014, per the Commission's directive not to procure products more than five months before delivery begins.
- (3) The April 2014 solicitation no longer includes a 12-month product with deliveries after May 31, 2015, as directed by the Commission.

Original Filing

Procurement Dates	2013						2014						2015					Post POLR VI Plan																	
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Nov-12* (50%)	12 months																																		
Apr-13 (50%)	12 months												12 months																						
Nov-13 (25%)													12 months																						
Apr-14 (25%)													12 months					12 months																	

* Or within one month after PUC approval of the POLR VI Plan, whichever is later.

Revised Plan

Procurement Dates	2013						2014						2015					Post POLR VI Plan																	
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Mar-13* (50%)	12 months																																		
Apr-13 (50%)	12 months																																		
Jan-14 (50%)													12 months																						
Apr-14 (50%)													12 months																						

* This may be delayed and combined with the April 2013 solicitation, depending upon when the plan is approved.

Small C&I Procurement Plan

Differences Between the Original Filing and the Revised Plan

(1) The November 2012 solicitation has been rescheduled for March 2013.

(2) The 12-month product to be procured in November 2014 has been changed to a 6-month product, so as not to include in the plan any products with deliveries beyond May 31, 2015, as directed by the Commission.

Original Filing

Procurement Dates	2013						2014						2015					Post POLR VI Plan												
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
Nov-12* (50%)	6 months																													
Apr-13 (50%)	12 months																													
Nov-13 (50%)							12 months																							
Apr-14 (50%)													12 months																	
Nov-14 (50%)																		12 months												

* Or within one month after PUC approval of the POLR VI Plan, whichever is later.

Revised Plan

Procurement Dates	2013						2014						2015					Post POLR VI Plan												
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
Mar-13* (50%)	6 months																													
Apr-13 (50%)	12 months																													
Nov-13 (50%)							12 months																							
Apr-14 (50%)													12 months																	
Nov-14 (50%)																		6 months												

* This may be delayed and combined with the April 2013 solicitation, depending upon when the plan is approved.

Medium C&I Procurement Plan

For Medium C&I customers, the Revised Plan is identical to the Original Filing.

Procurement Dates	2013						2014						2015														
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May			
Nov-12 (50%)	From POLR V (6 months)																										
Apr-13 (50%)	6 months																										
Nov-13 (100%)							6 months																				
Apr-14 (100%)													6 months														
Nov-14 (100%)																			6 months								

Revised Procurement Schedule -- Tranches and Supplier Caps

Total Number of Tranches Per Solicitation				
<u>Solicitation</u>	<u>Residential</u>	<u>Small C&I</u>	<u>Medium C&I</u>	<u>Total</u>
Mar-13 (a)	12	2	0	14
Apr-13	12	2	4	18
Nov-13	0	2	8	10
Jan-14	12	0	0	12
Apr-14	12	2	8	22
Nov-14	0	2	8	10

Supplier Caps (# of Tranches)				50%
<u>Solicitation</u>	<u>Residential</u>	<u>Small C&I</u>	<u>Medium C&I</u>	<u>Total</u>
Mar-13 (a)	6	1	0	7
Apr-13	6	1	2	9
Nov-13	0	1	4	5
Jan-14	6	0	0	6
Apr-14	6	1	4	11
Nov-14	0	1	4	5

Notes:

(a) This may be delayed and combined with the April 2013 solicitation, depending upon when the plan is approved.

Appendix B

DEFAULT SUPPLY MASTER AGREEMENT
Medium C & I Service

by and between

DUQUESNE LIGHT COMPANY

and

[_____]

Dated as of _____

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Exhibits

- Exhibit A Transaction Confirmation
- Exhibit B Alternative Energy Portfolio Standards Obligation
- Exhibit C Performance Assurance Letter of Credit
- Exhibit D Sample PJM Invoice
- Exhibit E Methodology of Mark to Market (MTM) Exposure
- Exhibit F Form of Guaranty
- Exhibit G Form of Notice
- Exhibit H PJM Declaration of Authority

DEFAULT SUPPLY MASTER AGREEMENT

THIS DEFAULT SUPPLY MASTER AGREEMENT ("Agreement" or "DSMA"), is made and entered into as of _____ by and between _____, a _____, ("Seller" and Duquesne Light Company, a Pennsylvania corporation ("Buyer" or "Company") (each hereinafter referred to individually as "Party" and collectively as "Parties").

WITNESSETH:

WHEREAS, Buyer has an obligation as the Default Service Provider to provide default service (Energy, Capacity and related incidences as defined below) for its retail customers;

WHEREAS, Buyer has solicited offers for serving Medium C&I Customers with respect to default service pursuant to a Request for Proposal (all as defined below) and the Seller is a winning bidder in that solicitation; and

WHEREAS, Seller desires to sell Full Requirements Service (as defined below), which may include Time-of-Use Load, and Buyer desires to purchase such Full Requirements Service to supply a Specified Percentage (as defined below) of the default service requirements of Buyer's retail Medium C&I customers for a certain period of time, as provided herein, on a firm and continuous basis;

NOW, THEREFORE, and in consideration of the foregoing, and of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound by the terms and conditions set forth in this Agreement, hereby agree as follows:

ARTICLE I DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

"AEP Dayton Hub" means the aggregated Locational Marginal Price ("LMP") nodes defined by PJM.

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

"Aggregate Buyer's Exposure" means all Buyer's Exposure for Aggregate Transactions.

“Aggregate Transactions” means all Transactions under this Agreement and all other transactions under Supply Master Agreements executed between the Parties pursuant to the PUC Orders.

“Alternative Energy Portfolio Standards (“AEPS”)” shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

“Alternative Energy Portfolio Standards (“AEPS”) Obligation” shall have the meaning ascribed to it in Section 4.5 (Alternative Energy Portfolio Standards Obligation).

“Auction Revenue Rights” or “ARR” means the current or any successor congestion management mechanism or mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARRs are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM OATT.

“Ancillary Services” shall have the meaning ascribed thereto in the PJM Agreements.

“Bankrupt” means, with respect to any entity, such entity: (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes insolvent, however evidenced; (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due.

“Bid Block” means a fixed percentage share of load for a Service Type that is awarded to Seller in accordance with Buyer's RFP as set forth in a Transaction Confirmation. The fixed percentage defines the Bid Block size for each of the Company's Service Types.

“Bid Price” means the price for Full Requirements Service bid by Seller in its response to the RFP and accepted by Buyer, on a cents per kWh basis.

“Business Day” means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. EPT.

“Buyer Downgrade Event” means that Buyer's (or Buyer's Guarantor's) Credit Rating is less than the Buyer Minimum Rating for each of the Ratings Agencies by which Buyer is rated.

“Buyer Minimum Rating” means BBB- by S&P, BBB- by Fitch and Baa3 by Moody's.

“Buyer’s Exposure” during the term of a Transaction shall be deemed equal to the positive difference between: (i) the MtM Exposure pursuant to a Transaction under this Agreement; less (ii) the sum of any unpaid or unbilled amounts owed by Buyer to Seller pursuant to a Transaction under this Agreement. With respect to the preceding sentence, “unbilled amounts owed by Buyer” shall consist of a good faith estimate by Buyer as to any amounts which will be owed by Buyer for service already rendered by Seller under a Transaction.

“Capacity” shall mean “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM, including capacity as a product of PJM’s Reliability Pricing Model.

“Capacity Peak Load Contribution” or “Capacity PLC” means the aggregation of retail customer peak load contributions for Buyer’s retail customers, as determined by Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer’s retail load settlement process, and used by PJM from time to time to determine the Seller’s capacity obligation for each Transaction.

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

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or Fitch.

“Current Capacity PLC Per Bid Block” means, on any given Business Day, for each Transaction, the product of: (i) the aggregate Capacity PLC for an entire Service Type; and (ii) the quotient of (x) the Specified Percentage and (y) the number of Bid Blocks.

“Declaration of Authority” shall have the meaning ascribed to it in Section 4.9 (Declaration of Authority).

“Default Damages” means, for the period of time specified in Article 12 (Remedies) any direct damages and Costs, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs with respect to the Specified Percentage as a result of an Event of Default. Direct damages may include, but are not limited to: (i) the positive difference (if any) between the price of Full Requirements Service hereunder and the price at which the Buyer or Seller is able to purchase or sell (as applicable) Full Requirements Service (or any components of Full Requirements Service it is able to purchase or sell) from or to

third parties, including PJM; (ii) Emergency Energy charges; and (iii) additional transmission or congestion costs incurred to purchase or sell Full Requirements Service.

“Default Service” shall mean the electric generation supply provided by a default service provider as described in the Electricity Generation Customer Choice and Competition Act and PUC Orders enacted thereunder.

“Default Service Load” means the total sales at the retail meter, plus any losses and Unaccounted For Energy, as reflected in PJM settlement volumes (including adjustments required by PJM for PJM’s derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements), expressed in MWh of retail customers in a particular Customer Supply Group being served by Buyer pursuant to the PUC Orders, as such sales vary from hour to hour, in Buyer’s Pennsylvania franchise service territory, as such territory exists on the Effective Date or may increase or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. The Default Service Load is net of any reduction in load as a result of Energy Efficiency and Demand Side Response Programs offered by Buyer, PJM, Curtailment Service Providers, or other third parties, or any Retail Market Programs. For avoidance of doubt, Default Service Load shall not include (i) the amount of load that would otherwise have been served in the absence of such Energy Efficiency or Demand Side Response Programs or Retail Market Programs; or (ii) sales resulting from changes in the Buyer’s Pennsylvania service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Pennsylvania. Default Service Load may include Default Service Time-of-Use Load.

“Default Service Supply Estimate” means, for each hour during the term of this Agreement, Buyer’s estimate of the Full Requirements Service associated with the Default Service Load, as provided to PJM in accordance with Section 3.2 hereof.

“Default Service Time-of-Use Load” means the portion of load used to supply TOU customers. Default service TOU Load may include separate on- and off-peak rates or other time-varying rates that are based on the time of day a customer uses electricity.

“Default Service Time-of-Use Price” means the unique Time-of-Use On-Peak and Time-of-Use Off-peak Price per MWh.

“Delivery Period” means the period of delivery for a Transaction as specified in a Transaction Confirmation.

“Delivery Point” means the Duquesne Zone as may be designated by PJM.

“Duquesne Zone” means the PJM defined load zone for Buyer.

“Eastern Prevailing Time” or “EPT” means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

“Effective Date” shall mean the date of both parties having executed this Agreement.

“Emergency Energy” shall have the meaning ascribed to it in the PJM Agreements.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

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

“FERC” means the Federal Energy Regulatory Commission or its successor.

“Fitch” means Fitch Investor Service, Inc. or its successor.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not foreseen as of the date a Transaction is entered into, which is not within the reasonable control of, or the result of the negligence or intentional conduct of the affected party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of Seller’s supply; (ii) Seller’s ability to sell the Full Requirements Service at a price greater than that received under any Transaction; (iii) curtailment by a Transmitting Utility; (iv) Buyer’s ability to purchase the Full Requirements Service at a price lower than paid under any Transaction; or (v) Labor stoppage or lockout.

“Full Requirements Service” means all necessary Energy, Capacity, transmission other than Network Integrating Transmission Service, Ancillary Services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply the Specified Percentage except for distribution service. This may include Default Service Time-of-Use Load.

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

“Governmental Authority” means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party or this Agreement.

“Grid Management Charges” means the grid management charges defined in the PJM OATT as they may change from time to time,

“Guarantor” means any party who agrees to guaranty Seller’s financial obligations under this Agreement pursuant to the guaranty agreement, attached hereto as Exhibit F,

recognizing that such a party will be obligated to meet or exceed Buyer's credit requirements for Seller and that the acceptability of such guaranty will be determined at Buyer's sole discretion.

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

"Invoice" shall have the meaning ascribed to it in Section 7.1 (Billing).

"kWh" means one kilowatt of electric power over a period of one hour.

"Letter(s) of Credit" means one or more irrevocable, evergreen, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least A- from S&P or A3 from Moody's and a minimum of \$10 billion in assets, in a form acceptable to the Party in whose favor the letter of credit is issued (for clarification, the form of Letter of Credit attached as Exhibit C hereto shall be considered an acceptable form). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. The Party to whom the Letter of Credit is in favor reserves the right to monitor the financial position of the issuing bank and, if the issuing bank's Credit Rating is downgraded by any increment; or if the issuing bank's Current, Quick, Return on Assets, or Price/Earnings ratios diminish (reflecting the financial stability of the bank); or if the Party determines, for any reason, at its sole discretion that the issuing bank's position has deteriorated, then the Party has the right to demand and receive, from the applicant for the Letter of Credit, that the Letter of Credit be reissued from a bank that meets or exceeds the credit ratings and asset valuation listed above.

"Line Losses" means those losses set forth in Buyer's Supplier Tariff.

"Load Serving Entity" or "LSE" has the meaning ascribed to it in the PJM Agreements.

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

"Medium C&I Customer" means any commercial or industrial retail customer of Buyer receiving Default Service from Buyer under a Default Service GS/GM or GMH Rate Schedule that has a demand equal to or greater than 25 kw and less than 300 kw.

"Mark to Market Exposure" or "MtM Exposure" means, with respect to each month remaining in each Transaction Delivery Period, the sum of: (i) the relevant month On Peak Forward Price minus the relevant month On Peak Initial Mark Price, multiplied by the relevant month On Peak Estimated Energy Quantity; and (ii) the relevant month Off-Peak Forward Price minus the relevant month Off-Peak Initial Mark Price, multiplied by

the relevant month Off-Peak Estimated Energy Quantity. The method and an example for calculating the MtM Exposure are included in Exhibit E.

“Monthly Settlement Amount” means with respect to any calendar month during the Delivery Period, the sum of: (i) the product of the applicable Monthly Settlement Price and Monthly Settlement Load; and (ii) any other adjustments as set forth in this Agreement.

“Monthly Settlement Price” means price for Monthly Settlement Load for the applicable month of the Delivery Period as set forth in a Transaction Confirmation.

“Monthly Settlement Date” means, with respect to any calendar month of a Delivery Period, the date(s) determined to be the PJM Settlement Date(s) pursuant to the PJM Agreements.

“Monthly Settlement Load” means, with respect to any calendar month during an applicable Delivery Period, the product of Specified Percentage and Default Service Load.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MWh” means one megawatt of electric power used over a period of one hour which shall be rounded in a manner consistent with standards in the PJM Agreements. The current rounding standards are to the nearest one-thousandth of a megawatt hour.

“MW-Measure” means the estimated megawatt measure of Capacity Peak Load Contribution corresponding to a single Bid Block identified in the Transaction Confirmation as of the Transaction Date.

“NERC” means the North American Electric Reliability Council or any successor organization thereto.

“Network Integration Transmission Service” has the meaning ascribed to it in the PJM Agreements.

“Non-Defaulting Party” means the Party not responsible for an Event of Default, as set forth in Article 12.

“Officer” is an individual empowered to undertake contracts and bind the Seller and/or Buyer. All representations in this Agreement must be made by an Officer of Seller and/or Buyer.

“Off-Peak Estimated Energy Quantity” means, for each month in each Transaction, the product of: (i) the relevant month Off-Peak Estimated Energy Quantity Per MW-Measure; (ii) the quotient of the Current Capacity PLC Per Bid Block and the MW-Measure; (iii) the number of Bid Blocks awarded to the Seller per the Transaction

Confirmation; and (iv) the percentage of Off-Peak Hours remaining (excluding current day) in each month.

“Off-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the Off-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“Off-Peak Forward Price” means the price, as provided by the Buyer, for Off-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and based on the most recent publicly available information and/or quotes from Reference Market-Makers on forward Energy transactions occurring at the AEP Dayton Hub.

“Off-Peak Hours” means those hours which are not On-Peak Hours.

“Off-Peak Initial Mark Price” means the Off-Peak Forward Price as of the Transaction Date.

“On-Peak Estimated Energy Quantity” means, for each month in each Transaction, the product of: (i) the relevant month On-Peak Estimated Energy Quantity Per MW-Measure; (ii) the quotient of the Current Capacity PLC Per Bid Block and the MW-Measure; (iii) the number of Bid Blocks awarded to the Seller per the Transaction Confirmation; and (iv) the percentage of On-Peak Hours remaining (excluding current day) in each month.

“On-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the On-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“On-Peak Forward Price” means the price, as provided by the Pricing Agent, for On-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and based on the most recent publicly available information and/or quotes from Reference Market-Makers on forward Energy transactions occurring at the AEP Dayton Hub.

“On-Peak Hours” means Hour Ending (“HE”) 0800 through HE 2300 EPT, Monday through Friday, excluding Saturday, Sunday and NERC holidays.

“On-Peak Initial Mark Price” means the On-Peak Forward Price as of the Transaction Date.

“Performance Assurance” means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

“Photo-voltaic (“PV”)” shall have the meaning ascribed in Tier 1 Alternative Energy Sources.

“PJM” means the PJM Interconnection, LLC or any successor organization thereto.

“PJM Agreements” means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM West RAA, and any other applicable PJM manuals or documents, or any successor, superceding or amended versions that may take effect from time to time.

“PJM Control Area” has the meaning ascribed to it in the PJM Agreements.

“PJM OATT” or “PJM Tariff” means the Open Access Transmission Tariff of PJM or the successor, superceding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

“PJM Operating Agreement” means the Operating Agreement of PJM or the successor, superceding or amended versions of the Operating Agreement that may take effect from time to time.

“PJM Planning Period” has the meaning ascribed to it in the PJM Agreements. Currently, the PJM Planning Period is the twelve months beginning June 1 and extending through May 31 of the following year.

“PJM RAA” means the PJM Reliability Assurance Agreement or any successor, superceding or amended versions of the PJM Reliability Assurance Agreement that may take effect from time to time.

“PJM Settlement Date” means the date on which payments are due to PJM for services provided by PJM in accordance with the PJM Agreements.

“PUC” means the Pennsylvania Public Utility Commission and any successor agency thereto.

“PUC Orders” means the orders issued by the PUC including but not limited to the Electricity Generation customer Choice and Competition Act, 66 Pa. C. S. Sections 2801-2812, including the Order authorizing the parties to enter into this Agreement.

“Ratings Agencies” means Fitch, Moody’s and S&P.

“Reference Market-Maker” means any broker in energy products who is not an Affiliate of Buyer or Seller.

“Retail Market Program” means any program, action, or offer arising out of or relating to the PUC’s *Investigation of Pennsylvania’s Retail Electricity Market* (Docket No. I-2011-2237952) (as such proceeding may be amended, supplemented or superseded, in whole or in part) to encourage Default Service customers to obtain electric generation service from one or more Electric Generation Suppliers or to transfer Default Service customers from an Electric Distribution Company (including Buyer) to one or more Electric Generation Suppliers for purposes of obtaining electric generation service supply, whether or not any such program, action or offer is introduced or endorsed by Buyer or undertaken in compliance with any Requirement of Law. Such programs, actions and offers include, but shall not be limited to, any PUC or Buyer customer education program relating to Default Service, any program in which Default Service customers are referred by Buyer to one or

more Electric Generation Suppliers, and any program under which Default Service customers are transferred (or elect to be transferred) individually or in aggregate to one or more Electric Generation Suppliers on any basis.

“Request for Proposal” or “RFP” means the request for proposals issued by Buyer for the provision of Full Requirements Service that is necessary to supply Medium C&I Service.

“S&P” means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc. and any successor thereto.

“Service Type” means the customer class, partial customer class and/or group of customer classes, as set forth in a Transaction Confirmation.

“Specified Percentage” means, the percentage of Default Service Load as set forth in a Transaction Confirmation.

“Supplier Tariff” means Buyer's Electric Generation Supplier Coordination Tariff, or its successor, filed with and approved by the PUC.

“Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Article 12 (Events of Default; Remedies). The calculation of a Settlement Amount for a Terminated Transaction shall exclude any Default Damages calculated pursuant to Section 12.2 (Remedies) for the same Terminated Transaction. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

“Step-Up” shall have the meaning ascribed to it in Section 4.13 (Seller Step-Up Rights).

“Tangible Net Worth” or “TNW” means an entity's total assets (exclusive of intangible assets), minus that entity's total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission or similar Governmental Authority or governing body in such jurisdiction of incorporation, organization or formation. Should there arise a discrepancy between this definition of TNW and the provisions of Article 14, Article 14 shall govern.

“Terminated Transaction(s)” means any Transaction which has been terminated in accordance with Section 12.2.

“Tier 1 Alternative Energy Sources” shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

“Tier 2 Alternative Energy Sources” shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

“Time-of-Use” or “TOU” shall be a time-varying rate option offered by the Buyer to meet its obligations under 66 Pa. C.S. § 2807(f).

“Time-of-Use Monthly Billed Load” means the customer usage that is billed on a monthly basis to those eligible customers accepting service on a TOU program that has been approved by the PUC.

“Time-of-Use Off-Peak Hours” means all hours that are deemed by the PUC to be Off-Peak Hours under a PUC approved TOU program.

“Time-of-Use On-Peak Hours” means all hours that are deemed by the PUC to be On-Peak Hours under a PUC approved TOU program.

“TNW Amount” shall equal the product of the applicable TNW Percentage and an entity’s Tangible Net Worth.

“TNW Percentage” means the percentage determined pursuant to Section 14.3 (Unsecured Credit) that is multiplied by an entity’s Tangible Net Worth to determine that entity’s TNW Amount.

“Transaction” means a particular agreement by which Buyer purchases and Seller sells Full Requirements Service pursuant to this Agreement, the details of which are more fully set forth in a Transaction Confirmation.

“Transaction Confirmation” shall have the meaning ascribed to it in Section 2.9 (Transaction Confirmation).

“Transaction Date” means the date on which a Transaction under this Agreement is executed by Buyer and Seller as set forth in the Transaction Confirmation.

“Transmitting Utility” means the utility or utilities, and their respective control area operators and their successors, transmitting all or any portion of the Full Requirements Service.

“Unaccounted For Energy” means the difference between the Buyer’s hourly system load and the sum of: (i) the estimated hourly customer loads (interval metered and profiled); and (ii) electrical losses, and Unaccounted For Energy as determined in the Buyer’s load settlement process for the Monthly Settlement Load.

“Unsecured Credit” means an amount that is the lower of: (i) the relevant Unsecured Credit Limit as determined pursuant to Section 14.3 (Unsecured Credit); (ii) the relevant TNW Amount, as determined pursuant to Section 14.3 (Unsecured Credit); or (iii) the Guaranty Amount from Seller’s Guarantor as set forth in the Guaranty Agreement.

“Unsecured Credit Limit” shall have the meaning ascribed to it in Section 14.3 (Unsecured Credit).

ARTICLE II TERMS AND CONDITIONS OF FULL REQUIREMENTS SERVICE

- 2.1 Seller’s Obligation to Provide Service. With respect to a Transaction, Seller shall provide Full Requirements Service on a firm and continuous basis such that the Specified Percentage is supplied at the Delivery Point during the Delivery Period. For those Full Requirements Contracts with assigned Default Service Time-of-Use Load, Seller shall, at Buyer’s request, provide Full Requirements Service on a firm and continuous basis, meeting the assigned obligation amount.
- 2.2 Buyer’s Obligation to Take Service. With respect to a Transaction, Buyer shall accept Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller’s Obligation to Provide Service), and shall pay Seller the Monthly Settlement Amounts for such Full Requirements Service on the applicable Monthly Settlement Date in accordance with Section 7.3 (Payments of the Invoice). With respect to Seller’s TOU Obligation, Buyer shall accept, if requested, Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller’s Obligation to Provide Service), and shall pay Seller the Buyer’s revenues received for Time-of-Use Off-Peak Hours and Time-of-Use On-Peak Hours for TOU Monthly Billed Load.
- 2.3 Network Integration Transmission Service and Distribution Service. With respect to a Transaction, Buyer shall be responsible, at its sole cost and expense, for the provision of Network Integration Transmission Service and distribution service necessary to serve the Specified Percentage. Buyer is responsible, at its sole cost and expense, for future PJM charges assessed to network transmission customers for PJM-required transmission system enhancements pursuant to the PJM Regional Transmission Expansion Plan (as defined in the PJM Agreements) and for future PJM charges assessed to network transmission customers, including for transition costs related to the elimination of through-and-out transmission rates. Seller shall be responsible for transmission charges to deliver power to the Duquesne Zone and for Grid Management Charges.
- 2.4 Congestion and Congestion Management. Seller is responsible for any congestion costs incurred to supply the Specified Percentage. Buyer shall transfer or assign to Seller Buyer’s rights to Auction Revenue Rights (ARRs) to which Buyer is entitled as an LSE pursuant to the PJM Agreements, provided that such rights are related to the service being provided to the Specified Percentage and for the applicable term hereunder. All rights and obligations associated with such ARRs will accrue to the Seller through the transfer or assignment from Buyer to Seller including the responsibility and ability of Seller to request and nominate such ARRs when applicable. Seller shall have the right to request and nominate ARRs if: (i) all Transactions for Default Service Load have been executed and are in full force and effect; and (ii) the Delivery Period under each Transaction

Confirmation is inclusive of the PJM Planning Period for which the ARRs are being requested or nominated. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARRs for the upcoming PJM Planning Period and such ARRs will be allocated to Seller in accordance with the PJM Agreements based upon its Specified Percentage.

- 2.5 Other Changes in PJM Charges. Except as provided in Section 2.3 (Network Integration Transmission Service and Distribution Service), Seller bears the risk of any other changes in PJM products and pricing during the term of this Agreement.
- 2.6 Status of Seller. Seller, for purposes of this Agreement, is not a Load Serving Entity and nothing contained herein shall be deemed to cause Seller to be a Load Serving Entity.
- 2.7 Sales for Resale. All Full Requirements Service provided by Seller to Buyer shall be sales for resale, with Buyer reselling such Full Requirements Service to certain of its retail customers that are receiving Medium C&I Service from Buyer under a Default Service Rate Schedule pursuant to this Agreement. At Seller's request, Buyer shall provide Seller with mutually agreeable resale certificates related to the Full Requirements Service provided pursuant to this Agreement.
- 2.8 Governing Terms. Each Transaction shall be governed by this Agreement. This Agreement, including all schedules and exhibits hereto, any designated collateral, credit support, margin agreement or similar arrangements and all Transaction Confirmations shall form a single integrated agreement between Buyer and Seller. Any inconsistency between terms in this Agreement and terms in a Transaction Confirmation shall be resolved in favor of the terms of this Agreement.
- 2.9 Transaction Confirmation. A Transaction shall be documented in a Transaction Confirmation in the form attached hereto as Exhibit A. On the next Business Day following the Business Day on which Seller is selected as a provider of Full Requirements Service, Buyer will forward by e-mail, facsimile or other immediate means acceptable to both Parties, to Seller a partially executed Transaction Confirmation(s) and shall send by overnight delivery one (1) original. Except as otherwise provided in the RFP, by 2:00 p.m. EPT on the next Business Day following Seller's receipt of such facsimile of partially executed Transaction Confirmation(s), Seller shall return by e-mail, facsimile, or other immediate means acceptable to both Parties, to Buyer a fully executed Transaction Confirmation(s), and shall send by overnight delivery one (1) original. In addition, if such Transaction(s) is the initial Transaction(s) with the Seller under the current RFP solicitation, then Buyer will forward by e-mail, facsimile or other immediate means acceptable to both Parties, to Seller a fully executed Agreement, and shall send by overnight delivery one (1) original. By close of the same Business Day on which Buyer is in receipt of the bids, Buyer shall submit all the bids, including the winning bids, to the Pennsylvania PUC for review and

approval. Unless it orders otherwise, the PUC will approve the winning bids no later than two days following submittal.

ARTICLE III SCHEDULING, FORECASTING, AND INFORMATION SHARING

- 3.1 Scheduling. Seller shall schedule Full Requirements Service pursuant to the PJM Agreements. Buyer will provide to PJM all information required by PJM, for the purpose of calculating Seller's Full Requirements Service obligations.
- 3.2 Load Estimates. On a daily basis, for each hour during the term of this Agreement on and following the initial Delivery Date, Buyer shall deliver to Seller the Default Service Supply Estimates for the following calendar day in accordance with the terms of the Supplier Tariff. Buyer may provide updates to any Default Service Supply Estimates delivered to Seller by delivering to Seller a subsequent real-time Default Service Supply Estimate. In addition, Buyer shall deliver to Seller, as often as is practicable but in no event later than the end of each month, a report listing known changes in the Default Service Load. Buyer does not make any representation or warranty, and expressly disclaims any representation or warranty, regarding the accuracy or completeness of the Default Service Supply Estimates, or any information contained in such Default Service Supply Estimates. On a daily basis, for each hour during the term of this Agreement on and following the initial Delivery Date, Buyer shall deliver to PJM Buyer's estimate of the Energy associated with the Default Service Load for the preceding calendar day in accordance with the terms of the PJM Agreements. Buyer shall provide any necessary updates to PJM in accordance with the PJM Agreements.
- 3.3 Information Sharing. On each Business Day, Buyer shall provide to Seller on a reasonable efforts basis, Buyer's estimation of the Capacity information related to Seller's obligations under this Agreement that Buyer provides to PJM daily. Buyer does not warrant the accuracy of such information.

ARTICLE IV SPECIAL TERMS AND CONDITIONS

- 4.1 Load Response Programs. Buyer will manage its load response programs in accordance with PJM Agreements as amended from time to time and the provisions of its applicable riders and retail electric service tariffs, as amended and approved by the PUC from time to time, or Buyer customer contracts, as amended by the Buyer from time to time. Buyer will retain all of the benefits associated with its load response programs, including but not limited to all associated wholesale revenues from PJM for Capacity, Energy and Ancillary Services. Unless specifically prohibited by its retail electric service tariffs, Default Service customers may, at their election, participate in demand response programs offered under the PJM Agreements.

- 4.2 Demand Side Response, Energy Efficiency, Net Metering and Retail Market Programs. Seller acknowledges that Default Service customers may participate in Demand Side Response, Energy Efficiency, Net Metering and Retail Market Programs offered by Buyer or by third parties, including Curtailment Service Providers, which are available on the Effective Date or may become available during the Delivery Period, and that such participation may reduce or change Default Service Load that might otherwise be served in the absence of such programs and, accordingly, the Monthly Settlement Amount received by Seller. To the extent that PJM imposes charges on Buyer as LSE associated with PJM Demand Response programs, those charges will be allocated by Buyer to Seller in proportion to Seller's Specified Percentage. Except as provided in the preceding sentence, Buyer shall retain all of the benefits associated with its Demand Side Response Programs and/or Energy Efficiency Programs.
- 4.3 Time of Use. In accordance with PUC statutes, regulations and Orders, Buyer may provide Time of Use rates to its customers when Smart Meters are installed. At that time, Buyer may request TOU supply from Seller pursuant to the terms and conditions included in this Agreement. Buyer will charge TOU customers the rates that are approved by the PUC for TOU service, and Seller will be paid the revenues that Buyer receives for TOU service for that portion of supply used by TOU customers, netted to reflect any other adjustments set forth herein. Seller assumes the risk that these TOU revenues may be higher or lower than the fixed price provided for under Exhibit A. Buyer reserves the sole right to bid TOU supply out separately from this Agreement, and if that occurs, that amount of TOU supply will not be included in this Agreement.
- 4.4 PJM e-Accounts. Buyer and Seller shall work with PJM to establish any PJM e-Accounts (as defined in the PJM Agreements) necessary for Seller to provide Full Requirements Service. In a timely manner, Buyer shall establish PJM e-Account contract(s) for the entire duration of the Transaction(s) and Seller shall confirm the PJM e-Account contract(s) for the entire duration of the Transaction(s).
- 4.5 Pennsylvania Disclosure Requirements. Subject to any applicable confidentiality requirements, Seller shall provide to Buyer, to the best of its knowledge, the generation resources used to supply Full Requirements Service, in order to comply with the requirements, if any, of the PUC or any other Governmental Authority that relate to reporting such information. All information provided pursuant to this Section 4.5 (Pennsylvania Disclosure Requirements) shall be provided in a timely manner and in an appropriate form to enable Buyer to comply with the requirements, if any, of the PUC or any other Governmental Authority that relate to reporting such information.
- 4.6 Alternative Energy Portfolio Standards Obligation.
- (a) Seller shall provide Buyer with AECs required to comply with the Alternative Energy Portfolio Standards, including regulations adopted

thereunder, (together the "AEPS Obligation") in proportion to Seller's Specified Percentage.

- (b) Seller and Buyer shall work together to establish the proper accounts within the GATS. Seller shall be a subscriber to GATS and is responsible for paying its annual subscription fee. Seller shall transfer all AECs to Buyer using GATS. Seller shall transfer certificates into the Buyer's account(s) on a timely basis in the amount necessary to fulfill Seller's AEPS Obligation under this Agreement. Seller shall be responsible for paying the volumetric fees associated with LSE GATS fee requirements in proportion to Seller's Full Requirements Service. Seller warrants that all AECs transferred to Buyer during an AEPS Reporting Period (or during the twenty calendar days thereafter) shall be eligible for Buyer's use for compliance during such AEPS Reporting Period.
- (c) Seller shall provide to the Buyer all information regarding its share of the AEPS Obligation that may be required by the PUC rules governing reporting and auditing of Buyer's compliance with the AEPS Obligation.
- (d) The Buyer will provide the Seller with a version of Exhibit B to this Agreement at the same time that it provides the Transaction Confirmation. Exhibit B at that time will incorporate the AEPS percentage obligations for the applicable delivery year covered by the Transaction Confirmation(s) in effect on the day the bid was submitted. Exhibit B as provided with the Transaction Confirmation(s) will apply during the term of the Agreement and will be used to determine the Seller's AEPS Obligation.
- (e) If Seller fails to fulfill Seller's AEPS Obligation for any AEPS Reporting Period as provided in Section 4.7(b), Buyer shall invoice Seller and Seller shall pay liquidated damages equal to the AEC Non-Solar Penalty or the AEC Solar Penalty for such Transaction, as applicable, for each AEC Seller failed to provide for that AEPS Reporting Period. If the PUC subsequently establishes an alternative compliance payment under the AEPS Act for non-compliance with the Tier I (solar) requirements in excess of the AEC Solar Penalty for such AEPS Reporting Period, Seller shall also pay Buyer the amount in excess of the AEC Solar Penalty; if the tier I (solar) alternative compliance payment is less than AEC Solar Penalty, Buyer shall refund the difference to Seller. Moreover, the Seller will be liable for any costs directly or indirectly related to the procurement of AECs by the Buyer or related to any penalties or costs associated with non-compliance of the AEPS Act in the event that the Seller defaults in its obligations under this Section.
- (f) Seller shall provide Buyer all information Buyer may require to comply with the AEPS Act and its implementing regulations and other

Requirements of Law, including but not limited to the price paid per AEC required by 73 Pa.C.S. § 1648.3(e)(8).

- 4.7 Title Transfer. Seller shall cease to have title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claims) and 9.2 (Buyers Indemnification for Third-Party Claims) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Seller warrants that it has good title to the Full Requirements Service sold and delivered hereunder and that it has the right to sell such Full Requirements Service. The word "loss" in this Section (Title Transfer) does not encompass electrical transmission losses and distribution losses. As between Buyer and Seller only, Buyer shall take title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claims) and 9.2 (Buyer's Indemnification for Third-Party Claims) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Notwithstanding the foregoing, nothing contained in this Agreement is intended to create or increase liability of Buyer to any third party beyond such liability, if any, that would otherwise exist under the PJM Agreements or under applicable law if Buyer had not taken title.
- 4.8 Reliability Guidelines and Compliance Requirements. Each Party agrees to adhere to the applicable operating policies, criteria and/or guidelines of the NERC, PJM, their successors, and any regional or sub regional requirements. Each Party agrees to provide in a timely manner all required information to the other Party, as necessary, to assure Seller's and Buyer's compliance with all applicable reliability standards.
- 4.9 Declaration of Authority. For the period of time that this Agreement is in effect, both Buyer and Seller shall have executed the Declaration of Authority in the form attached as Exhibit H.
- 4.10 PJM Membership; Integration. On the Effective Date and continuing through the term of this Agreement, Seller shall be (i) a member in good standing of PJM; and (ii) qualified as a PJM "Market Buyer" and "Market Seller" pursuant to the PJM Agreements.
- 4.11 FERC Authorization. Beginning on the Effective Date and continuing through the term of this Agreement, Seller shall have FERC authorization to make sales of energy, and capacity at market based rates.
- 4.12 Disclosure in Event of Seller Default. If Seller defaults and this Agreement is terminated pursuant to Article 12 (Events of Default; Remedies), Buyer may disclose the terms of this Agreement and any Transaction Confirmation to all other non-defaulting wholesale suppliers providing Medium C&I Service to Buyer in connection with Full Requirements Service associated with the Default Service Load. Such disclosure by Buyer shall be made for the purpose of allowing

each non-defaulting wholesale supplier to make its Step-Up elections described in Section 4.13 (Seller Step-Up Rights) below.

- 4.13 **Seller Step-Up Rights.** Buyer may ask other sellers whether they wish to assume all or part of the delivery obligations on the same terms and price contained herein, but any seller shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a “Step-Up.” Buyer would only exercise this pursuant to a Commission approved plan to address defaults. For the avoidance of doubt, in the event that Seller does not respond to Buyer’s Step-Up request within the relevant timeframe, Seller shall be deemed to have rejected the Buyer’s request in full.

ARTICLE V TERM AND SURVIVAL

- 5.1 **Term.** Unless otherwise agreed upon by Buyer and Seller, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed under this Agreement, unless the Agreement is terminated prematurely pursuant to Article 12 (Events of Default; Remedies) of this Agreement.

ARTICLE VI DETERMINATION OF DELIVERED QUANTITIES

- 6.1 **Monthly Settlement Load.** The amount of Monthly Settlement Load with respect to any calendar month during the Delivery Period shall be determined in terms of megawatt-hours (MWh) of Energy. The MWh of Energy shall be equivalent to the amount of Energy reported as the Seller’s Specified Percentage obligation by Buyer to PJM with duration adjustments for marginal losses.

ARTICLE VII BILLING AND SETTLEMENT

- 7.1 **Billing.** Unless otherwise agreed to by the Parties, on or before the sixth (6th) Business Day of each month, Buyer shall deliver to Seller, via electronic transmission or other means agreed to by the Parties, an invoice (“Invoice”) that sets forth the total amount due for the previous calendar month for all Transactions. The Invoice shall detail for each Transaction, where applicable, the following:

- (a) Monthly Settlement Load
- (b) Monthly Settlement Price
- (c) Monthly Settlement Amount
- (d) PJM Billing Adjustments

- (e) Any other adjustments set forth in this Agreement.

7.2 PJM Billing.

- (a) Buyer and Seller shall direct PJM to invoice Seller and Buyer for charges and credits relating to Seller's and Buyer's rights and obligations under this Agreement, as set forth in Exhibit D attached hereto and made a part hereof. If PJM is unable to invoice charges or credits in accordance with Exhibit D, Buyer shall rectify such PJM invoice discrepancy in the Invoice sent pursuant to Section 7.1 (Billing).
- (b) The Parties agree that the PJM bill may change from time to time. Allocation of any charges that are reflected in a PJM bill that are not included on or are inconsistent with Exhibit D will be determined pursuant to Sections 2.3 (Network Integration Transmission Service and Distribution Service), 2.5 (Other Changes in PJM Charges), and 16.11 (PJM Agreement Modifications) of this Agreement.

7.3 Payments of the Invoice.

- (a) Except as may otherwise be provided in this Agreement, on the Monthly Settlement Date, Buyer will pay to Seller, or Seller will pay to the Buyer, as the case may be, the total amount due in the applicable Invoice. All payments due hereunder shall be made to the Party owed such payments by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), unless otherwise agreed to by the Parties, to a bank designated in writing by such Party, by 8:00 p.m. EPT on the Monthly Settlement Date. Should an invoice not be received by Seller by the 10th day of the month, then the invoice shall be paid 10 days after receipt. Payment of Invoices shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement (other than the obligation to make such payment) nor shall such payment constitute a waiver of any claims arising hereunder.
- (b) For Time-of-Use Load, Buyer shall make payment to Seller based upon the revenues received for Time-of-Use Off-Peak Hours and Time-of-Use On-Peak Hours for the Time-of-Use Monthly Billed Load. Buyer shall initiate payment based upon the terms set forth in Section 7.3(a) of this Agreement.

7.4 Netting of Payments. The Parties shall discharge mutual debts and payment obligations due and owing to each other under this Agreement, as of the Monthly Settlement Date, such that all amounts owed by each Party to the other Party shall be reflected in a single amount due to be paid by the Party who owes it and received by the other Party, provided that the calculation of the net amount shall not include any disputed amounts being withheld pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices).

7.5 Billing Disputes and Adjustments of Invoices.

- (a) Within twelve (12) months of the date on which an Invoice is issued, Buyer may, in good faith, adjust the Invoice to correct any errors. The adjustment shall include interest calculated at the Interest Rate from the original due date to the date of payment. Buyer shall provide Seller a written explanation of the basis for the adjustment.
- (b) Within twelve (12) months of the date on which an Invoice is issued or an Invoice is adjusted pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices), Seller may, in good faith, dispute the correctness of such Invoice or adjustment, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that Seller has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.
- (c) Within twelve (12) months of the date on which a PJM bill is issued, Buyer or Seller may, in good faith, dispute the correctness of any such PJM bill, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that the disputing Party has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.

7.6 Interest on Unpaid Balances. Interest on delinquent amounts, other than amounts in dispute as described in Section 7.5 (Billing Disputes and Adjustment of Invoices), shall be calculated at the Interest Rate from the original due date to the date of payment.

**ARTICLE VIII
TAXES**

8.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Taxes.

- (a) As between the Parties: (i) The payment of any Governmental Authority taxes ("Governmental Charges") imposed on or with respect to Seller's wholesale sales of Full Requirements Service to the Delivery Point shall be the responsibility of Seller; and (ii) The payment of any Governmental Charges on or with respect to the retail sales of Full Requirements Service shall be the responsibility of Buyer. The payment of any Pennsylvania gross receipts taxes attributable to Buyer's sale of Energy to its retail customers shall be the responsibility of Buyer.
- (b) Any Party paying taxes that should have been paid by the other Party pursuant to Section 8.2(a) (Taxes) shall be reimbursed by such other Party

in the next Invoice issued under this Agreement pursuant to Section 7.1 (Billing).

ARTICLE IX INDEMNIFICATION

- 9.1 Seller's Indemnification for Third-Party Claims. Seller shall indemnify, hold harmless, and defend Buyer and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Governmental Authorities in any action or proceeding between Buyer and a third party or Seller for damage to property of unaffiliated third parties, injury to or death of any person, including Buyer's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Seller's performance under this Agreement, Seller's exercise of rights under this Agreement, or Seller's breach of this Agreement.
- 9.2 Buyer's Indemnification for Third-Party Claims. Buyer shall indemnify, hold harmless, and defend Seller and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Seller's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Governmental Authorities in any action or proceeding between Seller and a third party or Buyer for damage to property of unaffiliated third parties, injury to or death of any person, including Seller's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Buyer and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Buyer's performance under this Agreement, Buyer's exercise of rights under this Agreement, or Buyer's breach of this Agreement.
- 9.3 Indemnification Procedures. If either Party intends to seek indemnification under Sections 9.1 (Seller's Indemnification for Third-Party Claims) or 9.2 (Buyer's Indemnification for Third-Party Claims), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in

this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE X LIMITATIONS ON LIABILITY

EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE XI FORCE MAJEURE

- 11.1 Force Majeure. Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the

Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Section 11.2 (Notification).

- 11.2 Notification. A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

ARTICLE XII EVENTS OF DEFAULT; REMEDIES

- 12.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;
 - (b) any representation or warranty made by such Party herein or in response to the RFP that is false or misleading in any material respect when made or when deemed made or repeated;
 - (c) the failure of a Party to comply with the requirements of Section 4.10 (PJM Membership; Integration) and 4.11 (FERC Authorization) if such failure is not remedied within three (3) Business Days after written notice;
 - (d) PJM has declared a Party to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;
 - (e) except to the extent constituting a separate Event of Default, the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within three (3) Business Days after written notice;
 - (f) such Party becomes Bankrupt;
 - (g) such Party consolidates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, or assigns the Agreement or any rights, interests, or obligations hereunder without the prior written consent of the other Party when such consent is required, and, at the time of such consolidation, merger, transfer or assignment, the resulting, surviving, transferee, or assignee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a

party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (h) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of either \$100,000,000 or an amount equal to 5% of the Tangible Net Worth of the Party, whichever is lower, which results in such indebtedness becoming immediately due and payable; or (ii) a default by such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of either \$100,000,000 or an amount equal to 5% of the Tangible Net Worth of the Party, whichever is lower, under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);
- (i) the failure of a Party to comply with its obligations pursuant to Article 14 (Performance Assurance/Accelerated Payments) if such failure is not remedied within three (3) Business Days after written notice;
- (j) with respect to Seller's Guarantor, if any:
 - (i) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of the Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) the failure of the Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party;
 - (iv) the Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty; or
 - (v) conditions described with respect to a Party in subparagraph (f) of this Section 12.1 (Events of Default) occurs with respect to its Guarantor.

12.2 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party"), shall provide written notice to the Defaulting Party and shall have the right to

temporarily suspend performance pursuant to Section 12.2(a) or implement all of the following remedies pursuant to Section 12.2(b):

- (a) If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Section 12.2(b). In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement all the following remedies:
 - (i) designate a day, in such notice, no earlier than the day such notice is effective and no later than twenty (20) (calendar) days after such notice is effective, as an early termination date ("Early Termination Date"), for the purposes of determining the Settlement Amount;
 - (ii) calculate and receive from the Defaulting Party, payment for any Default Damages the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of Default, until the earlier of: (i) the Early Termination Date (if applicable); or (ii) the Event of Default has been cured by the Defaulting Party; or (iii) the Non-Defaulting Party waives such Event of Default;
 - (iii) withhold any payments due to the Defaulting Party under this Agreement as an offset to any Default Damages or Termination Payment, as defined in Section 12.3 (Calculation and Net Out of Settlement Amounts); and
 - (iv) permanently suspend performance.
- (b) If an Event of Default has occurred and the Non-Defaulting Party is the Buyer, then:
 - (i) unless the Event of Default was a failure by Seller to meet any or all of its Full Requirements Service obligations, Buyer may elect, at its sole discretion, to offer to waive the default on such terms and conditions as Buyer, at its sole discretion, may deem appropriate to propose ("Special Remedy") provided that;
 - (ii) Any such Special Remedy can only be offered to Seller if it first is specifically approved by the PUC in accordance with PUC Orders.

12.3 Calculation and Net Out of Settlement Amounts.

- (a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable. For purposes of calculating the Settlement Amount, the Non-Defaulting Party shall reflect the net impact of the exercise of the option on the part of other wholesale suppliers as described in Section 4.13 (Seller Step-Up Rights) of this Agreement. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single liquidated amount (the "Termination Payment") by netting out: (i) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security, if any, then available to the Non-Defaulting Party pursuant to Article 14 (Performance Assurance/Accelerated Payments), plus any or all other amounts due to the Defaulting Party under this Agreement, against (ii) all Settlement Amounts that are due to the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party, including but not limited to Default Damages, under this Agreement. The Termination Payment shall be due to or from the Non-Defaulting Party as appropriate. When the Buyer is the Non-Defaulting Party and replaces Seller's full requirements obligation under this Agreement, the result of that procedure will be deemed to be commercially reasonable for purposes of calculating the Settlement Amount.
- (b) Seller may, in its sole discretion, add the following subsection 12.3(b) by checking this box. If Seller does not check this box, subsection 12.3(b) will not be deemed to be included as part of the Parties' Agreement.
- (b) In order to avoid doubt regarding a commercially reasonable calculation for the purposes of calculating the Settlement Amount by the Non-Defaulting Party, the quantity of amounts of Energy, Capacity and other services to have been provided under the DSMA for the period following the Early Termination Date (the "Termination Quantity") shall be deemed those quantity amounts that would have been delivered on an hourly basis had the DSMA been in effect during the previous calendar year, adjusted for such Default Service load changes as have occurred since the previous calendar year. Nothing in this section shall limit the right of the Buyer when Seller is the Defaulting Party to replace Seller's full requirements obligation and the result of any Commission approved procedure will be deemed to be commercially reasonable for purposes of calculating the

Settlement Amount and will be deemed to have been determined by reference to the Termination Quantity.

- 12.4 Notice of Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide written notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The owing Party shall make the Termination Payment within five (5) Business Days after such notice is effective.
- 12.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a notice that it intends to dispute the calculation of the Termination Payment ("Termination Payment Dispute Notice"), pursuant to the provisions of Article 12 (Dispute Resolution), and provided, however, that, if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party with the Termination Payment Dispute Notice.
- 12.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 12.3 (Calculation and Net Out of Settlement Amounts), if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to: (i) set off against such Termination Payment any amounts payable by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party; and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 12.2 (a), withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Article shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). If any obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set-off in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained.
- 12.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.
- 12.8 Return of Auction Revenue Rights. When the Seller is the Defaulting Party, the Seller shall transfer or reassign to the Buyer on the Early Termination Date, any

and all of Buyer's rights to Auction Revenue Rights (ARRs) to which Buyer is entitled as an LSE pursuant to the PJM Agreements, which were transferred or assigned to Seller under Section 2.4 (Congestion and Congestion Management).

ARTICLE XIII DISPUTE RESOLUTION

- 13.1 Informal Dispute Resolution. Before pursuing resolution of any dispute arising out of this Agreement, the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Section 13.1 (Informal Dispute Resolution) shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Rate from the original due date through the date of payment.
- 13.2 Formal Dispute Resolution. After the requirements of Section 13.1 (Informal Dispute Resolution) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Notwithstanding anything set forth in this Article 13 (Dispute Resolution) to the contrary, any dispute concerning new PJM charges will be resolved in accordance with the procedures set forth in Section 2.4 (Other Changes in PJM Charges).

ARTICLE XIV PERFORMANCE ASSURANCE/ACCELERATED PAYMENTS

- 14.1 Requirement for Performance Assurance. With respect to Aggregate Transactions, if at any time and from time to time during the term of this Agreement, Aggregate Buyer's Exposure exceeds the Unsecured Credit on any Business Day, then Buyer may request that Seller post Performance Assurance in an amount equal to the amount by which Aggregate Buyer's Exposure exceeds the Unsecured Credit (rounding upwards to the nearest \$100,000), less any Performance Assurance already posted with Buyer. Notwithstanding the above, Seller shall only be required to post the required Performance Assurance to the extent the amount of required Performance Assurance is equal to or greater than \$250,000. Subsequent and incremental requests for Performance Assurance shall be in \$100,000 increments. Buyer's request for Performance Assurance shall not be disputed by Seller.
- 14.2 Performance Assurance Transfers/Returns. If the request for Performance Assurance is made by Buyer before 1:00 p.m. EDT on a Business Day, then if Seller is posting cash as the form of Performance Assurance Collateral, Seller

shall be required to deliver the Performance Assurance cash to Buyer on the Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the second Business Day following the date of such request. If a request for Performance Assurance is made by Buyer at or after 1:00 p.m. EPT, then if Seller is posting cash as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance cash to Buyer on the second Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the third Business Day following the date of such request. Telephone, facsimile, or other communication means mutually acceptable by the Parties, are suitable means for the Buyer to make requests for Performance Assurance. Buyer shall be entitled to hold Performance Assurance in the form of Cash, provided that the following conditions are satisfied: (1) it has not defaulted; (2) Buyer has a Credit Rating of (a) at least BBB- from S&P and Baa3 from Moody's, if Buyer is rated by both S&P and Moody's but not by both; and (3) cash shall be held only in any jurisdiction within the United States. To the extent the Buyer is entitled to hold Cash, the interest payable to Seller shall be calculated by multiplying the amount of cash held times the Federal Funds Effective Rate for that day as set forth in the weekly statistical release designated as H.15.(519), or any successor publication, published by the Board of Governors of the Federal Reserve System. Buyer shall not be entitled to hold Performance Assurance in the form of cash under other circumstances than those above. Rather, Performance Assurance in the form of cash shall be held in any major U.S. commercial bank, or a foreign bank with a U. S. branch office, (which is not the Buyer or an affiliate of the Buyer), and has assets of at least \$10 billion and a credit rating of at least "A" by Standard and Poor's, or "A2" by Moody's Investor Services ("Qualified Institution"). Buyer will pay to Seller on the first Business Day of each calendar quarter the amount of interest it receives based upon the applicable overnight repurchase interest rate from the Qualified Institution on any Performance Assurance in the form of cash posted by Seller. The interest amount or portion thereof not returned to Seller pursuant to this Section 14.2 (Performance Assurance Transfers>Returns) will constitute Performance Assurance and will be subject to the provisions of Article 14 (Performance Assurance) of this Agreement.

On any Business Day (but no more frequently than weekly with respect to Letters of Credit or other security acceptable to Buyer, and daily with respect to cash), Seller, at its sole cost, may request that the Performance Assurance be reduced correspondingly to reflect the decrease in Buyer Exposure or an increase in Seller's Unsecured Credit, if any (rounding upwards for any fractional amount to the nearest \$100,000). Buyer shall be required to return the amount of Performance Assurance due in accordance with the timeframes set forth in the preceding paragraph. Telephone, facsimile, or other communication means

mutually acceptable by the Parties are suitable means for the Seller to make requests for return of Performance Assurance.

In the event that Seller fails to provide Performance Assurance or Buyer fails to return Performance Assurance pursuant to the terms of this Article 14 (Performance Assurance/Accelerated Payments) within the applicable timeframes, then an Event of Default pursuant to Section 12.1(i) (Events of Default) shall be deemed to have occurred with respect to the non-performing Party and the other Party will be entitled to the remedies set forth therein.

In instances caused by the timing of the requests for both the return of Performance Assurance and placement of Performance Assurance, a situation may arise where the Parties are both sending and receiving transactions on the same day. In these instances, the Parties may net the requested amounts and proceed with only one transaction. Netting is only permitted for Performance Assurance purposes if it is mutually agreed to by both Parties in advance and confirmed in advance.

- 14.3 Unsecured Credit. During the term of this Agreement, Buyer shall extend, solely with respect to the Performance Assurance set forth in Section 14.1 (Requirement for Performance Assurance), Unsecured Credit to Seller in an amount initially determined on the Effective Date and re-determined each Business Day thereafter pursuant to this Section 14.3.

The relevant Unsecured Credit Limit shall be the Unsecured Credit Limit listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's. The relevant TNW Amount shall be calculated using the TNW Percentage listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

<u>Credit Rating</u>				
<u>S&P</u>	<u>Fitch</u>	<u>Moody's</u>	<u>TNW Percentage</u>	<u>Unsecured Credit Limit</u>
A- or above	A-or above	A3 or above	16%	\$60,000,000
BBB+	BBB+	Baa1	10%	\$40,000,000
BBB	BBB	Baa2	7%	\$30,000,000
BBB-	BBB-	Baa3	3%	\$20,000,000
BB+ or below	BB+ or below	Ba1 or below	0%	\$0

- 14.4 Credit Rating. If during the term of the Agreement, Seller's or Seller's Guarantor's Credit Rating changes, by either being upgraded or downgraded by any of the rating agencies referenced in Section 14.3 (Unsecured Credit) of the Agreement, the Seller shall be required to provide written notice to Buyer of such Credit Rating change no later than two (2) Business Days after the date of such change.
- 14.5 Tangible Net Worth. During the term of the Agreement, Seller, or Seller's Guarantor shall be required to provide Buyer written financial information to determine the Seller's, or Seller's Guarantor's Tangible Net Worth. Financial information shall include an audited "Annual Report", containing, but not limited to, a balance sheet prepared in accordance with generally accepted accounting principles, a schedule of long term debt including maturity dates, and all notes to the financial statement that apply to long term debt, short term borrowing, and liquidity and capital resources. The Seller or Seller's Guarantor, shall also provide the Buyer written financial information on a quarterly basis containing a balance sheet prepared in accordance with generally accepted accounting principles. However, if Seller's, or Seller's Guarantor's equity is publicly traded on the New York Stock Exchange, NASDAQ National Market, or American Stock Exchange, the Buyer will waive the requirement to provide written financial information.
- 14.6 Foreign Entities. The following standards shall apply to Seller, or Seller's Guarantor, that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States. For Sellers who cannot meet the following requirements, the posting of cash or letter of credit in an acceptable form (see standard format in Exhibit C) for the Aggregate Buyer's Exposure shall be required.
- (a) The Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. The Buyer shall have full and sole discretion, without liability or recourse to the Seller, to evaluate the evidence of creditworthiness submitted by such Seller; or
 - (b) The Guarantor of a Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Guarantors of Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. Buyer shall have full and sole discretion, without liability or recourse to the Guarantor or the Seller, to evaluate the evidence of creditworthiness submitted by such Guarantor.

All Sellers or Guarantors of Sellers that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States shall, in addition to all documentation required elsewhere in this Section 14.6 (Foreign Entities), supply the following as a condition of being granted Unsecured Credit, up to a maximum level, for the purpose of covering the Aggregate Buyer's Exposure:

(c) For Seller:

- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Seller is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the Seller in the jurisdiction in which it has been incorporated or otherwise formed; and
- (ii) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the person executing this Agreement on behalf of the Seller has the authority to execute the Agreement and that the governing board of such Seller has approved the execution of this Agreement; and
- (iii) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the Seller has been authorized by its governing board to enter into agreements of the same type as this Agreement.

Buyer shall have full and sole discretion, without liability or obligation to the Seller, to evaluate the sufficiency of the documents submitted by the Seller.

(d) For Guarantor of a Seller:

- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in the which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and
- (ii) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and

- (iii) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the Guaranty.

Buyer shall have full and sole discretion, without liability or obligation to the Guarantor or the Seller, to evaluate the sufficiency of the documents submitted by such Guarantor.

14.7 Aggregate Buyer's Exposure. In order to determine the amount of Performance Assurance during the term of this Agreement, Buyer shall calculate the Aggregate Buyer's Exposure under Aggregate Transactions once per Business Day, pursuant to the process and methodology described in Exhibit F. On a Transaction Date, the Buyer's Exposure for that Transaction shall be deemed equal to zero. To the extent that the calculations of the Aggregate Buyer's Exposure for a given date result in a negative number, the Aggregate Buyer's Exposure for such date shall be deemed equal to zero.

- (a) Buyer shall provide Seller with the On-Peak Initial Mark Price and the Off-Peak Initial Mark Price. In addition, on each Business Day, Buyer shall use reasonable efforts to provide Seller with the On-Peak Forward Price and the Off-Peak Forward Price. To the extent that information and/or quotes are not available to determine an On-Peak Forward Price or Off-Peak Forward Price for a given month Buyer shall be permitted to use information and/or quotes relevant to such month for which information/and quotes are available in order to provide Seller the required On-Peak Forward Price and Off-Peak Forward Price for such month. Exhibit E presents in more detail the methodology to be used by Buyer in determining the Off-Peak Initial Mark Price, the On-Peak Initial Mark Price, the On-Peak Forward Price and the Off-Peak Forward Price.
- (b) Buyer shall use reasonable efforts to provide Seller with the Aggregate Buyer's Exposure on each Business Day, subject to the Confidentiality provisions of this Agreement.
- (c) Pursuant to Section 14.1 (Requirement for Performance Assurance) above, Seller shall not dispute any request by Buyer for Performance Assurance. Notwithstanding such provision, Seller may dispute Buyer's determinations of the On-Peak Initial Mark Price, Off-Peak Initial Mark Price, On-Peak Forward Price and Off-Peak Forward Price if Seller can demonstrate that Buyer has been grossly negligent or has exhibited willful misconduct in such determinations, or that Buyer is making determinations in a manner that is arbitrary, capricious or erroneous on its face. Such dispute of Buyer's determinations by Seller shall not be cause for any delay by Seller in posting any Performance Assurance requested by Buyer.

ARTICLE XV
REPRESENTATIONS AND WARRANTIES

- 15.1 Representations and Warranties. On the Effective Date and throughout the term of this Agreement, each Party represents and warrants to the other Party that:
- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
 - (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
 - (d) this Agreement constitutes a legally valid and binding obligation of such Party enforceable against it in accordance with its terms; subject to any Equitable Defenses;
 - (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
 - (f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;
 - (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
 - (h) with respect to Buyer, it is acting to fulfill its obligations under and in accordance with PUC Orders to enter into this Agreement;
 - (i) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement;
 - (j) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, all setoffs, netting and liquidations contemplated hereunder constitute “settlement payments” as set forth in Sections 101 and 741 of the United States Bankruptcy Code and each payment or

transfer of Performance Assurance is a “margin payment”, “settlement payment” or transfer within the meaning of Section 101 of the United States Bankruptcy Code for the purposes of and as used in such Code;

- (k) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of the Full Requirements Service as required by this Agreement; and it is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act.

15.2 Additional Understandings. This Agreement is for the purchase and sale of Full Requirements Service that will be delivered in quantities expected to be used or sold over a defined period(s) in the normal course of business, and it is the intention at the inception and throughout the term of this Agreement and each Transaction hereunder that the Agreement will result in physical delivery and not financial settlement, and the quantity of Full Requirements Service that Seller must deliver and Buyer must receive will be determined by the requirements of the Default Service Load served by Buyer, and, as such, the Agreement does not provide for an option by either Party with respect to the quantity of Full Requirements Service to be delivered or received during performance of the Agreement. Notwithstanding any other provision of this Agreement, Seller acknowledges that Buyer makes no representation as to any amount of Default Service Load that may or may not be required during this Agreement. This Agreement has been drafted to effectuate Buyer's and Seller's specific intent so that in accordance with Financial Accounting Standards Board Statement No. 133 (“FAS 133”), as amended, Buyer would be able to elect to use accrual accounting for its purchases under this Agreement, while Seller would be able to elect to use either accrual or mark-to-market accounting for its sales under the Agreement. If either Buyer or Seller determines, in good faith, that the intended accounting treatment has become jeopardized, due to a change in interpretations of FAS 133, as amended, or otherwise, then Buyer and Seller agree to meet and use their best efforts to reform the Agreement so that, with the minimum changes possible, the Agreement again qualifies for the intended accounting treatments.

ARTICLE XVI MISCELLANEOUS

- 16.1 Notices. Unless otherwise specified herein, all notices shall be in writing and delivered by hand, overnight or facsimile (provided a copy is also sent by overnight mail). Notice shall be effective on the next Business Day after it is sent. A Party may change its address by providing notice of the same in accordance with this Section 16.1 (Notices). Notice information for Buyer and Seller is shown on Exhibit G.
- 16.2 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of

negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement or any Transaction. Any provision declared or rendered unlawful will not otherwise affect the remaining lawful obligations that arise under this Agreement; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

16.3 Rules of Interpretation. The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) references to the singular include the plural and vice versa;
- (d) references to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) in carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) if any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

16.4 Audit. Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Sections 7.1 (Billing) and 7.6 (Interest on Unpaid Balances) of this Agreement.

16.5 Confidentiality.

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; (iii) such document or information was available to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation or (v) such disclosure is made to PJM and is necessary in order for the transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.
- (b) Notwithstanding any other provision of this Section 16.5, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of the Section 16.5, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.
- (c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.
- (d) Any independent auditor performing an audit on behalf of a Party pursuant to Section 16.4 (Audit) shall be required to execute a confidentiality agreement with the Party being audited. Such audit information shall be treated as confidential pursuant to this Section 16.5.
- (e) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.5. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Section 16.5, 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.

- 16.6 Successors. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 16.7 Assignment/Change in Corporate Identity. Neither Party shall assign this Agreement, its rights or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder),
- (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements,
 - (b) after written notice, transfer or assign this Agreement to an Affiliate of such Party if (i) such Affiliate's creditworthiness is equal to or greater than that of such Party; or (ii) in the case of the Seller, where such Affiliate's creditworthiness is not equal to or higher than that of such Party, such Affiliate provides the Performance Assurance required pursuant to this Agreement and the other Party consents, which consent shall not be unreasonably withheld
 - (c) after written notice, transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose (i) creditworthiness is equal to or higher than that of such Party, or (ii) in the case of the Seller, where such entity's creditworthiness is not equal to or higher than that of such Party, such entity provides the Performance Assurance required pursuant to this Agreement and the other Party consents, which consent shall not be unreasonably withheld, and
 - (d) provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.
- 16.8 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTITUTED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
- 16.9 Jurisdiction and Venue. Except for matters jurisdictional to FERC, the PUC or the appellate courts having jurisdiction over the PUC or FERC matters, all disputes hereunder shall be resolved in the Federal or State courts of Pittsburgh, Pennsylvania and each Party hereby irrevocably submits to the in personam jurisdiction of such courts. Each Party hereby waives its respective rights to any

jury trial with respect to any litigation arising under or in connection with this Agreement.

- 16.10 Amendments. Except as provided in Section 16.11 (PJM Agreement Modifications), this Agreement shall not be amended, modified, terminated, discharged or supplemented, nor any provision hereof waived, unless mutually agreed, in writing, by the Parties. Except as provided in Section 16.11 (PJM Agreement Modifications), the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U. S. 348 (1956) (the "Mobile-Sierra" doctrine).
- 16.11 PJM Agreement Modifications.
- (a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.
- (h) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement; provided that no such changes shall alter the economic benefits of this Agreement between the Parties.
- 16.12 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to the respective Parties hereto upon any breach or default of any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, or any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.
- 16.13 Regulatory Approvals. Seller agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the DSMA and/or Transaction Confirmations hereunder. The commencement of the

Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Buyer of all Buyer required regulatory approvals, (ii) the receipt or waiver by Seller of all Seller required regulatory approvals, and (iii) Pennsylvania PUC approval. Unless ordered otherwise, the PUC will approve the transactions no later than four days following the full execution of the transactions. In the event such required regulatory approvals are not received or waived, the DSMA and/or applicable Transaction Confirmations will be non-enforceable.

- 16.14 Survival. The termination of all or a part of this Agreement or Transaction Confirmations thereto shall not affect the survival of any clauses or provisions necessary to enforce the remedies in the event of default and those provisions shall continue in full force and effect until all amounts due hereunder, including all obligations, have been paid or performed in full.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered, as of the date first written above, by their respective duly authorized officers.

ATTEST:

DUQUESNE LIGHT COMPANY

Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

[SELLER]

Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

TRANSACTION CONFIRMATION

This Transaction Confirmation letter is being provided pursuant to and in accordance with the Default Supply Master Agreement ("DSMA") dated _____ between Duquesne Light Company ("Company" or "DLC") and _____ ("Seller"). Terms used but not defined herein shall have the meanings ascribed to them in the DSMA. This Transaction Confirmation shall confirm the following terms of the transaction ("Transaction") agreed to on _____ ("Transaction Date").

Product: Full Requirements Service
 Service Type: [Small Commercial & Industrial/ Medium Commercial & Industrial]
 Delivery Point: Duquesne Zone
 Delivery Period: [MONTH] [DAY], [YEAR] through [MONTH] [DAY], [YEAR]
 Bid Blocks: [INSERT]
 Specified Percentage: [INSERT]% of DEFAULT SERVICE Load
 MW-Measure: [INSERT] MW

Monthly Settlement Price: *[MONTH] [DAY], [YEAR] through [MONTH] [DAY], [YEAR]*

Energy (\$ / MWh) \$ XX.XX

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
On-Peak Estimated Energy Quantity Per MW-Measure, MWh	[INSE RT]											
Off-Peak Estimated Energy Quantity Per MW-Measure, MWh	[INSE RT]											

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between Seller and Buyer by returning an executed copy of this Transaction Confirmation by facsimile to DLC at [INSERT FAX NUMBER] in accordance with Section 2.8 – Transaction Confirmation of the DSMA. The signatories to this Transaction must have the authority to enter into this Transaction.

Duquesne Light Company

SELLER

By: _____

Name: _____

Title: _____

EXHIBIT B

ALTERNATIVE ENERGY PORTFOLIO STANDARDS OBLIGATION

This Exhibit B shall confirm the Alternative Energy Portfolio Standards Obligation of the transaction ("Transaction") agreed to on _____ ("Bid Proposal Due Date").

Alternative Energy Portfolio Standards Obligations for the period beginning [MONTH] [DAY], [YEAR] based on the total MWh supplied by Seller:

<u>Compliance Period</u>	<u>Tier 1</u>	<u>PV</u>	<u>Tier 2</u>
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%

The percentages set forth above are those applicable for the first RFP and may be revised for future RFPs to reflect changes in law or other applicable regulatory requirements.

The above amounts are estimates and will vary based on actual load served. Seller will need to true-up, higher or lower, actual credits needed based on Monthly Settlement Amount.

If Alternative Energy Portfolio Requirements change by law or any other reason, Seller shall be responsible for providing the credits at its expense in order to comply with its obligations under Full Requirements Service.

EXHIBIT C

PERFORMANCE ASSURANCE LETTER OF CREDIT

{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}

IRREVOCABLE LETTER OF CREDIT NO. _____

ISSUE DATE _____

EXPIRY DATE _____

APPLICANT

[NAME]

[ADDRESS]

BENEFICIARY

[NAME]

[ADDRESS]

CURRENCY

AMOUNT

USD *****\$

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO: _____ FOR THE ACCOUNT OF _____ (APPLICANT) FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS _____ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE BANK OF _____ ("ISSUER") _____ (ADDRESS), EFFECTIVE _____ AND EXPIRING AT OUR COUNTERS ON _____ OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, AS PROVIDED HEREIN. THIS LETTER OF CREDIT IS AVAILABLE IN ONE OR MORE DRAFTS UP TO THE AGGREGATE AMOUNT SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED ON PRESENTATION IF ACCOMPANIED BY THE REQUIRED DOCUMENTS PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE THE EXPIRY DATE OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

1. YOUR SIGNED AND DATED STATEMENT, READING AS FOLLOWS:

"THE AMOUNT FOR THIS DRAWING, USD (INSERT AMOUNT), BEING MADE UNDER THE BANK OF _____ (BANK) LETTER OF CREDIT NUMBER (INSERT LETTER OF CREDIT REFERENCE NUMBER), REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM APPLICANT FOR PERFORMANCE ASSURANCE RELATED TO THE BENEFICIARY'S PENNSYLVANIA FULL REQUIREMENTS SERVICE AGREEMENT(S) DATED _____ BETWEEN _____ AND _____."

2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER SHALL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY'S RECEIPT OF FULL PAYMENT FROM THE APPLICANT AND ISSUER'S RECEIPT OF A WRITTEN RELEASE FROM THE BENEFICIARY RELEASING THE ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM "BUSINESS DAY" AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT'S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT'S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF [BANK] UNDER THIS LETTER OF CREDIT AND [BANK] SHALL ALWAYS REMAIN LIABLE TO [BENEFICIARY] FOR THE FULL AMOUNT OF APPLICANT'S OBLIGATIONS HEREIN TO [BENEFICIARY] NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT MAY BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") OR SUCH LATER REVISIONS(S) OF THE ISP AS MAY BE HEREAFTER ADOPTED. AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF PENNSYLVANIA. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.
5. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.
6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AUTHORIZED SIGNATURE: _____
TITLE: _____

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES TO:
[BANK NAME, ADDRESS AND PHONE NUMBER]

EXHIBIT D
SAMPLE PJM INVOICE

PJM Operating Agreement

	Day Ahead	Balancing	Real Time
Charges			
Spot Market Energy	Seller	Seller	
Transmission Congestion	Seller	Seller	
Transmission Losses	Seller	Seller	
Inadvertent Interchange			Seller
Economic Load Response	Seller		Seller
Planning Period Congestion Uplift			Seller
Emergency Load Response			Seller
Meter Error Correction			Seller
Emergency Energy			Seller
Operating Reserve for Load Response	Seller	Seller	
Regulation and Frequency Response Service			Seller
Synchronized Reserve			Seller
Day-ahead Scheduling Reserve			Seller
Operating Reserves	Seller	Seller	
Synchronous Condensing			Seller
PJM Customer Payment Defaults			Buyer & Seller
Load Reconciliation for Spot Market Energy			Seller
Load Reconciliation for Transmission Congestion			Seller
Load Reconciliation for Transmission Losses			Seller
Load Reconciliation for Inadvertent Interchange			Seller
Load Reconciliation for Regulation and Frequency Response Service			Seller
Load Reconciliation for Synchronized Reserve			Seller
Load Reconciliation for Day-ahead Scheduling Reserve			Seller
Load Reconciliation for Balancing Operating Reserve			Seller
Load Reconciliation for Synchronous Condensing			Seller
Financial Transmission Rights Auction			Seller
Credits:			
Transmission Congestion			Seller
Planning Period Excess Congestion			Seller
Planning Period Congestion Uplift			Seller
Transmission Losses			Seller
Load Reconciliation for Transmission Losses			Seller
Financial Transmission Rights Auction			Seller
Auction Revenue Rights			Seller

PJM OATT

		Real Time
Charges		
PJM Scheduling, System Control and Dispatch Service (Schedule 9-1 thru 9-5))		Seller
Transmission Owner Scheduling, System Control and Dispatch Service (Schedule 1A)		Seller
Market Monitoring Unit (MMU) Funding (Schedule 9-MMU)		Seller
FERC Annual Recovery (Schedule 9-FERC)		Seller
Organization of PJM States, Inc. (OPSI) Funding (Schedule 9-OPSI)		Seller
Reactive Supply and Voltage Control from Generation Sources Service		Seller
Black Start Service		Seller
Network Integration Transmission Service		Buyer
North American Electric Reliability Corporation (NERC) (Schedule 10-NERC)		Seller
Firm Point-to-Point Transmission Service		Seller
Non-Firm Point-to-Point Transmission Service		Seller
Reliability First Corporation (RFC) (Schedule 10-RFC)		Seller
Expansion Cost Recovery (Schedule 13)		Buyer
Transmission Enhancement (Schedule 12)		Buyer
Load Reconciliation for PJM Scheduling, System Control and Dispatch Service (Schedule 9-1, 9-3)		Seller
Load Reconciliation for Schedule 9-6 - Advanced Second Control Center (Schedule 9-1, 9-3)		Seller
Load Reconciliation for Market Monitoring Unit (MMU) Funding (Schedule 9-MMU)		Seller
Load Reconciliation for FERC Annual Recovery (Schedule 9-FERC)		Seller
Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding (Schedule 9-OPSI)		Seller
Load Reconciliation for North American Electric Reliability Corporation (NERC) (Schedule 10-NERC)		Seller
Load Reconciliation for Reliability First Corporation (RFC) (Schedule 10-RFC)		Seller
Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service (Schedule 1A)		Seller
Locational Reliability		Seller
Generation Deactivation/RMR		Buyer
Credits:		
Capacity Resource Deficiency		Seller
Load Management Test Failure		Seller
Non-Firm Point-to-Point Transmission Service		Seller

EXHIBIT E

METHODOLOGY FOR CALCULATION OF MARK TO MARKET (MTM) EXPOSURE

Parameters

In calculating the MtM Exposure for each Transaction, the following parameters are set on the Transaction Date:

1. On-Peak Initial Mark Price
2. Off-Peak Initial Mark Price
3. MW-Measure
4. On-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
5. Off-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
6. Number of awarded Bid Blocks

In calculating the MtM Exposure for each Transaction, the following parameters are set each Business Day subsequent to the Transaction Date:

- 1) On-Peak Forward Price
- 2) Off-Peak Forward Price
- 3) Current Capacity PLC Per Bid Block
- 4) On-Peak Estimated Energy Quantity
- 5) Off-Peak Estimated Energy Quantity

Determination of On-Peak Forward Prices

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub On-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly On-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available ("Aggregate Quotes"), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that On-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the On-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the On-Peak Forward Price for the given month may be updated based on the changes in On-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day

Determination of Off-Peak Forward Prices

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub Off-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly Off-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available ("Aggregate Quotes"), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from the average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that Off-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the Off-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the Off-Peak Forward Price for the given month may be updated based on the changes in Off-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

Example of Disaggregating Aggregate Quotes

The following is an example of the process to be used for disaggregating Aggregate Quotes:

a. Aggregate Quote only available for January – March: \$60/MWh.

b. Immediate Prior Calendar year quotes for January, February, and March as follows:

January: \$42/MWh

February: \$45/MWh

March: \$40/MWh

c. Calculations as follows:

1. Calculate Average price in (b) = \$42.33/MWh

2. Calculate monthly deviation from Average:

January: 99.2% ($\$42/\42.33)

February: 106.3% ($\$45/\42.33)

March: 94.5% ($\$40/\42.33)

3. Disaggregate the Aggregate Quote by applying percentages from c.(2) to the available aggregate quote:

January: \$59.53 ($\$60 \times 99.2\%$)

February: \$63.78 ($\$60 \times 106.3\%$)

March: \$56.69 ($\$60 \times 94.5\%$)

Mark-To-Market Example

Necessary Information from a Transaction Confirmation:		
Delivery Period:	June 1, 2011 - May 31, 2012	
Bid Blocks:	3	(i)
Estimated Energy Quantity Per MW-Measure:		
	On-Peak MWh (k)	Off-Peak MWh (l)
Jan	11900	8300
Feb	13000	9100
Mar	9100	6400
Apr	7200	5000
May	8800	6200
Jun	12900	9000
Jul	15200	10600
Aug	16000	11200
Sep	9500	6700
Oct	8100	5800
Nov	9800	6900
Dec	10900	7600

Business Day on which MtM is Calculated:	June 24, 2011
MW-Measure:	50.0 MW (m)
Current Capacity P.L.C. Per Bid Block:	40.0 MW (n)
Percent of On-Peak Hours Remaining in Current Month:	13.2% (o)
Percent of Off-Peak Hours Remaining in Current Month:	21.7% (p)

MtM Exposure Calculation									
	a	b	c	d	e=c-a	f=d-b	g=k*o/n*(1-p)	h=P*o/n*(1-p)	i=(e*o)+(f*p)
	On-Peak Initial Mark Price \$/MWh	Off-Peak Initial Mark Price \$/MWh	On-Peak Forward Price \$/MWh	Off-Peak Forward Price \$/MWh	Change In On-Peak Price \$/MWh	Change In Off-Peak Price \$/MWh	On Peak Estimated Energy Quantity MWh	Off-Peak Estimated Energy Quantity MWh	MtM Exposure
Jun-11	57.04	27.95	58.48	28.65	1.44	0.70	5,629	4,606	\$ 11,393
Jul-11	72.81	31.31	73.26	32.36	2.45	1.05	36,480	25,440	\$ 116,088
Aug-11	72.81	31.23	74.28	34.91	1.47	0.68	30,400	26,880	\$ 73,726
Sep-11	45.56	24.15	47.31	25.08	1.75	0.50	22,800	16,080	\$ 54,854
Oct-11	43.23	23.34	46.09	24.89	2.86	1.55	19,920	13,920	\$ 76,547
Nov-11	43.23	25.50	46.40	27.38	3.17	1.88	23,520	16,560	\$ 105,691
Dec-11	43.23	26.35	44.86	27.36	1.63	1.00	26,160	18,240	\$ 63,881
Jan-12	50.73	38.55	54.45	41.39	3.72	2.84	28,328	19,920	\$ 161,923
Feb-12	50.73	39.96	53.61	41.29	2.88	2.23	31,200	21,840	\$ 158,559
Mar-12	45.23	30.75	47.64	32.19	2.41	1.64	21,840	15,360	\$ 77,825
Apr-12	45.23	25.78	48.01	31.06	2.78	1.58	17,280	12,000	\$ 66,998
May-12	47.06	24.94	49.06	26.00	2.00	1.06	21,120	14,880	\$ 58,613
									\$ 1,005,499

EXHIBIT F

FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this "Guaranty") is made and entered into as of this day of _____, by _____ (the "Guarantor"), with an address at _____, in favor of Duquesne Light Company (the "Creditor"), with an address at [INSERT ADDRESS], in consideration of the Default Supply Master Agreement(s) (the "DSMA(s)") between Duquesne Light Company and _____ (the "Seller") dated _____, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Guarantor is the _____ of Seller.

1. Whereas, Supplier _____ is an affiliate of _____, _____ will therefore benefit by Supplier entering into the DSMA with Creditor and _____ desires Creditor to enter into the DSMA with Supplier and to extend credit to Supplier thereunder. (May be revised if guarantor is not a parent or affiliate of supplier.)

1. Guaranty of Obligations.

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as primary obligor and not a surety with effect from date hereof, the prompt and complete payment when due of all of Seller's payment obligations under the DSMA (to the extent such payment obligations exceed the amount of any Performance Assurance provided to the Creditor by Seller as defined in and in accordance with the DSMA), whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the DSMA and giving effect to any applicable grace period, and, provided only that the Creditor is the prevailing party in any judicial suit, action or proceeding arising out of, resulting from, or in any way relating to this Guaranty, or if by mutual agreement by Guarantor and Creditor, all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of the Guarantor's obligations or collection under this Guaranty, including reasonable attorney's fees and expenses (collectively, the "Obligations"). [Optional provision: Notwithstanding anything to the contrary herein, the liability of the Guarantor under this Guaranty and Creditor's right of recovery hereunder for all Obligations is limited to a total aggregate amount of \$ _____, ("Guaranty Amount"), where Guaranty Amount shall be no less than Five Hundred Thousand US Dollars (\$500,000).]
- (b) The limitations on liabilities of the Seller set forth in Article 10 of the DSMA shall also apply to the liabilities of the Guarantor hereunder.

2. Nature of Guaranty; Waivers.

- (a) This is a guaranty of payment and not of collection and the Creditor shall not be required, as a condition of the Guarantor's liability, to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations. This is not a performance guaranty and the Guarantor is not obligated to provide power under the DSMA or this Guaranty.
- (b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the DSMA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of the Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the DSMA resulting from the conduct of the Creditor) or any part thereof.
- (c) Except as to any claims, defenses, rights of set-off or to reductions of Seller in respect of its obligations under the DSMA, (all of which are expressly reserved under this Guaranty), the Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Seller or the Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, laws, rules, regulations or powers), structure or ownership of Seller or the Guarantor; or (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or its assets; or (iii) the invalidity or unenforceability in whole or in part of the DSMA; or (iv) any provision of applicable law or regulations purporting to prohibit payment by Seller of amounts to be paid by it under the DSMA (other than any law or regulation that eliminates or nullifies the obligations under the DSMA).
- (d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any person exhaust any right to take any action against Seller or their assets or any other guarantor or person, provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. The Guarantor waives all defenses based on suretyship or impairment of collateral or any

other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Seller in respect of its obligations under the DSMA.

- (e) The Creditor at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (i) to the extent permitted by the DSMA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the DSMA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other person, including Seller, with respect to any Obligations in such manner as the Creditor deems appropriate at its sole discretion; (iv) substitute, exchange or release any guaranty; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. The Guarantor hereby represents and warrants that:

- (a) it is a [limited liability company, corporation, limited partnership, general partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation, organization, incorporation] and has the [corporate power] [power] and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;
- (b) it has the [corporate power] [power] and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary [corporate action] [action] to authorize its execution, delivery and performance of this Guaranty;
- (c) this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of Creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;
- (d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of law or contractual obligation of the Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on the Guarantor or this Guaranty);

- (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other person (including, without limitation, any stockholder or of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and
 - (f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor that would have a material adverse effect on this Guaranty.
4. Repayments or Recovery from the Creditor. If any demand is made at any time upon the Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Seller and if the Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Creditor. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.
5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Seller arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Seller that may result from any such proceeding.
6. Postponement of Subrogation. Only to the extent that, at the relevant time, there are Obligations, or other amounts hereunder, that are then due and payable but unpaid, the Guarantor postpones and subordinates in favor of the Creditor any and all rights which the Guarantor may have to (a) assert any claim against the Seller based on subrogation rights with respect to payments made by Guarantor hereunder and (b) any realization on any property of the Seller, including participation in any marshalling of the Seller's assets. Upon payment of such due and unpaid Obligations, Creditor

agrees that Guarantor shall be subrogated to the rights of Creditor against Seller to the extent of Guarantor's payment to Creditor.

7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for the Creditor and the Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:
Phone:
Fax:
With a copy to:

Phone:
Fax:

or such other address as the Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:

Attn:
Phone:
Fax:

or such other address as the Guarantor shall from time to time specify to Creditor.

8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on the Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Creditor's action or inaction impair any such right or power. The Creditor's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Creditor may have under other agreements with the Guarantor, at law or in equity.
9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and

enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing signed by the Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.
11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Guarantor and the Creditor with respect to the subject matter hereof.
12. Successors and Assigns. This Guaranty will be binding upon and inure to the benefit of the Guarantor and the Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same persons as Creditor assigns the DSMA in accordance with Section 16.7(b) of the DSMA, and except that this Section 12 shall not limit the Guarantor's right to assign this Guaranty, along with substantially all of the Guarantor's assets and business to a successor entity or Affiliate that assumes all obligations thereunder and (i) where the successor Guarantor's Lowest Credit Rating is equal to or greater than the Guarantor's Lowest Credit Rating or where the successor Guarantor's Lowest Credit Rating is equal to or greater than BBB, as rated by S&P or Fitch, or Baa2, as rated by Moody's, and (ii) the Seller is in compliance with Article 14 of the DSMA. The "Lowest Credit Rating" shall mean the lowest of the senior unsecured long-term debt ratings determined by Moody's Investor Services, Inc. (or its successor) ("Moody's"), the Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., (or its successor) ("S&P"), or Fitch Investor Service, Inc. (or its successor) ("Fitch") immediately before such transfer and assumption. Upon any such delegation and assumption of obligations by a successor Guarantor, the Guarantor shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such delegation and assumption.
13. Interpretation. In this Guaranty, unless the Creditor and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this

Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

(a) This Guaranty has been delivered to and accepted by the Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE CREDITOR AND THE GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES.

(b) The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of any federal court in the Commonwealth of Pennsylvania, but in the event that the Guarantor and the Creditor determine in good faith that jurisdiction does not lay with such court or that such court refuses to exercise jurisdiction or venue over the Guarantor and the Creditor or any claims made pursuant to this Guaranty, then the Guarantor and the Creditor agree to submit to the non-exclusive jurisdiction of the Pennsylvania state courts; provided that nothing contained in this Guaranty will prevent the Creditor from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county, state or other foreign or domestic jurisdiction. The Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both the Creditor and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. THE GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the DSMA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Seller under the DSMA is stayed upon the insolvency, bankruptcy or reorganization of Seller, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the DSMA shall nonetheless be payable by the Guarantor hereunder on written demand by Creditor.

The Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

ATTEST:

[Guarantor]

By: _____

Name: _____

Title: _____

EXHIBIT G

FORM OF NOTICE

Any notices required under this Agreement shall be made as follows:

Buyer:

Seller:

All Notices:

All Notices:

Street:

Street:

City/State/Zip:

City/State/Zip

Attn:

Attn:

Facsimile:

Facsimile:

Duns:

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Scheduling:

Scheduling:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Payments:

Payments:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Wire Transfer:

Wire Transfer

BNK:

BNK:

ABA:

ABA:

ACCT:

ACCT:

Credit and Collections:

Attn:
Phone:
Facsimile:

**With additional Notices of an
Event of Default to:**

Attn:
Phone:
Facsimile:

Credit and Collections:

Attn:
Phone:
Facsimile:

**With Additional Notices of an
Event of Default to:**

Attn:
Phone:
Facsimile:

EXHIBIT H

PJM DECLARATION OF AUTHORITY

This Declaration of Authority ("Declaration") is made this ____ day of _____, 2013 by the following:

PARTY A: _____ ("Party A")

PARTY B: _____ ("Party B").

RECITALS

WHEREAS, PJM is a Regional Transmission Organization ("RTO") subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC");

WHEREAS, PJM Settlement, Inc ("PJM Settlement") is a Pennsylvania Non-Profit Corporation, incorporated for the purpose of providing billing and settlement functions and credit and risk management functions for PJM. References to "PJM" in this Declaration are intended to apply to PJM and/or PJM Settlement, as appropriate, with regard to their respective functions.

WHEREAS, PJM and PJM Settlement administer centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;

WHEREAS, PJM additionally exercises operational control over its members' transmission facilities whereby PJM provides open-access transmission service and control area functions, including economic dispatch and emergency response to ensure reliability;

WHEREAS, Party A is a PJM Member and seeks to obtain, or is obtaining, services provided or administered by PJM, seeks to participate, or is participating in, markets administered by PJM, or seeks to engage in, or is engaging in, operations that use or affect the integrated transmission system operated by PJM;

WHEREAS, such activities or contemplated activities by Party A and Party B are governed by rights and obligations established by or under the PJM Open Access Transmission Tariff ("Tariff"), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), the Reliability Assurance Agreement Among Load-serving Entities in the MAAC Control Zone ("RAA"), and other agreements, manuals, and practices of PJM (the Tariff, the Operating Agreement, the RAA, and such other agreements manuals, and practices of PJM, the "PJM Agreements"); and

WHEREAS, Party A and Party B desire to declare to PJM their respective authorities concerning such rights and obligations, intend that PJM rely upon such declaration, and acknowledge that PJM may rely upon such declaration to its detriment.

DECLARATION

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the declarations made below, Party A and Party B, as identified below, make the following declarations:

1. Exclusivity of Party B's Authority.

Pursuant to a binding, legally enforceable agreement, Party A has authorized Party B to act for Party A with respect to certain rights and responsibilities as specified in Section 2 of this Declaration ("the Authorized Rights and Responsibilities"). With respect to the Authorized Rights and Responsibilities, Party B is authorized to communicate and transact with PJM as Party A's sole and exclusive Party B, and PJM is authorized to communicate and transact directly and exclusively with Party B as Party A's Party B. With respect to Authorized Rights and Responsibilities, Party A will abide by any direction issued by PJM to Party B.

2. Specification of Authorized Rights and Responsibilities.

In the following parts (a) through (h), Party A and Party B specify the rights and responsibilities with respect to which Party B is authorized to act for Party A. Specification shall be effective only if both Party A and Party B have placed the initials of their authorized representatives in the space provided for each applicable right or responsibility from among the options provided below:

(a) Load Server Responsibilities.

_____ Party B is authorized to satisfy Party A's obligations as a Load-Serving Entity under the RAA, including, without limitation, its obligations to provide Unforced Capacity, submit capacity plans, provide or arrange for Capacity Resources, satisfy Accounted-for Obligations and Peak Season Maintenance Obligations, comply with any capacity audits, make payment of all deficiency, data submission, and emergency procedure charges incurred, coordinate planning and operation of Capacity Resources with other parties; and develop and submit planned outage schedules.

_____ Party B is authorized to satisfy Party A's obligations under the Tariff, RAA and to provide or arrange for transmission service to its loads; provide or arrange for sufficient reactive capability, voltage control facilities, and black start capability for service to its loads; submit firm transmission service schedules, and designate Network Resources and other points of receipt and delivery for transmission service. Party B is authorized to request changes to the transmission service required for service to Party A's loads, and to enter into, on Party A's behalf, any feasibility, system impact, facilities study, or other agreements required to process such request for a change in service.

_____ Party B is authorized to satisfy Party A's rights and obligations under the Tariff and Operating Agreement to submit bids on, obtain, administer, and

receive payments or credits for Financial Transmission Rights and Auction Revenue Rights with respect to service to Party A's loads.

_____ Party B is authorized to provide data required by PJM with respect to service to Party A's loads, including, but not limited to, data required for coordination of operations, accounting for all interchange transactions, preparation of required reports and maintenance schedules, and analysis of system disturbances.

_____ Party B is authorized to provide the facilities and personnel required to coordinate operations with PJM and other PJM Members.

(b) Electric Distributor Responsibilities.

_____ Party B is authorized to satisfy Party A's rights and obligations as an Electric Distributor under the Operating Agreement, including, but not limited to, assuring the continued compatibility of its local energy management, monitoring, and telecommunications systems with PJM's technical requirements; providing or arranging for the services of a 24-hour local control center to coordinate with PJM; providing to PJM all system, accounting, customer tracking, load forecasting, and other data necessary or appropriate to implement or administer the Operating Agreement, RAA; shedding connected load, initiating active load management programs, and taking such other coordination actions as may be necessary in accordance with PJM's directions in Emergencies; maintaining or arranging for a portion of its connected load to be subject to control by automatic underfrequency, under-voltage, or other load-shedding devices; and complying with the underfrequency relay obligations and charges specified in the Operating Agreement.

(c) Generator Responsibilities.

_____ Party B is authorized to operate the Party A's generation resources in all events, including, but not limited to, in the event of Emergencies, and shall operate such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

_____ Party B is authorized to ensure that the required portion of Party A's Capacity Resources have the ability to go from a shutdown condition to an operating condition and start delivering power without assistance from the power system.

- Or -

_____ Party B is authorized to direct the operation of Party A's generation resources by relaying PJM's instructions to the resource in all events, including, but not limited to, in the event of Emergencies, and shall direct

such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

_____ Party B is authorized to communicate with PJM in all matters concerning the provision of capacity, energy, or ancillary services from Party A's generation resources, including, without limitation, information required in connection with Capacity Resources, dispatch of any unit, provision of reactive power, regulation, synchronous condensing, spinning or other reserves, establishment or maintenance of a unit as a Black-Start Unit, satisfaction of must-run obligations, and costs or revenue requirements for any product or service offered by any such unit.

_____ Party B is authorized to provide information on outages of Party A's generation facilities, whether planned, forced, or for maintenance, and to coordinate such outages with PJM

_____ Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Feasibility Study, System Impact Study, or Facilities Study Agreements.

_____ Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Construction Service Agreements.

_____ Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Interconnection Service Agreements.

_____ Party B is authorized to receive from PJM historic and real time data collected by PJM from, or provided to PJM by, Party A with respect to Party A's generation resources.

_____ Party B is authorized to act on behalf of Party A for the following specific unit(s) in Party A primary and subaccounts:

Resource Name:

Resource ID:

(d) Market Buyer/Market Seller Responsibilities.

_____ ***Party B is authorized to satisfy Party A's rights and obligations as a Market Buyer or Market Seller under the Operating***

Agreement, including, but not limited to, arranging for a Market Operations Center capable of real-time communication with PJM during normal and Emergency conditions; reporting to PJM sources of energy available for operation; providing to PJM scheduling and other information, including, but not limited to, maintenance and other anticipated outages of generation or transmission facilities, scheduling and related information on bilateral transactions and self-scheduled resources, and implementation of active load management, interruption of load, and other load reduction measures; obtaining Spot Market Backup for bilateral transactions; submitting to PJM binding offers to purchase or sell energy and ancillary services in compliance with all applicable Offer Data specifications; responding to PJM's directives to start, shut down or change output levels of generation units, or change scheduled voltages or reactive output levels; responding to PJM's directives to schedule delivery or change delivery schedules for external resources; and following PJM's directions to take actions to prevent, manage, alleviate or end an Emergency.

(e) Billing and Payment Responsibilities.

_____ In connection with all rights and responsibilities specified by Party A and Party B in any of subparts (a) through (d) of this Section, Party B shall be billed for, and shall make payment to PJM for, all charges, penalties, costs and fees. (If this option is not specified, PJM will issue billings to, and collect amounts due from, Party A.)

_____ In connection with all rights and responsibilities specified by Party A and Party B above, Party B is entitled to receive from PJM in Party B's account all credits, revenues, distributions, and disbursements. (If this option is not specified, PJM will pay such amounts to Party A.)

(f) General Membership Responsibilities.

_____ Party B is authorized to participate and vote in all PJM committees, working groups, and other stakeholder bodies on Party A's behalf.

_____ Party B is authorized to participate on Party A's behalf in the regional transmission expansion planning process.

_____ Party B is authorized to provide information or otherwise cooperate on Party A's behalf in connection with any investigation or request for information by PJM or the PJM Market Monitoring Unit in accordance

with the Operating Agreement and Attachment M to the Tariff. (If this option is specified, PJM and the PJM Market Monitoring Unit shall have the right to request and obtain such information from Party B and/or Party A.)

_____ Party B shall be billed for, and shall make payment of, Party A's costs of membership in PJM, including payment of the Membership fee, and payment of any other general assessments on the PJM members, including, but not limited to, amounts assessed as a consequence of defaults by other Members.

(g) Additional Responsibilities.

~~(Initial)~~ _____ Party B has been Authorized other rights and responsibilities of Party A as specified on Attachment "A" to this Declaration.

(h) Limitation on Responsibilities.

_____ The rights and responsibilities specified in parts (a) through (f) above apply to a limited portion of Party A's facilities or loads located in the PJM Region, as specified on Attachment "B" to this Declaration, and to no other facilities or loads of Party A.

3. Continuing Responsibilities and Liabilities of Party A.

3.1 The Authorized Rights and Responsibilities are the only rights and responsibilities under the PJM Agreements for which Party B is authorized to act for Party A, and Party A retains all rights and responsibilities under the PJM Agreements not specified by Party A and Party B in Section 2.

3.2 With respect to the Authorized Rights and Responsibilities, and notwithstanding any other provision of this Agreement, Party A shall remain liable to PJM for all amounts due or to become due to PJM under the PJM Agreements, and Party B's authorization to make payment of any such amounts hereunder (if specified in Section 2) shall not release Party A from liability for any financial obligations to PJM not satisfied by Party B.

4. Reliance and Indemnity, Duty to Inform, Liability Waiver, and Rules of Construction.

4.1 Party A and Party B each recognizes, accepts and intends that PJM will rely, upon on the truth, accuracy and completeness of the declarations herein in matters including but not limited to creditworthiness and in assuring compliance with the PJM Agreements. Party A and Party B each recognizes and accepts that PJM or its members may suffer losses and damages if any declaration is or becomes untrue, inaccurate or incomplete, and each agrees to indemnify PJM for any such losses and damages.

4.2 Party A and Party B each has a continuing duty to notify PJM if and when any declaration herein ceases to be truthful, accurate or complete. Until such time

as PJM receives written notification of any change to any declaration, in accordance with the terms contained herein, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with Party A and Party B as to the subject matter of this Declaration. Written notice of changes to the declarations contained herein must be provided by Party A (PJM Member) to PJM at least thirty days in advance of their effectiveness. If Party B is also a PJM Member, then both parties will be required to provide thirty days prior written notification in order for such changes to be effective. Such notification is required for changes to the declarations and responsibilities contained herein and/or termination of this Declaration. Upon such termination, all rights, responsibilities and accounts will revert back to the original status quo prevailing before the Declaration became effective. Should less than thirty days notice be provided, PJM shall use its best efforts to accommodate and process the declarations herein, but all attempts should be made to provide such notice.

4.3 Nothing in this Declaration shall be construed to create or give rise to any liability on the part of PJM and Party A and Party B expressly waive any claims that may arise against PJM under this Declaration. This Declaration shall not be construed to modify any of the PJM Agreements and in the event of conflict between this Declaration and a PJM Agreement, the applicable PJM Agreement shall control.

4.4 Capitalized terms used herein that are not defined herein have the meanings given in the PJM Agreements, as applicable.

4.5 The Recitals are hereby incorporated into the body of this Declaration.

IN WITNESS WHEREOF, Party A and Party B execute this Declaration to be effective as of the date written above or upon receipt of a fully executed original by PJM, whichever date is later.

PARTY A:

PARTY B:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Company Name: _____

Company Name: _____

SUBSTITUTIONS TO SMALL C&I CUSTOMER AND RESIDENTIAL CUSTOMER CONTRACTS

The term "Small C&I" will replace the term "Medium C&I" in the Small C&I Default Supply Master Agreement, and the following definition will be substituted for the definition of "Medium C&I Customer":

"Small C&I Customer" means any commercial or industrial retail customer of Buyer receiving POLR service from Buyer that has a demand less than 25 kw.

The term "Residential" will replace the term "Medium C&I" in the Residential Default Supply Master Agreement, and the following definition will be substituted for the definition of "Medium C&I Customer":

"Residential Customer" means any residential customers using the Company's standard low voltage service for lighting, appliance operation and general household purposes supplied at 240 volt (or less) single phase service, as well as lighting customers who use the service for street lighting, architectural lighting and other equipment such as traffic signals.

DEFAULT SUPPLY MASTER AGREEMENT
Medium C & I Service

by and between

DUQUESNE LIGHT COMPANY

and

[]

Dated as of

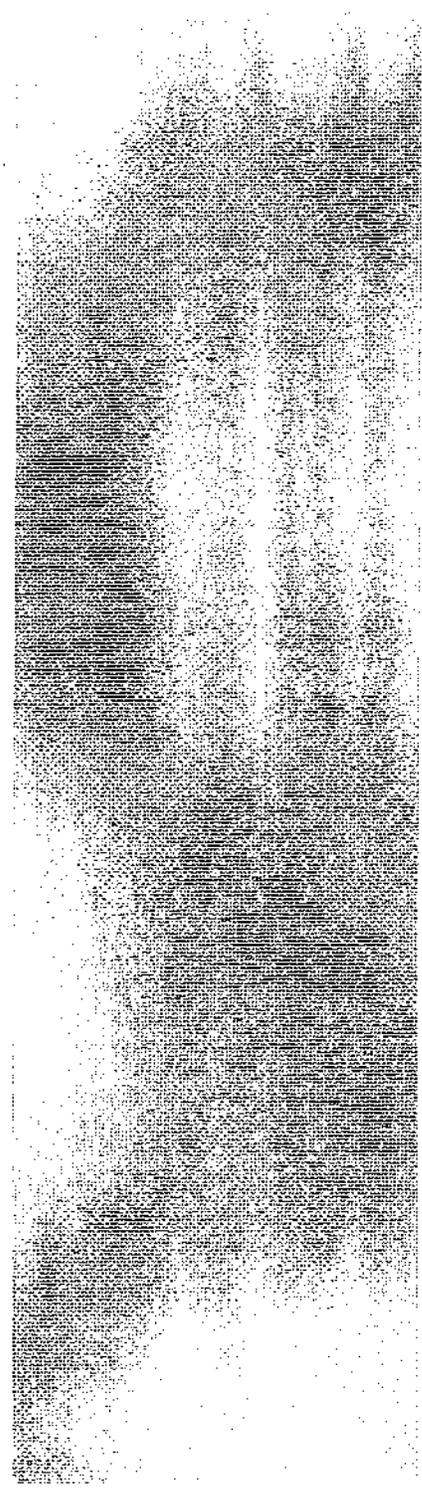


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Exhibits

- Exhibit A Transaction Confirmation
- Exhibit B Alternative Energy Portfolio Standards Obligation
- Exhibit C Performance Assurance Letter of Credit
- Exhibit D Sample PJM Invoice
- Exhibit E Methodology of Mark to Market (MTM) Exposure
- Exhibit F Form of Guaranty
- Exhibit G Form of Notice
- Exhibit H PJM Declaration of Authority

DEFAULT SUPPLY MASTER AGREEMENT

THIS DEFAULT SUPPLY MASTER AGREEMENT ("Agreement" or "DSMA"), is made and entered into as of _____ by and between _____, a _____, ("Seller") (and Duquesne Light Company, a Pennsylvania corporation ("Buyer" or "Company") (each hereinafter referred to individually as "Party" and collectively as "Parties").

WITNESSETH:

WHEREAS, Buyer has an obligation as the Default Service Provider to provide default service (Energy, Capacity and related incidences as defined below) for its retail customers;

WHEREAS, Buyer has solicited offers for serving Medium C&I Customers with respect to default service pursuant to a Request for Proposal (all as defined below) and the Seller is a winning bidder in that solicitation; and

WHEREAS, Seller desires to sell Full Requirements Service (as defined below), which may include Time-of-Use Load, and Buyer desires to purchase such Full Requirements Service to supply a Specified Percentage (as defined below) of the default service requirements of Buyer's retail Medium C&I customers for a certain period of time, as provided herein, on a firm and continuous basis;

NOW, THEREFORE, and in consideration of the foregoing, and of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound by the terms and conditions set forth in this Agreement, hereby agree as follows:

ARTICLE I DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

""AIP" Dayton Hub" means the aggregated Locational Marginal Price ("LMP") nodes defined by PJM.

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

"Aggregate Buyer's Exposure" means all Buyer's Exposure for Aggregate Transactions.

"Aggregate Transactions" means all Transactions under this Agreement and all other transactions under Supply Master Agreements executed between the Parties pursuant to the PJM Orders.

"Alternative Energy Portfolio Standards ("AEPs)" shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

"Alternative Energy Portfolio Standards ("AEPs") Obligation" shall have the meaning ascribed to it in Section 4.5 (Alternative Energy Portfolio Standards Obligation).

"Auction Revenue Rights" or "ARR" means the current or any successor congestion management mechanism or mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARRs are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM OATT.

"Ancillary Services" shall have the meaning ascribed thereto in the PJM Agreements.

"Bankrupt" means, with respect to any entity, such entity: (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes insolvent, however evidenced; (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due.

"Bid Block" means a fixed percentage share of load for a Service Type that is awarded to Seller in accordance with Buyer's RFP as set forth in a Transaction Confirmation. The fixed percentage defines the Bid Block size for each of the Company's Service Types.

"Bid Price" means the price for Full Requirements Service bid by Seller in its response to the RFP and accepted by Buyer, on a cents per kWh basis.

"Business Day" means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. EPT.

"Buyer Downgrade Event" means that Buyer's (or Buyer's Guarantor's) Credit Rating is less than the Buyer Minimum Rating for each of the Ratings Agencies by which Buyer is rated.

"Buyer Minimum Rating" means BBB- by S&P, BBB- by Fitch and Baa3 by Moody's.

"Buyer's Exposure" during the term of a Transaction shall be deemed equal to the positive difference between: (i) the MtM Exposure pursuant to a Transaction under this Agreement; less (ii) the sum of any unpaid or unbilled amounts owed by Buyer to Seller pursuant to a Transaction under this Agreement. With respect to the preceding sentence, "unbilled amounts owed by Buyer" shall consist of a good faith estimate by Buyer as to any amounts which will be owed by Buyer for service already rendered by Seller under a Transaction.

"Capacity" shall mean "Unforced Capacity" as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM, including capacity as a product of PJM's Reliability Pricing Model.

"Capacity Peak Load Contribution" or "Capacity PLC" means the aggregation of retail customer peak load contributions for Buyer's retail customers, as determined by Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer's retail load settlement process, and used by PJM from time to time to determine the Seller's capacity obligation for each Transaction.

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

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or Fitch.

"Current Capacity PLC Per Bid Block" means, on any given Business Day, for each Transaction, the product of: (i) the aggregate Capacity PLC for an entire Service Type; and (ii) the quotient of (x) the Specified Percentage and (y) the number of Bid Blocks.

"Declaration of Authority" shall have the meaning ascribed to it in Section 4.9 (Declaration of Authority).

"Default Damages" means, for the period of time specified in Article 12 (Remedies) any direct damages and Costs, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs with respect to the Specified Percentage as a result of an Event of Default. Direct damages may include, but are not limited to: (i) the positive difference (if any) between the price of Full Requirements Service hereunder and the price at which the Buyer or Seller is able to purchase or sell (as applicable) Full Requirements Service (or any components of Full Requirements Service it is able to purchase or sell) from or to

third parties, including PJM; (ii) Emergency Energy charges; and (iii) additional transmission or congestion costs incurred to purchase or sell Full Requirements Service.

"Default Service" shall mean the electric generation supply provided by a default service provider as described in the Electricity Generation Customer Choice and Competition Act and PUC Orders enacted thereunder.

"Default Service Load" means the total sales at the retail meter, plus any losses and Unaccounted For Energy, as reflected in PJM settlement volumes (including adjustments required by PJM for PJM's derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements), expressed in MWh of retail customers in a particular Customer Supply Group being served by Buyer pursuant to the PUC Orders, as such sales vary from hour to hour, in Buyer's Pennsylvania franchise service territory, as such territory exists on the Effective Date or may increase or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. The Default Service Load is net of any reduction in load as a result of Energy Efficiency and Demand Side Response Programs offered by Buyer, PJM, Curtailment Service Providers, or other third parties, or any Retail Market Programs. For avoidance of doubt, Default Service Load shall not include (i) the amount of load that would otherwise have been served in the absence of such Energy Efficiency or Demand Side Response Programs or Retail Market Programs; or (ii) sales resulting from changes in the Buyer's Pennsylvania service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Pennsylvania. Default Service Load may include Default Service Time-of-Use Load.

"Default Service Supply Estimate" means, for each hour during the term of this Agreement, Buyer's estimate of the Full Requirements Service associated with the Default Service Load, as provided to PJM in accordance with Section 3.2 hereof.

"Default Service Time-of-Use Load" means the portion of load used to supply TOU customers. Default service TOU Load may include separate on- and off-peak rates or other time-varying rates that are based on the time of day a customer uses electricity.

"Default Service Time-of-Use Price" means the unique Time-of-Use On-Peak and Time-of-Use Off-peak Price per MWh.

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

"Delivery Point" means the Duquesne Zone as may be designated by PJM.

"Duquesne Zone" means the PJM defined load zone for Buyer.

"Eastern Prevailing Time" or "EPT" means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

"Effective Date" shall mean the date of both parties having executed this Agreement.

"Emergency Energy" shall have the meaning ascribed to it in the PJM Agreements.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

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

"FERC" means the Federal Energy Regulatory Commission or its successor.

"Fitch" means Fitch Investor Service, Inc. or its successor.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not foreseen as of the date a Transaction is entered into, which is not within the reasonable control of, or the result of the negligence or intentional conduct of the affected party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of Seller's supply; (ii) Seller's ability to sell the Full Requirements Service at a price greater than that received under any Transaction; (iii) curtailment by a Transmitting Utility; (iv) Buyer's ability to purchase the Full Requirements Service at a price lower than paid under any Transaction; or (v) Labor stoppage or lockout.

"Full Requirements Service" means all necessary Energy, Capacity, transmission other than Network Integration Transmission Service, Ancillary Services, AECs for compliance with the AEPS Act, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply the Specified Percentage except for distribution service. This may include Default Service Time-of-Use Load.

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

"Governmental Authority" means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party or this Agreement.

"Grid Management Charges" means the grid management charges defined in the PJM OATT as they may change from time to time,

"Guarantor" means any party who agrees to guaranty Seller's financial obligations under this Agreement pursuant to the guaranty agreement, attached hereto as Exhibit F,

recognizing that such a party will be obligated to meet or exceed Buyer's credit requirements for Seller and that the acceptability of such guaranty will be determined at Buyer's sole discretion.

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

"Invoice" shall have the meaning ascribed to it in Section 7.1 (Billing).

"kWh" means one kilowatt of electric power over a period of one hour.

"Letter(s) of Credit" means one or more irrevocable, evergreen, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least A- from S&P or A3 from Moody's and a minimum of \$10 billion in assets, in a form acceptable to the Party in whose favor the letter of credit is issued (for clarification, the form of Letter of Credit attached as Exhibit C hereto shall be considered an acceptable form). Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. The Party to whom the Letter of Credit is in favor reserves the right to monitor the financial position of the issuing bank and, if the issuing bank's Credit Rating is downgraded by any increment; or if the issuing bank's Current, Quick, Return on Assets, or Price/Earnings ratios diminish (reflecting the financial stability of the bank); or if the Party determines, for any reason, at its sole discretion that the issuing bank's position has deteriorated, then the Party has the right to demand and receive, from the applicant for the Letter of Credit, that the Letter of Credit be reissued from a bank that meets or exceeds the credit ratings and asset valuation listed above.

"Line Losses" means those losses set forth in Buyer's Supplier Tariff.

"Load Serving Entity" or "LSE" has the meaning ascribed to it in the PJM Agreements.

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

"Medium C&I Customer" means any commercial or industrial retail customer of Buyer receiving Default Service from Buyer under a Default Service GS/GM or GMH Rate Schedule that has a demand equal to or greater than 25 kw and less than 300 kw.

"Mark to Market Exposure" or "MTM Exposure" means, with respect to each month remaining in each Transaction Delivery Period, the sum of: (i) the relevant month On Peak Forward Price minus the relevant month On Peak Initial Mark Price, multiplied by the relevant month On Peak Estimated Energy Quantity; and (ii) the relevant month Off-Peak Forward Price minus the relevant month Off-Peak Initial Mark Price, multiplied by

the relevant month Off-Peak Estimated Energy Quantity. The method and an example for calculating the MIM Exposure are included in Exhibit E.

“Monthly Settlement Amount” means with respect to any calendar month during the Delivery Period, the sum of: (i) the product of the applicable Monthly Settlement Price and Monthly Settlement Load; and (ii) any other adjustments as set forth in this Agreement.

“Monthly Settlement Price” means price for Monthly Settlement Load for the applicable month of the Delivery Period as set forth in a Transaction Confirmation.

“Monthly Settlement Date” means, with respect to any calendar month of a Delivery Period, the date(s) determined to be the PJM Settlement Date(s) pursuant to the PJM Agreements.

“Monthly Settlement Load” means, with respect to any calendar month during an applicable Delivery Period, the product of Specified Percentage and Default Service Load.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MWh” means one megawatt of electric power used over a period of one hour which shall be rounded in a manner consistent with standards in the PJM Agreements. The current rounding standards are to the nearest one-thousandth of a megawatt hour.

“MW-Measure” means the estimated megawatt measure of Capacity Peak Load Contribution corresponding to a single Bid Block identified in the Transaction Confirmation as of the Transaction Date.

“NERC” means the North American Electric Reliability Council or any successor organization thereto.

“Network Integration Transmission Service” has the meaning ascribed to it in the PJM Agreements.

“Non-Defaulting Party” means the Party not responsible for an Event of Default, as set forth in Article 12.

“Officer” is an individual empowered to undertake contracts and bind the Seller and/or Buyer. All representations in this Agreement must be made by an Officer of Seller and/or Buyer.

“Off-Peak Estimated Energy Quantity” means, for each month in each Transaction, the product of: (i) the relevant month Off-Peak Estimated Energy Quantity Per MW-Measure; (ii) the quotient of the Current Capacity PLC Per Bid Block and the MW-Measure; (iii) the number of Bid Blocks awarded to the Seller per the Transaction

Confirmation; and (iv) the percentage of Off-Peak Hours remaining (excluding current day) in each month.

"Off-Peak Estimated Energy Quantity Per MW-Measure" means the estimation of Energy, inclusive of electrical line losses, in the Off-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

"Off-Peak Forward Price" means the price, as provided by the Buyer, for Off-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and based on the most recent publicly available information and/or quotes from Reference Market-Makers on forward Energy transactions occurring at the AEP Dayton Hub.

"Off-Peak Hours" means those hours which are not On-Peak Hours.

"Off-Peak Initial Mark Price" means the Off-Peak Forward Price as of the Transaction Date.

"On-Peak Estimated Energy Quantity" means, for each month in each Transaction, the product of: (i) the relevant month On-Peak Estimated Energy Quantity Per MW-Measure; (ii) the quotient of the Current Capacity PLC Per Bid Block and the MW-Measure; (iii) the number of Bid Blocks awarded to the Seller per the Transaction Confirmation; and (iv) the percentage of On-Peak Hours remaining (excluding current day) in each month.

"On-Peak Estimated Energy Quantity Per MW-Measure" means the estimation of Energy, inclusive of electrical line losses, in the On-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

"On-Peak Forward Price" means the price, as provided by the Pricing Agent, for On-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and based on the most recent publicly available information and/or quotes from Reference Market-Makers on forward Energy transactions occurring at the AEP Dayton Hub.

"On-Peak Hours" means Hour Ending ("HE") 0800 through HE 2300 EPT, Monday through Friday, excluding Saturday, Sunday and NERC holidays.

"On-Peak Initial Mark Price" means the On-Peak Forward Price as of the Transaction Date.

"Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

"Photo-voltaic ("PV")" shall have the meaning ascribed in Tier 1 Alternative Energy Sources.

"PJM" means the PJM Interconnection, LLC or any successor organization thereto.

“PJM Agreements” means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM West RAA, and any other applicable PJM manuals or documents, or any successor, superceding or amended versions that may take effect from time to time.

“PJM Control Area” has the meaning ascribed to it in the PJM Agreements.

“PJM OATT” or “PJM Tariff” means the Open Access Transmission Tariff of PJM or the successor, superceding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

“PJM Operating Agreement” means the Operating Agreement of PJM or the successor, superceding or amended versions of the Operating Agreement that may take effect from time to time.

“PJM Planning Period” has the meaning ascribed to it in the PJM Agreements. Currently, the PJM Planning Period is the twelve months beginning June 1 and extending through May 31 of the following year.

“PJM RAA” means the PJM Reliability Assurance Agreement or any successor, superceding or amended versions of the PJM Reliability Assurance Agreement that may take effect from time to time.

“PJM Settlement Date” means the date on which payments are due to PJM for services provided by PJM in accordance with the PJM Agreements. ~~Such date currently occurs on the first Business Day after the nineteenth (19th) calendar day of the month following service.~~

“PUC” means the Pennsylvania Public Utility Commission and any successor agency thereto.

Field Code Changed

“PUC Orders” means the orders issued by the PUC including but not limited to the Electricity Generation customer Choice and Competition Act, 66 Pa. C. S. Sections 2801-2812, including the Order authorizing the parties to enter into this Agreement.

“Ratings Agencies” means Fitch, Moody’s and S&P.

“Reference Market-Maker” means any broker in energy products who is not an Affiliate of Buyer or Seller.

“Retail Market Program” means any program, action, or offer arising out of or relating to the PUC’s *Investigation of Pennsylvania’s Retail Electricity Market* (Docket No. I-2011-2237952) (as such proceeding may be amended, supplemented or superseded, in whole or in part) to encourage Default Service customers to obtain electric generation service from one or more Electric Generation Suppliers or to transfer Default Service customers from an Electric Distribution Company (including Buyer) to one or more Electric Generation Suppliers for purposes of obtaining electric generation service supply, whether or not any such program, action or offer is introduced or endorsed by Buyer or undertaken in compliance with any Requirement of Law. Such programs, actions and offers include, but

shall not be limited to, any PUC or Buyer customer education program relating to Default Service, any program in which Default Service customers are referred by Buyer to one or more Electric Generation Suppliers, and any program under which Default Service customers are transferred (or elect to be transferred) individually or in aggregate to one or more Electric Generation Suppliers on any basis.

“Request for Proposal” or “RFP” means the request for proposals issued by Buyer for the provision of Full Requirements Service that is necessary to supply Medium C&I Service.

“S&P” means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc. and any successor thereto.

“Service Type” means the customer class, partial customer class and/or group of customer classes, as set forth in a Transaction Confirmation.

“Specified Percentage” means, the percentage of Default Service Load as set forth in a Transaction Confirmation.

“Supplier Tariff” means Buyer's Electric Generation Supplier Coordination Tariff, or its successor, filed with and approved by the PUC.

“Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Article 12 (Events of Default; Remedies). The calculation of a Settlement Amount for a Terminated Transaction shall exclude any Default Damages calculated pursuant to Section 12.2 (Remedies) for the same Terminated Transaction. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

“Step-Up” shall have the meaning ascribed to it in Section 4.13 (Seller Step-Up Rights).

“Tangible Net Worth” or “TNW” means an entity's total assets (exclusive of intangible assets), minus that entity's total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission or similar Governmental Authority or governing body in such jurisdiction of incorporation, organization or formation. Should there arise a discrepancy between this definition of TNW and the provisions of Article 14, Article 14 shall govern.

“Terminated Transaction(s)” means any Transaction which has been terminated in accordance with Section 12.2.

“Tier 1 Alternative Energy Sources” shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

"Tier 2 Alternative Energy Sources" shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

"Time-of-Use" or "TOU" shall be a time-varying rate option offered by the Buyer to meet its obligations under 66 Pa. C.S. § 2807(f).

"Time-of-Use Monthly Billed Load" means the customer usage that is billed on a monthly basis to those eligible customers accepting service on a TOU program that has been approved by the PUC.

"Time-of-Use Off-Peak Hours" means all hours that are deemed by the PUC to be Off-Peak Hours under a PUC approved TOU program.

"Time-of-Use On-Peak Hours" means all hours that are deemed by the PUC to be On-Peak Hours under a PUC approved TOU program.

"TNW Amount" shall equal the product of the applicable TNW Percentage and an entity's Tangible Net Worth.

"TNW Percentage" means the percentage determined pursuant to Section 14.3 (Unsecured Credit) that is multiplied by an entity's Tangible Net Worth to determine that entity's TNW Amount.

"Transaction" means a particular agreement by which Buyer purchases and Seller sells Full Requirements Service pursuant to this Agreement, the details of which are more fully set forth in a Transaction Confirmation.

"Transaction Confirmation" shall have the meaning ascribed to it in Section 2.9 (Transaction Confirmation).

"Transaction Date" means the date on which a Transaction under this Agreement is executed by Buyer and Seller as set forth in the Transaction Confirmation.

"Transmitting Utility" means the utility or utilities, and their respective control area operators and their successors, transmitting all or any portion of the Full Requirements Service.

"Unaccounted For Energy" means the difference between the Buyer's hourly system load and the sum of: (i) the estimated hourly customer loads (interval metered and profiled); and (ii) electrical losses, and Unaccounted For Energy as determined in the Buyer's load settlement process for the Monthly Settlement Load.

"Unsecured Credit" means an amount that is the lower of: (i) the relevant Unsecured Credit Limit as determined pursuant to Section 14.3 (Unsecured Credit); (ii) the relevant TNW Amount, as determined pursuant to Section 14.3 (Unsecured Credit); or (iii) the Guaranty Amount from Seller's Guarantor as set forth in the Guaranty Agreement.

“Unsecured Credit Limit” shall have the meaning ascribed to it in Section 14.3 (Unsecured Credit).

ARTICLE II
TERMS AND CONDITIONS OF FULL REQUIREMENTS SERVICE

- 2.1 Seller’s Obligation to Provide Service. With respect to a Transaction, Seller shall provide Full Requirements Service on a firm and continuous basis such that the Specified Percentage is supplied at the Delivery Point during the Delivery Period. For those Full Requirements Contracts with assigned Default Service Time-of-Use Load, Seller shall, at Buyer’s request, provide Full Requirements Service on a firm and continuous basis, meeting the assigned obligation amount.
- 2.2 Buyer’s Obligation to Take Service. With respect to a Transaction, Buyer shall accept Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller’s Obligation to Provide Service), and shall pay Seller the Monthly Settlement Amounts for such Full Requirements Service on the applicable Monthly Settlement Date in accordance with Section 7.3 (Payments of the Invoice). With respect to Seller’s TOU Obligation, Buyer shall accept, if requested, Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller’s Obligation to Provide Service), and shall pay Seller the Buyer’s revenues received for Time-of-Use Off-Peak Hours and Time-of-Use On-Peak Hours for TOU Monthly Billed Load.
- 2.3 Network Integration Transmission Service and Distribution Service. With respect to a Transaction, Buyer shall be responsible, at its sole cost and expense, for the provision of Network Integration Transmission Service and distribution service necessary to serve the Specified Percentage. Buyer is responsible, at its sole cost and expense, for future PJM charges assessed to network transmission customers for PJM-required transmission system enhancements pursuant to the PJM Regional Transmission Expansion Plan (as defined in the PJM Agreements) and for future PJM charges assessed to network transmission customers, including for transition costs related to the elimination of through-and-out transmission rates, ~~and for Grid Management Charges.~~ Seller shall be responsible for transmission charges to deliver power to the Duquesne Zone and for Grid Management Charges.
- 2.4 Congestion and Congestion Management. Seller is responsible for any congestion costs incurred to supply the Specified Percentage. Buyer shall transfer or assign to Seller Buyer’s rights to Auction Revenue Rights (ARRs) to which Buyer is entitled as an LSE pursuant to the PJM Agreements, provided that such rights are related to the service being provided to the Specified Percentage and for the applicable term hereunder. All rights and obligations associated with such ARRs will accrue to the Seller through the transfer or assignment from Buyer to Seller including the responsibility and ability of Seller to request and nominate such ARRs when applicable. Seller shall have the right to request and nominate ARRs

if: (i) all Transactions for Default Service Load have been executed and are in full force and effect; and (ii) the Delivery Period under each Transaction Confirmation is inclusive of the PJM Planning Period for which the ARR's are being requested or nominated. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARR's for the upcoming PJM Planning Period and such ARR's will be allocated to Seller in accordance with the PJM Agreements based upon its Specified Percentage.

- 2.5 Other Changes in PJM Charges. Except as provided in Section 2.3 (Network Integration Transmission Service and Distribution Service), Seller bears the risk of any other changes in PJM products and pricing during the term of this Agreement.
- 2.6 Status of Seller. Seller, for purposes of this Agreement, is not a Load Serving Entity and nothing contained herein shall be deemed to cause Seller to be a Load Serving Entity.
- 2.7 Sales for Resale. All Full Requirements Service provided by Seller to Buyer shall be sales for resale, with Buyer reselling such Full Requirements Service to certain of its retail customers that are receiving Medium C&I Service from Buyer under a Default Service Rate Schedule pursuant to this Agreement. At Seller's request, Buyer shall provide Seller with mutually agreeable resale certificates related to the Full Requirements Service provided pursuant to this Agreement.
- 2.8 Governing Terms. Each Transaction shall be governed by this Agreement. This Agreement, including all schedules and exhibits hereto, any designated collateral, credit support, margin agreement or similar arrangements and all Transaction Confirmations shall form a single integrated agreement between Buyer and Seller. Any inconsistency between terms in this Agreement and terms in a Transaction Confirmation shall be resolved in favor of the terms of this Agreement.
- 2.9 Transaction Confirmation. A Transaction shall be documented in a Transaction Confirmation in the form attached hereto as Exhibit A. On the next Business Day following the Business Day on which Seller is selected as a provider of Full Requirements Service, Buyer will forward by e-mail, facsimile or other immediate means acceptable to both Parties, to Seller a partially executed Transaction Confirmation(s) and shall send by overnight delivery one (1) original. Except as otherwise provided in the RFP, by 2:00 p.m. EPT on the next Business Day following Seller's receipt of such facsimile of partially executed Transaction Confirmation(s), Seller shall return by e-mail, facsimile, or other immediate means acceptable to both Parties, to Buyer a fully executed Transaction Confirmation(s), and shall send by overnight delivery one (1) original. In addition, if such Transaction(s) is the initial Transaction(s) with the Seller under the current RFP solicitation, then Buyer will forward by e-mail, facsimile or other immediate means acceptable to both Parties, to Seller a fully executed Agreement, and shall send by overnight delivery one (1) original. By close of the same

Business Day on which Buyer is in receipt of the bids, Buyer shall submit all the bids, including the winning bids, to the Pennsylvania PUC for review and approval. Unless it orders otherwise, the PUC will approve the winning bids no later than two days following submittal.

ARTICLE III SCHEDULING, FORECASTING, AND INFORMATION SHARING

- 3.1 Scheduling. Seller shall schedule Full Requirements Service pursuant to the PJM Agreements. Buyer will provide to PJM all information required by PJM, for the purpose of calculating Seller's Full Requirements Service obligations.
- 3.2 Load Estimates. On a daily basis, for each hour during the term of this Agreement on and following the initial Delivery Date, Buyer shall deliver to Seller the Default Service Supply Estimates for the following calendar day in accordance with the terms of the Supplier Tariff. Buyer may provide updates to any Default Service Supply Estimates delivered to Seller by delivering to Seller a subsequent real-time Default Service Supply Estimate. In addition, Buyer shall deliver to Seller, as often as is practicable but in no event later than the end of each month, a report listing known changes in the Default Service Load. Buyer does not make any representation or warranty, and expressly disclaims any representation or warranty, regarding the accuracy or completeness of the Default Service Supply Estimates, or any information contained in such Default Service Supply Estimates. On a daily basis, for each hour during the term of this Agreement on and following the initial Delivery Date, Buyer shall deliver to PJM Buyer's estimate of the Energy associated with the Default Service Load for the preceding calendar day in accordance with the terms of the PJM Agreements. Buyer shall provide any necessary updates to PJM in accordance with the PJM Agreements.
- 3.3 Information Sharing. On each Business Day, Buyer shall provide to Seller on a reasonable efforts basis, Buyer's estimation of the Capacity information related to Seller's obligations under this Agreement that Buyer provides to PJM daily. Buyer does not warrant the accuracy of such information.

ARTICLE IV SPECIAL TERMS AND CONDITIONS

- 4.1 Load Response Programs. Buyer will manage its load response programs in accordance with PJM Agreements as amended from time to time and the provisions of its applicable riders and retail electric service tariffs, as amended and approved by the PUC from time to time, or Buyer customer contracts, as amended by the Buyer from time to time. Buyer will retain all of the benefits associated with its load response programs, including but not limited to all associated wholesale revenues from PJM for Capacity, Energy and Ancillary Services. Unless specifically prohibited by its retail electric service tariffs,

Default Service customers may, at their election, participate in demand response programs offered under the PJM Agreements.

- 4.2 Demand Side Response, Energy Efficiency, Net Metering and Retail Market Programs. Seller acknowledges that Default Service customers may participate in Demand Side Response, Energy Efficiency, Net Metering and Retail Market Programs offered by Buyer or by third parties, including Curtailment Service Providers, which are available on the Effective Date or may become available during the Delivery Period, and that such participation may reduce or change Default Service Load that might otherwise be served in the absence of such programs and, accordingly, the Monthly Settlement Amount received by Seller. To the extent that PJM imposes charges on Buyer as LSE associated with PJM Demand Response programs, those charges will be allocated by Buyer to Seller in proportion to Seller's Specified Percentage. Except as provided in the preceding sentence, Buyer shall retain all of the benefits associated with its Demand Side Response Programs and/or Energy Efficiency Programs.
- 4.3 Time of Use. In accordance with PUC statutes, regulations and Orders, Buyer may provide Time of Use rates to its customers when Smart Meters are installed. At that time, Buyer may request TOU supply from Seller pursuant to the terms and conditions included in this Agreement. Buyer will charge TOU customers the rates that are approved by the PUC for TOU service, and Seller will be paid the revenues that Buyer receives for TOU service for that portion of supply used by TOU customers, netted to reflect any other adjustments set forth herein. Seller assumes the risk that these TOU revenues may be higher or lower than the fixed price provided for under Exhibit A. Buyer reserves the sole right to bid TOU supply out separately from this Agreement, and if that occurs, that amount of TOU supply will not be included in this Agreement.
- 4.4 PJM e-Accounts. Buyer and Seller shall work with PJM to establish any PJM e-Accounts (as defined in the PJM Agreements) necessary for Seller to provide Full Requirements Service. In a timely manner, Buyer shall establish PJM e-Account contract(s) for the entire duration of the Transaction(s) and Seller shall confirm the PJM e-Account contract(s) for the entire duration of the Transaction(s).
- 4.5 Pennsylvania Disclosure Requirements. Subject to any applicable confidentiality requirements, Seller shall provide to Buyer, to the best of its knowledge, the generation resources used to supply Full Requirements Service, in order to comply with the requirements, if any, of the PUC or any other Governmental Authority that relate to reporting such information. All information provided pursuant to this Section 4.5 (Pennsylvania Disclosure Requirements) shall be provided in a timely manner and in an appropriate form to enable Buyer to comply with the requirements, if any, of the PUC or any other Governmental Authority that relate to reporting such information.
- 4.6 Alternative Energy Portfolio Standards Obligation.

- (a) Seller shall provide Buyer with AECs required to comply with the Alternative Energy Portfolio Standards, including regulations adopted thereunder, (together the "AEPS Obligation") in proportion to Seller's Specified Percentage.
- (b) Seller and Buyer shall work together to establish the proper accounts within the GATS. Seller shall be a subscriber to GATS and is responsible for paying its annual subscription fee. Seller shall transfer all AECs to Buyer using GATS. Seller shall transfer certificates into the Buyer's account(s) on a timely basis in the amount necessary to fulfill Seller's AEPS Obligation under this Agreement. Seller shall be responsible for paying the volumetric fees associated with LSE GATS fee requirements in proportion to Seller's Full Requirements Service. Seller warrants that all AECs transferred to Buyer during an AEPS Reporting Period (or during the twenty calendar days thereafter) shall be eligible for Buyer's use for compliance during such AEPS Reporting Period.
- (c) Seller shall provide to the Buyer all information regarding its share of the AEPS Obligation that may be required by the PUC rules governing reporting and auditing of Buyer's compliance with the AEPS Obligation.
- (d) The Buyer will provide the Seller with a version of Exhibit B to this Agreement at the same time that it provides the Transaction Confirmation. Exhibit B at that time will incorporate the AEPS percentage obligations for the applicable delivery year covered by the Transaction Confirmation(s) in effect on the day the bid was submitted. Exhibit B as provided with the Transaction Confirmation(s) will apply during the term of the Agreement and will be used to determine the Seller's AEPS Obligation.
- (e) If Seller fails to fulfill Seller's AEPS Obligation for any AEPS Reporting Period as provided in Section 4.7(b), Buyer shall invoice Seller and Seller shall pay liquidated damages equal to the AEC Non-Solar Penalty or the AEC Solar Penalty for such Transaction, as applicable, for each AEC Seller failed to provide for that AEPS Reporting Period. If the PUC subsequently establishes an alternative compliance payment under the AEPS Act for non-compliance with the Tier I (solar) requirements in excess of the AEC Solar Penalty for such AEPS Reporting Period, Seller shall also pay Buyer the amount in excess of the AEC Solar Penalty; if the tier I (solar) alternative compliance payment is less than AEC Solar Penalty, Buyer shall refund the difference to Seller. Moreover, the Seller will be liable for any costs directly or indirectly related to the procurement of AECs by the Buyer or related to any penalties or costs associated with non-compliance of the AEPS Act in the event that the Seller defaults in its obligations under this Section.

- (f) Seller shall provide Buyer all information Buyer may require to comply with the AEPS Act and its implementing regulations and other Requirements of Law, including but not limited to the price paid per AEC required by 73 Pa.C.S. § 1648.3(c)(8).
- 4.7 Title Transfer. Seller shall cease to have title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claims) and 9.2 (Buyer's Indemnification for Third-Party Claims) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Seller warrants that it has good title to the Full Requirements Service sold and delivered hereunder and that it has the right to sell such Full Requirements Service. The word "loss" in this Section (Title Transfer) does not encompass electrical transmission losses and distribution losses. As between Buyer and Seller only, Buyer shall take title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claims) and 9.2 (Buyer's Indemnification for Third-Party Claims) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Notwithstanding the foregoing, nothing contained in this Agreement is intended to create or increase liability of Buyer to any third party beyond such liability, if any, that would otherwise exist under the PJM Agreements or under applicable law if Buyer had not taken title.
- 4.8 Reliability Guidelines and Compliance Requirements. Each Party agrees to adhere to the applicable operating policies, criteria and/or guidelines of the NERC, PJM, their successors, and any regional or sub regional requirements. Each Party agrees to provide in a timely manner all required information to the other Party, as necessary, to assure Seller's and Buyer's compliance with all applicable reliability standards.
- 4.9 Declaration of Authority. For the period of time that this Agreement is in effect, both Buyer and Seller shall have executed the Declaration of Authority in the form attached as Exhibit H.
- 4.10 PJM Membership: Integration. On the Effective Date and continuing through the term of this Agreement, Seller shall be (i) a member in good standing of PJM; and (ii) qualified as a PJM "Market Buyer" and "Market Seller" pursuant to the PJM Agreements.
- 4.11 FERC Authorization. Beginning on the Effective Date and continuing through the term of this Agreement, Seller shall have FERC authorization to make sales of energy, and capacity at market based rates.
- 4.12 Disclosure in Event of Seller Default. If Seller defaults and this Agreement is terminated pursuant to Article 12 (Events of Default; Remedies), Buyer may disclose the terms of this Agreement and any Transaction Confirmation to all other non-defaulting wholesale suppliers providing Medium C&I Service to Buyer in connection with Full Requirements Service associated with the Default

Service Load. Such disclosure by Buyer shall be made for the purpose of allowing each non-defaulting wholesale supplier to make its Step-Up elections described in Section 4.13 (Seller Step-Up Rights) below.

- 4.13 Seller Step-Up Rights. Buyer may ask other sellers whether they wish to assume all or part of the delivery obligations on the same terms and price contained herein, but any seller shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a "Step-Up." Buyer would only exercise this pursuant to a Commission approved plan to address defaults. For the avoidance of doubt, in the event that Seller does not respond to Buyer's Step-Up request within the relevant timeframe, Seller shall be deemed to have rejected the Buyer's request in full.

ARTICLE V TERM AND SURVIVAL

- 5.1 Term. Unless otherwise agreed upon by Buyer and Seller, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed under this Agreement, unless the Agreement is terminated prematurely pursuant to Article 12 (Events of Default; Remedies) of this Agreement.

Field Code Changed

ARTICLE VI DETERMINATION OF DELIVERED QUANTITIES

- 6.1 Monthly Settlement Load. The amount of Monthly Settlement Load with respect to any calendar month during the Delivery Period shall be determined in terms of megawatt-hours (MWh) of Energy. The MWh of Energy shall be equivalent to the amount of Energy reported as the Seller's Specified Percentage obligation by Buyer to PJM with deration adjustments for marginal losses.

ARTICLE VII BILLING AND SETTLEMENT

- 7.1 Billing. Unless otherwise agreed to by the Parties, on or before the sixth (6th) Business Day of each month, Buyer shall deliver to Seller, via electronic transmission or other means agreed to by the Parties, an invoice ("Invoice") that sets forth the total amount due for the previous calendar month for all Transactions. The Invoice shall detail for each Transaction, where applicable, the following:

- (a) Monthly Settlement Load
- (b) Monthly Settlement Price
- (c) Monthly Settlement Amount

- (d) PJM Billing Adjustments
- (c) Any other adjustments set forth in this Agreement.

7.2 PJM Billing.

- (a) Buyer and Seller shall direct PJM to invoice Seller and Buyer for charges and credits relating to Seller's and Buyer's rights and obligations under this Agreement, as set forth in Exhibit D attached hereto and made a part hereof. If PJM is unable to invoice charges or credits in accordance with Exhibit D, Buyer shall rectify such PJM invoice discrepancy in the Invoice sent pursuant to Section 7.1 (Billing).
- (b) The Parties agree that the PJM bill may change from time to time. Allocation of any charges that are reflected in a PJM bill that are not included on or are inconsistent with Exhibit D will be determined pursuant to Sections 2.3 (Network Integration Transmission Service and Distribution Service), 2.5 (Other Changes in PJM Charges), and 16.11 (PJM Agreement Modifications) of this Agreement.

7.3 Payments of the Invoice.

- (a) Except as may otherwise be provided in this Agreement, on the Monthly Settlement Date, Buyer will pay to Seller, or Seller will pay to the Buyer, as the case may be, the total amount due in the applicable Invoice. All payments due hereunder shall be made to the Party owed such payments by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), unless otherwise agreed to by the Parties, to a bank designated in writing by such Party, by 8:00 p.m. EPT on the Monthly Settlement Date. Should an invoice not be received by Seller by the 10th day of the month, then the invoice shall be paid 10 days after receipt. Payment of Invoices shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement (other than the obligation to make such payment) nor shall such payment constitute a waiver of any claims arising hereunder.
- (b) For Time-of-Use Load, Buyer shall make payment to Seller based upon the revenues received for Time-of-Use Off-Peak Hours and Time-of-Use On-Peak Hours for the Time-of-Use Monthly Billed Load. Buyer shall initiate payment based upon the terms set forth in Section 7.3(a) of this Agreement.

7.4 Netting of Payments. The Parties shall discharge mutual debts and payment obligations due and owing to each other under this Agreement, as of the Monthly Settlement Date, such that all amounts owed by each Party to the other Party shall be reflected in a single amount due to be paid by the Party who owes it and received by the other Party, provided that the calculation of the net amount shall

not include any disputed amounts being withheld pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices).

7.5 Billing Disputes and Adjustments of Invoices.

- (a) Within twelve (12) months of the date on which an Invoice is issued, Buyer may, in good faith, adjust the Invoice to correct any errors. The adjustment shall include interest calculated at the Interest Rate from the original due date to the date of payment. Buyer shall provide Seller a written explanation of the basis for the adjustment.
- (b) Within twelve (12) months of the date on which an Invoice is issued or an Invoice is adjusted pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices), Seller may, in good faith, dispute the correctness of such Invoice or adjustment, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that Seller has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.
- (c) Within twelve (12) months of the date on which a PJM bill is issued, Buyer or Seller may, in good faith, dispute the correctness of any such PJM bill, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that the disputing Party has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.

7.6 Interest on Unpaid Balances. Interest on delinquent amounts, other than amounts in dispute as described in Section 7.5 (Billing Disputes and Adjustment of Invoices), shall be calculated at the Interest Rate from the original due date to the date of payment.

**ARTICLE VIII
TAXES**

8.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Taxes.

- (a) As between the Parties: (i) The payment of any Governmental Authority taxes ("Governmental Charges") imposed on or with respect to Seller's wholesale sales of Full Requirements Service to the Delivery Point shall be the responsibility of Seller; and (ii) The payment of any Governmental Charges on or with respect to the retail sales of Full Requirements Service shall be the responsibility of Buyer. The payment of any Pennsylvania gross receipts taxes attributable to Buyer's sale of Energy to its retail customers shall be the responsibility of Buyer.

- (b) Any Party paying taxes that should have been paid by the other Party pursuant to Section 8.2(a) (Taxes) shall be reimbursed by such other Party in the next Invoice issued under this Agreement pursuant to Section 7.1 (Billing).

ARTICLE IX INDEMNIFICATION

- 9.1 Seller's Indemnification for Third-Party Claims. Seller shall indemnify, hold harmless, and defend Buyer and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and exposures including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Governmental Authorities in any action or proceeding between Buyer and a third party or Seller for damage to property of unaffiliated third parties, injury to or death of any person, including Buyer's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Seller's performance under this Agreement, Seller's exercise of rights under this Agreement, or Seller's breach of this Agreement.
- 9.2 Buyer's Indemnification for Third-Party Claims. Buyer shall indemnify, hold harmless, and defend Seller and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Seller's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and exposures including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Governmental Authorities in any action or proceeding between Seller and a third party or Buyer for damage to property of unaffiliated third parties, injury to or death of any person, including Seller's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Buyer and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Buyer's performance under this Agreement, Buyer's exercise of rights under this Agreement, or Buyer's breach of this Agreement.
- 9.3 Indemnification Procedures. If either Party intends to seek indemnification under Sections 9.1 (Seller's Indemnification for Third-Party Claims) or 9.2 (Buyer's Indemnification for Third-Party Claims), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the

failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE X LIMITATIONS ON LIABILITY

EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREBIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THEREOF, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE XI FORCE MAJEURE

- 11.1 **Force Majeure.** Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for

damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Section 11.2 (Notification).

- 11.2 **Notification.** A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

ARTICLE XII EVENTS OF DEFAULT; REMEDIES

- 12.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;
 - (b) any representation or warranty made by such Party herein or in response to the RFP that is false or misleading in any material respect when made or when deemed made or repeated;
 - (c) the failure of a Party to comply with the requirements of Section 4.10 (PJM Membership; Integration) and 4.11 (FERC Authorization) if such failure is not remedied within three (3) Business Days after written notice;
 - (d) PJM has declared a Party to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;
 - (e) except to the extent constituting a separate Event of Default, the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within three (3) Business Days after written notice;
 - (f) such Party becomes Bankrupt;
 - (g) such Party consolidates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, or assigns the Agreement or any rights, interests, or obligations hereunder without the prior written consent of the other Party when such consent is required, and, at the time of such consolidation, merger, transfer or assignment, the resulting,

surviving, transferee, or assignee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (h) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than either \$1050,000,000 or an amount equal to 5% of the Tangible Net Worth of the Party, whichever is lower. which results in such indebtedness becoming immediately due and payable; or (ii) a default by such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of either \$100,000,000 or an amount equal to 5% of the Tangible Net Worth of the Party, whichever is lower, not less than \$50,000,000 under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);
- (i) the failure of a Party to comply with its obligations pursuant to Article 14 (Performance Assurance/Accelerated Payments) if such failure is not remedied within three (3) Business Days after written notice;
- (j) with respect to Seller's Guarantor, if any:
 - (i) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of the Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) the failure of the Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party;
 - (iv) the Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty; or
 - (v) conditions described with respect to a Party in subparagraph (f) of this Section 12.1 (Events of Default) occurs with respect to its Guarantor.

12.2 **Remedies.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party"), shall provide written notice to the Defaulting Party and shall have the right to temporarily suspend performance pursuant to Section 12.2(a) or implement all of the following remedies pursuant to Section 12.2(h):

- (a) If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Section 12.2(b). In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement all the following remedies:
 - (i) designate a day, in such notice, no earlier than the day such notice is effective and no later than twenty (20) (calendar) days after such notice is effective, as an early termination date ("Early Termination Date"), for the purposes of determining the Settlement Amount;
 - (ii) calculate and receive from the Defaulting Party, payment for any Default Damages the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of Default, until the earlier of: (i) the Early Termination Date (if applicable); or (ii) the Event of Default has been cured by the Defaulting Party; or (iii) the Non-Defaulting Party waives such Event of Default;
 - (iii) withhold any payments due to the Defaulting Party under this Agreement as an offset to any Default Damages or Termination Payment, as defined in Section 12.3 (Calculation and Net Out of Settlement Amounts); and
 - (iv) permanently suspend performance.
- (b) If an Event of Default has occurred and the Non-Defaulting Party is the Buyer, then:
 - (i) unless the Event of Default was a failure by Seller to meet any or all of its Full Requirements Service obligations, Buyer may elect, at its sole discretion, to offer to waive the default on such terms and conditions as Buyer, at its sole discretion, may deem appropriate to propose ("Special Remedy") provided that;

- (ii) Any such Special Remedy can only be offered to Seller if it first is specifically approved by the PUC in accordance with PUC Orders.

12.3 Calculation and Net Out of Settlement Amounts.

(a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable. For purposes of calculating the Settlement Amount, the Non-Defaulting Party shall reflect the net impact of the exercise of the option on the part of other wholesale suppliers as described in Section 4.13 (Seller Step-Up Rights) of this Agreement. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single liquidated amount (the "Termination Payment") by netting out: (i) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security, if any, then available to the Non-Defaulting Party pursuant to Article 14 (Performance Assurance/Accelerated Payments), plus any or all other amounts due to the Defaulting Party under this Agreement, against (ii) all Settlement Amounts that are due to the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party, including but not limited to Default Damages, under this Agreement. The Termination Payment shall be due to or from the Non-Defaulting Party as appropriate. When the Buyer is the Non-Defaulting Party and replaces Seller's full requirements obligation under this Agreement, the result of that procedure will be deemed to be commercially reasonable for purposes of calculating the Settlement Amount.

(b) Seller may, in its sole discretion, add the following subsection 12.3(b) by checking this box. If Seller does not check this box, subsection 12.3(b) will not be deemed to be included as part of the Parties' Agreement.

(b) In order to avoid doubt regarding a commercially reasonable calculation for the purposes of calculating the Settlement Amount by the Non-Defaulting Party, the quantity of amounts of Energy, Capacity and other services to have been provided under the DSMA for the period following the Early Termination Date (the "Termination Quantity") shall be deemed those quantity amounts that would have been delivered on an hourly basis had the DSMA been in effect during the previous calendar year, adjusted for such Default Service load changes as have occurred since the previous calendar year. Nothing in this section shall limit the right of the Buyer

when Seller is the Defaulting Party to replace Seller's full requirements obligation and the result of any Commission approved procedure will be deemed to be commercially reasonable for purposes of calculating the Settlement Amount and will be deemed to have been determined by reference to the Termination Quantity.

- 12.4 **Notice of Termination Payment.** As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide written notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The owing Party shall make the Termination Payment within five (5) Business Days after such notice is effective.
- 12.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a notice that it intends to dispute the calculation of the Termination Payment ("Termination Payment Dispute Notice"), pursuant to the provisions of Article 12 (Dispute Resolution), and provided, however, that, if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party with the Termination Payment Dispute Notice.
- 12.6 **Closeout Setoffs.** After calculation of a Termination Payment in accordance with Section 12.3 (Calculation and Net (Net of Settlement Amounts)), if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to: (i) set off against such Termination Payment any amounts payable by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party; and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 12.2 (a), withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Article shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). If any obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set-off in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained.
- 12.7 **Duty to Mitigate.** Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

- 12.8 Return of Auction Revenue Rights. When the Seller is the Defaulting Party, the Seller shall transfer or reassign to the Buyer on the Early Termination Date, any and all of Buyer's rights to Auction Revenue Rights (ARRs) to which Buyer is entitled as an LSE pursuant to the PJM Agreements, which were transferred or assigned to Seller under Section 2.4 (Congestion and Congestion Management).

ARTICLE XIII DISPUTE RESOLUTION

- 13.1 Informal Dispute Resolution. Before pursuing resolution of any dispute arising out of this Agreement, the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Section 13.1 (Informal Dispute Resolution) shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Rate from the original due date through the date of payment.
- 13.2 Formal Dispute Resolution. After the requirements of Section 13.1 (Informal Dispute Resolution) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Notwithstanding anything set forth in this Article 13 (Dispute Resolution) to the contrary, any dispute concerning new PJM charges will be resolved in accordance with the procedures set forth in Section 2.4 (Other Changes in PJM Charges).

ARTICLE XIV PERFORMANCE ASSURANCE/ACCELERATED PAYMENTS

- 14.1 Requirement for Performance Assurance. With respect to Aggregate Transactions, if at any time and from time to time during the term of this Agreement, Aggregate Buyer's Exposure exceeds the Unsecured Credit in any Business Day, then Buyer may request that Seller post Performance Assurance in an amount equal to the amount by which Aggregate Buyer's Exposure exceeds the Unsecured Credit (rounding upwards to the nearest \$100,000), less any Performance Assurance already posted with Buyer. Notwithstanding the above, Seller shall only be required to post the required Performance Assurance to the extent the amount of required Performance Assurance is equal to or greater than \$250,000. Subsequent and incremental requests for Performance Assurance shall be in \$100,000 increments. Buyer's request for Performance Assurance shall not be disputed by Seller.

14.2 Performance Assurance Transfers/Returns. If the request for Performance Assurance is made by Buyer before 1:00 p.m. EPT on a Business Day, then if Seller is posting cash as the form of Performance Assurance Collateral, Seller shall be required to deliver the Performance Assurance cash to Buyer on the Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the second Business Day following the date of such request. If a request for Performance Assurance is made by Buyer at or after 1:00 p.m. EPT, then if Seller is posting cash as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance cash to Buyer on the second Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the third Business Day following the date of such request. Telephone, facsimile, or other communication means mutually acceptable by the Parties, are suitable means for the Buyer to make requests for Performance Assurance. Buyer shall be entitled to hold Performance Assurance in the form of Cash, provided that the following conditions are satisfied: (1) it has not defaulted; (2) Buyer has a Credit Rating of (a) at least BBB- from S&P and Baa3 from Moody's, if Buyer is rated by both S&P and Moody's but not by both; and (3) cash shall be held only in any jurisdiction within the United States. To the extent the Buyer is entitled to hold Cash, the interest payable to Seller shall be calculated by multiplying the amount of cash held times the Federal Funds Effective Rate for that day as set forth in the weekly statistical release designated as H.15.(519), or any successor publication, published by the Board of Governors of the Federal Reserve System. Buyer shall not be entitled to hold Performance Assurance in the form of cash under other circumstances than those above. Rather, Performance Assurance in the form of cash shall be held in any major U.S. commercial bank, or a foreign bank with a U.S. branch office, (which is not the Buyer or an affiliate of the Buyer), and has assets of at least \$10 billion and a credit rating of at least "A" by Standard and Poor's, or "A2" by Moody's Investor Services ("Qualified Institution"). Buyer will pay to Seller on the first Business Day of each calendar quarter the amount of interest it receives based upon the applicable overnight repurchase interest rate from the Qualified Institution on any Performance Assurance in the form of cash posted by Seller. The interest amount or portion thereof not returned to Seller pursuant to this Section 14.2 (Performance Assurance Transfers/Returns) will constitute Performance Assurance and will be subject to the provisions of Article 14 (Performance Assurance) of this Agreement.

On any Business Day (but no more frequently than weekly with respect to Letters of Credit or other security acceptable to Buyer, and daily with respect to cash), Seller, at its sole cost, may request that the Performance Assurance be reduced correspondingly to reflect the decrease in Buyer Exposure or an increase in Seller's Unsecured Credit, if any (rounding upwards for any fractional amount to

the nearest \$100,000). Buyer shall be required to return the amount of Performance Assurance due in accordance with the timeframes set forth in the preceding paragraph. Telephone, facsimile, or other communication means mutually acceptable by the Parties are suitable means for the Seller to make requests for return of Performance Assurance.

In the event that Seller fails to provide Performance Assurance or Buyer fails to return Performance Assurance pursuant to the terms of this Article 14 (Performance Assurance/Accelerated Payments) within the applicable timeframes, then an Event of Default pursuant to Section 12.1(i) (Events of Default) shall be deemed to have occurred with respect to the non-performing Party and the other Party will be entitled to the remedies set forth therein.

In instances caused by the timing of the requests for both the return of Performance Assurance and placement of Performance Assurance, a situation may arise where the Parties are both sending and receiving transactions on the same day. In these instances, the Parties may net the requested amounts and proceed with only one transaction. Netting is only permitted for Performance Assurance purposes if it is mutually agreed to by both Parties in advance and confirmed in advance.

- 14.3 **Unsecured Credit.** During the term of this Agreement, Buyer shall extend, solely with respect to the Performance Assurance set forth in Section 14.1 (Requirement for Performance Assurance), Unsecured Credit to Seller in an amount initially determined on the Effective Date and re-determined each Business Day thereafter pursuant to this Section 14.3.

The relevant Unsecured Credit Limit shall be the Unsecured Credit Limit listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's. The relevant TNW Amount shall be calculated using the TNW Percentage listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

Credit Rating				
S&P	Fitch	Moody's	TNW Percentage	Unsecured Credit Limit
A- or above	A- or above	A3 or above	16%	\$60,000,000
BBB+	BBB+	Baa1	10%	\$40,000,000
BBB	BBB	Baa2	7%	\$30,000,000
BBB-	BBB-	Baa3	3%	\$20,000,000

BBB1 or below	BB+ or below	Ba1 or below	0%	\$0
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- 14.4 **Credit Rating.** If during the term of the Agreement, Seller's or Seller's Guarantor's Credit Rating changes, by either being upgraded or downgraded by any of the rating agencies referenced in Section 14.3 (Unsecured Credit) of the Agreement, the Seller shall be required to provide written notice to Buyer of such Credit Rating change no later than two (2) Business Days after the date of such change.
- 14.5 **Tangible Net Worth.** During the term of the Agreement, Seller, or Seller's Guarantor shall be required to provide Buyer written financial information to determine the Seller's, or Seller's Guarantor's Tangible Net Worth. Financial information shall include an audited "Annual Report", containing, but not limited to, a balance sheet prepared in accordance with generally accepted accounting principles, a schedule of long term debt including maturity dates, and all notes to the financial statement that apply to long term debt, short term borrowing, and liquidity and capital resources. The Seller or Seller's Guarantor, shall also provide the Buyer written financial information on a quarterly basis containing a balance sheet prepared in accordance with generally accepted accounting principles. However, if Seller's, or Seller's Guarantor's equity is publicly traded on the New York Stock Exchange, NASDAQ National Market, or American Stock Exchange, the Buyer will waive the requirement to provide written financial information.
- 14.6 **Foreign Entities.** The following standards shall apply to Seller, or Seller's Guarantor, that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States. For Sellers who cannot meet the following requirements, the posting of cash or letter of credit in an acceptable form (see standard format in Exhibit C) for the Aggregate Buyer's Exposure shall be required.
- (a) The Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. The Buyer shall have full and sole discretion, without liability or recourse to the Seller, to evaluate the evidence of creditworthiness submitted by such Seller; or
 - (b) The Guarantor of a Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Guarantors of Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the

District of Columbia. Buyer shall have full and sole discretion, without liability or recourse to the Guarantor or the Seller, to evaluate the evidence of creditworthiness submitted by such Guarantor.

All Sellers or Guarantors of Sellers that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States shall, in addition to all documentation required elsewhere in this Section 14.6 (Foreign Entities), supply the following as a condition of being granted Unsecured Credit, up to a maximum level, for the purpose of covering the Aggregate Buyer's Exposure:

(c) For Seller:

- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Seller is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the Seller in the jurisdiction in which it has been incorporated or otherwise formed; and
- (ii) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the person executing this Agreement on behalf of the Seller has the authority to execute the Agreement and that the governing board of such Seller has approved the execution of this Agreement; and
- (iii) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the Seller has been authorized by its governing board to enter into agreements of the same type as this Agreement.

Buyer shall have full and sole discretion, without liability or obligation to the Seller, to evaluate the sufficiency of the documents submitted by the Seller.

(d) For Guarantor of a Seller:

- (i) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and
- (ii) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that

the governing board of such Guarantor has approved the execution of the Guaranty; and

- (ii) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the Guaranty.

Buyer shall have full and sole discretion, without liability or obligation to the Guarantor or the Seller, to evaluate the sufficiency of the documents submitted by such Guarantor.

14.7 Aggregate Buyer's Exposure. In order to determine the amount of Performance Assurance during the term of this Agreement, Buyer shall calculate the Aggregate Buyer's Exposure under Aggregate Transactions once per Business Day, pursuant to the process and methodology described in Exhibit B. On a Transaction Date, the Buyer's Exposure for that Transaction shall be deemed equal to zero. To the extent that the calculations of the Aggregate Buyer's Exposure for a given date result in a negative number, the Aggregate Buyer's Exposure for such date shall be deemed equal to zero.

- (a) Buyer shall provide Seller with the On-Peak Initial Mark Price and the Off-Peak Initial Mark Price. In addition, on each Business Day, Buyer shall use reasonable efforts to provide Seller with the On-Peak Forward Price and the Off-Peak Forward Price. To the extent that information and/or quotes are not available to determine an On-Peak Forward Price or Off-Peak Forward Price for a given month Buyer shall be permitted to use information and/or quotes relevant to such month for which information and quotes are available in order to provide Seller the required On-Peak Forward Price and Off-Peak Forward Price for such month. Exhibit E presents in more detail the methodology to be used by Buyer in determining the Off-Peak Initial Mark Price, the On-Peak Initial Mark Price, the On-Peak Forward Price and the Off-Peak Forward Price.
- (b) Buyer shall use reasonable efforts to provide Seller with the Aggregate Buyer's Exposure on each Business Day, subject to the Confidentiality provisions of this Agreement.
- (c) Pursuant to Section 14.1 (Requirement for Performance Assurance) above, Seller shall not dispute any request by Buyer for Performance Assurance. Notwithstanding such provision, Seller may dispute Buyer's determinations of the On-Peak Initial Mark Price, Off-Peak Initial Mark Price, On-Peak Forward Price and Off-Peak Forward Price if Seller can demonstrate that Buyer has been grossly negligent or has exhibited willful misconduct in such determinations, or that Buyer is making determinations in a manner that is arbitrary, capricious or erroneous on its face. Such dispute of Buyer's determinations by Seller shall not be cause

for any delay by Seller in posting any Performance Assurance requested by Buyer.

**ARTICLE XV
REPRESENTATIONS AND WARRANTIES**

- 15.1 Representations and Warranties. On the Effective Date and throughout the term of this Agreement, each Party represents and warrants to the other Party that:
- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
 - (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
 - (d) this Agreement constitutes a legally valid and binding obligation of such Party enforceable against it in accordance with its terms; subject to any Equitable Defenses;
 - (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
 - (f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;
 - (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
 - (h) with respect to Buyer, it is acting to fulfill its obligations under and in accordance with PUC Orders to enter into this Agreement;
 - (i) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement;

- (j) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code, all setoffs, netting and liquidations contemplated hereunder constitute "settlement payments" as set forth in Sections 101 and 741 of the United States Bankruptcy Code and each payment or transfer of Performance Assurance is a "margin payment", "settlement payment" or transfer within the meaning of Section 101 of the United States Bankruptcy Code for the purposes of and as used in such Code;
- (k) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of the Full Requirements Service as required by this Agreement; and it is an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act.

15.2 **Additional Understandings.** This Agreement is for the purchase and sale of Full Requirements Service that will be delivered in quantities expected to be used or sold over a defined period(s) in the normal course of business, and it is the intention at the inception and throughout the term of this Agreement and each Transaction hereunder that the Agreement will result in physical delivery and not financial settlement, and the quantity of Full Requirements Service that Seller must deliver and Buyer must receive will be determined by the requirements of the Default Service Load served by Buyer, and, as such, the Agreement does not provide for an option by either Party with respect to the quantity of Full Requirements Service to be delivered or received during performance of the Agreement. Notwithstanding any other provision of this Agreement, Seller acknowledges that Buyer makes no representation as to any amount of Default Service Load that may or may not be required during this Agreement. This Agreement has been drafted to effectuate Buyer's and Seller's specific intent so that in accordance with Financial Accounting Standards Board Statement No. 133 ("FAS 133"), as amended, Buyer would be able to elect to use accrual accounting for its purchases under this Agreement, while Seller would be able to elect to use either accrual or mark-to-market accounting for its sales under the Agreement. If either Buyer or Seller determines, in good faith, that the intended accounting treatment has become jeopardized, due to a change in interpretations of FAS 133, as amended, or otherwise, then Buyer and Seller agree to meet and use their best efforts to reform the Agreement so that, with the minimum changes possible, the Agreement again qualifies for the intended accounting treatments.

ARTICLE XVI MISCELLANEOUS

16.1 **Notices.** Unless otherwise specified herein, all notices shall be in writing and delivered by hand, overnight or facsimile (provided a copy is also sent by overnight mail). Notice shall be effective on the next Business Day after it is sent. A Party may change its address by providing notice of the same in accordance with this Section 16.1 (Notices). Notice information for Buyer and Seller is shown on Exhibit G.

16.2 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound in this Agreement or any Transaction. Any provision declared or rendered unlawful will not otherwise affect the remaining lawful obligations that arise under this Agreement; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

16.3 Rules of Interpretation. The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) unless otherwise stated, the terms "include" and "including" when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) references to the singular include the plural and vice versa;
- (d) references to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) in carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) if any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

16.4 Audit. Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Sections 7.1 (Billing) and 7.6 (Interest on Unpaid Balances) of this Agreement.

16.5 Confidentiality.

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; (iii) such document or information was available to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation or (v) such disclosure is made to PJM and is necessary in order for the transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.
- (b) Notwithstanding any other provision of this Section 16.5, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of the Section 16.5, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by PJERC.
- (c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.
- (d) Any independent auditor performing an audit on behalf of a Party pursuant to Section 16.4 (Audit) shall be required to execute a confidentiality agreement with the Party being audited. Such audit information shall be treated as confidential pursuant to this Section 16.5.
- (e) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.5. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Section 16.5, 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.

- 16.6 Successors. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 16.7 Assignment/Change in Corporate Identity. Neither Party shall assign this Agreement, its rights or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder),
- (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements,
 - (b) after written notice, transfer or assign this Agreement to an Affiliate of such Party if (i) such Affiliate's creditworthiness is equal to or greater than that of such Party; or (ii) in the case of the Seller, where such Affiliate's creditworthiness is not equal to or higher than that of such Party, such Affiliate provides the Performance Assurance required pursuant to this Agreement and the other Party consents, which consent shall not be unreasonably withheld
 - (c) after written notice, transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose (i) creditworthiness is equal to or higher than that of such Party, or (ii) in the case of the Seller, where such entity's creditworthiness is not equal to or higher than that of such Party, such entity provides the Performance Assurance required pursuant to this Agreement and the other Party consents, which consent shall not be unreasonably withheld, and
 - (d) provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.
- 16.8 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTITUTED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
- 16.9 Jurisdiction and Venue. Except for matters jurisdictional to FERC, the PUC or the appellate courts having jurisdiction over the PUC or FERC matters, all disputes hereunder shall be resolved in the Federal or State courts of Pittsburgh, Pennsylvania and each Party hereby irrevocably submits to the in personam jurisdiction of such courts. Each Party hereby waives its respective rights to any

jury trial with respect to any litigation arising under or in connection with this Agreement.

- 16.10 Amendments. Except as provided in Section 16.11 (PJM Agreement Modifications), this Agreement shall not be amended, modified, terminated, discharged or supplemented, nor any provision hereof waived, unless mutually agreed, in writing, by the Parties. Except as provided in Section 16.11 (PJM Agreement Modifications), the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *suu sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U. S. 348 (1956) (the "Mobile-Sierra" doctrine).
- 16.11 PJM Agreement Modifications.
- (a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.
 - (b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement; provided that no such changes shall alter the economic benefits of this Agreement between the Parties.
- 16.12 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to the respective Parties hereto upon any breach or default of any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, or any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.
- 16.13 Regulatory Approvals. Seller agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the DSMA and/or Transaction Confirmations hereunder. The commencement of the

Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Buyer of all Buyer required regulatory approvals, (ii) the receipt or waiver by Seller of all Seller required regulatory approvals, and (iii) Pennsylvania PUC approval. Unless ordered otherwise, the PUC will approve the transactions no later than four days following the full execution of the transactions. In the event such required regulatory approvals are not received or waived, the DSMA and/or applicable Transaction Confirmations will be non-enforceable.

- 16.14 Survival. The termination of all or a part of this Agreement or Transaction Confirmations thereto shall not affect the survival of any clauses or provisions necessary to enforce the remedies in the event of default and those provisions shall continue in full force and effect until all amounts due hereunder, including all obligations, have been paid or performed in full.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered, as of the date first written above, by their respective duly authorized officers.

ATTEST:

DUQUESNE LIGHT COMPANY

Title: _____

By: _____
Name:
Title:

ATTEST:

[SELLER]

Title: _____

By: _____
Name:
Title:

EXHIBIT A

TRANSACTION CONFIRMATION

This Transaction Confirmation letter is being provided pursuant to and in accordance with the Default Supply Master Agreement ("DSMA") dated _____ between Duquesne Light Company ("Company" or "DLC") and _____ ("Seller"). Terms used but not defined herein shall have the meanings ascribed to them in the DSMA. This Transaction Confirmation shall confirm the following terms of the transaction ("Transaction") agreed to on _____ ("Transaction Date").

Product: Full Requirements Service
 Service Type: [Small Commercial & Industrial/ Medium Commercial & Industrial]
 Delivery Point: Duquesne Zone
 Delivery Period: [MONTH] [DAY], [YEAR] through [MONTH] [DAY], [YEAR]
 Bid Blocks: [INSERT]
 Specified Percentage: [INSERT]% of DEFAULT SERVICE Load
 MW-Measure: [INSERT] MW
 Monthly Settlement Price: [MONTH] [DAY], [YEAR] through [MONTH] [DAY], [YEAR]

Energy (\$ / MWh) \$ XX.XX

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
On-Peak Estimated Energy Quantity Per MW-Measure, MWh	[INSE RT]											
Off-Peak Estimated Energy Quantity Per MW-Measure, MWh	[INSE RT]											

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between Seller and Buyer by returning an executed copy of this Transaction Confirmation by facsimile to DLC at [INSERT FAX NUMBER] in accordance with Section 2.8 – Transaction Confirmation of the DSMA. The signatories to this Transaction must have the authority to enter into this Transaction.

Duquesne Light Company

SELLER

By: _____
 Name: _____
 Title: _____

EXHIBIT B

ALTERNATIVE ENERGY PORTFOLIO STANDARDS OBLIGATION

This Exhibit B shall confirm the Alternative Energy Portfolio Standards Obligation of the transaction ("Transaction") agreed to on _____ ("Bid Proposal Due Date").

Alternative Energy Portfolio Standards Obligations for the period beginning [MONTH] [DAY], [YEAR] based on the total MWh supplied by Seller:

<u>Compliance Period</u>	<u>Tier 1</u>	<u>PV</u>	<u>Tier 2</u>
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%
6/1/[YR] to 5/31/[YR]	[INSERT]%	[INSERT]%	[INSERT]%

The percentages set forth above are those applicable for the first RFP and may be revised for future RFPs to reflect changes in law or other applicable regulatory requirements.

The above amounts are estimates and will vary based on actual load served. Seller will need to true-up, higher or lower, actual credits needed based on Monthly Settlement Amount.

If Alternative Energy Portfolio Requirements change by law or any other reason, Seller shall be responsible for providing the credits at its expense in order to comply with its obligations under Full Requirements Service.

EXHIBIT C

PERFORMANCE ASSURANCE LETTER OF CREDIT

{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}

IRREVOCABLE LETTER OF CREDIT NO. _____

ISSUE DATE _____ EXPIRY DATE _____

APPLICANT
[NAME]
[ADDRESS]

BENEFICIARY
[NAME]
[ADDRESS]

CURRENCY _____ AMOUNT _____
USD *****\$

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO: _____ FOR THE ACCOUNT OF _____ (APPLICANT) FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS _____ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE BANK OF _____ ("ISSUER") _____ (ADDRESS), EFFECTIVE _____ AND EXPIRING AT OUR COUNTERS ON _____ OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, AS PROVIDED HEREIN. THIS LETTER OF CREDIT IS AVAILABLE IN ONE OR MORE DRAFTS UP TO THE AGGREGATE AMOUNT SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED ON PRESENTATION IF ACCOMPANIED BY THE REQUIRED DOCUMENTS PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE THE EXPIRY DATE OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

I. YOUR SIGNED AND DATED STATEMENT, READING AS FOLLOWS:

"THE AMOUNT FOR THIS DRAWING, USD (INSERT AMOUNT), BEING MADE UNDER THE BANK OF _____ (BANK) LETTER OF CREDIT NUMBER (INSERT LETTER OF CREDIT REFERENCE NUMBER), REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM APPLICANT FOR PERFORMANCE ASSURANCE RELATED TO THE BENEFICIARY'S PENNSYLVANIA FULL REQUIREMENTS SERVICE AGREEMENT(S) DATED _____ BETWEEN _____ AND _____."

2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER SHALL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE OBJECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY'S RECEIPT OF FULL PAYMENT FROM THE APPLICANT AND ISSUER'S RECEIPT OF A WRITTEN RELEASE FROM THE BENEFICIARY RELEASING THE ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM "BUSINESS DAY" AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT'S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT'S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF [BANK] UNDER THIS LETTER OF CREDIT AND [BANK] SHALL ALWAYS REMAIN LIABLE TO [BENEFICIARY] FOR THE FULL AMOUNT OF APPLICANT'S OBLIGATIONS HEREIN TO [BENEFICIARY] NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT MAY BE TRANSFERRED OR ASSIGNED.
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") OR SUCH LATER REVISIONS(S) OF THE ISP AS MAY BE HEREAFTER ADOPTED. AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF PENNSYLVANIA. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.
5. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.
6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AUTHORIZED SIGNATURE: _____

TITLE: _____

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES TO:

[BANK NAME, ADDRESS AND PHONE NUMBER]

EXHIBIT D
SAMPLE PJM INVOICE

PJM Operating Agreement

	Day Ahead	Balancing	Real Time
Charges			
Spot Market Energy	Seller	Seller	
Transmission Congestion	Seller	Seller	
Transmission Losses	Seller	Seller	
Inadvertent Interchange			Seller
Economic Load Response	Seller		Seller
Planning Period Congestion Uplift			Seller
Emergency Load Response			Seller
Meter Error Correction			Seller
Emergency Energy			Seller
Operating Reserve for Load Response	Seller	Seller	
Regulation and Frequency Response Service			Seller
Synchronized Reserve			Seller
Day-ahead Scheduling Reserve			Seller
Operating Reserves	Seller	Seller	
Synchronous Condensing			Seller
PJM Customer Payment Defaults			Buyer & Seller
Load Reconciliation for Spot Market Energy			Seller
Load Reconciliation for Transmission Congestion			Seller
Load Reconciliation for Transmission Losses			Seller
Load Reconciliation for Inadvertent Interchange			Seller
Load Reconciliation for Regulation and Frequency Response Service			Seller
Load Reconciliation for Synchronized Reserve			Seller
Load Reconciliation for Day-ahead Scheduling Reserve			Seller
Load Reconciliation for Balancing Operating Reserve			Seller
Load Reconciliation for Synchronous Condensing			Seller
Financial Transmission Rights Auction			Seller
Credits:			
Transmission Congestion			Seller
Planning Period Excess Congestion			Seller
Planning Period Congestion Uplift			Seller
Transmission Losses			Seller
Load Reconciliation for Transmission Losses			Seller
Financial Transmission Rights Auction			Seller
Auction Revenue Rights			Seller

PJM OATT

	Real Time
Charges	
PJM Scheduling, System Control and Dispatch Service (Schedule 9-1 thru 9-5))	Seller
Transmission Owner Scheduling, System Control and Dispatch Service (Schedule 1A)	Seller
Market Monitoring Unit (MMU) Funding (Schedule 9-MMU)	Seller
FERC Annual Recovery (Schedule 9-FERC)	Seller
Organization of PJM States, Inc. (OPSI) Funding (Schedule 9-OPSI)	Seller
Reactive Supply and Voltage Control from Generation Sources Service	Seller
Black Start Service	Seller
Network Integration Transmission Service	Buyer
North American Electric Reliability Corporation (NERC) (Schedule 10- NERC)	Seller
Firm Point-to-Point Transmission Service	Seller
Non-Firm Point-to-Point Transmission Service	Seller
Reliability First Corporation (RFC) (Schedule 10-RFC)	Seller
Expansion Cost Recovery (Schedule 13)	Buyer
Transmission Enhancement (Schedule 12)	Buyer
Load Reconciliation for PJM Scheduling, System Control and Dispatch Service (Schedule 9-1, 9-3)	Seller
Load Reconciliation for Schedule 9-6 - Advanced Second Control Center (Schedule 9-1, 9-3)	Seller
Load Reconciliation for Market Monitoring Unit (MMU) Funding (Schedule 9-MMU)	Seller
Load Reconciliation for FERC Annual Recovery (Schedule 9-FERC)	Seller
Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding (Schedule 9-OPSI)	Seller
Load Reconciliation for North American Electric Reliability Corporation (NERC) (Schedule 10-NERC)	Seller
Load Reconciliation for Reliability First Corporation (RFC) (Schedule 10-RFC)	Seller
Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service (Schedule 1A)	Seller
Locational Reliability	Seller
<u>Generation Deactivation/RMR</u>	<u>Buyer</u>
Credits:	
Capacity Resource Deficiency	Seller
Load Management Test Failure	Seller
Non-Firm Point-to-Point Transmission Service	Seller

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EXHIBIT E

**METHODOLOGY FOR CALCULATION OF MARK TO MARKET (MTM)
EXPOSURE**

Parameters

In calculating the MtM Exposure for each Transaction, the following parameters are set on the Transaction Date:

1. On-Peak Initial Mark Price
2. Off-Peak Initial Mark Price
3. MW-Measure
4. On-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
5. Off-Peak Estimated Energy Quantity Per MW-Measure for each of the twelve calendar months
6. Number of awarded Bid Blocks

In calculating the MtM Exposure for each Transaction, the following parameters are set each Business Day subsequent to the Transaction Date:

- 1) On-Peak Forward Price
- 2) Off-Peak Forward Price
- 3) Current Capacity PLC Per Bid Block
- 4) On-Peak Estimated Energy Quantity
- 5) Off-Peak Estimated Energy Quantity

Determination of On-Peak Forward Prices

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub On-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly On-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available ("Aggregate Quotes"), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that On-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the On-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the On-Peak Forward Price for the given month may be updated based on the changes in On-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

Determination of Off-Peak Forward Prices

On each Business Day subsequent to the Transaction date, Buyer or Broker will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for AEP Dayton Hub Off-Peak Hours for each month of the Delivery Period. For Buyer to include a monthly Off-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available ("Aggregate Quotes"), Buyer shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from the average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are inconsistent with each other, Buyer will use the one that is most consistent with other available quotes.

Quotes from the Reference Market-Makers will be examined to identify quotes that are out of line and potentially invalid or are in obvious error. Reference Market-Makers will be asked to either correct or verify data that is anomalous and/or inconsistent with that provided by other sources or is in obvious error. If the data cannot be verified in time for the daily mark, the anomalous data will be discarded.

To the extent that Off-Peak Forward Price quotes are not available for a given month on a given Business Day, either as single month price quotes or as an Aggregate Quote, Buyer shall establish the Off-Peak Forward Price for that month using a methodology that utilizes the best information available to Buyer at that time. For example, the Off-Peak Forward Price for the given month may be updated based on the changes in Off-Peak Forward Price quotes for different months provided by Reference Market-Makers between the prior Business Day and the current Business Day.

Example of Disaggregating Aggregate Quotes

The following is an example of the process to be used for disaggregating Aggregate Quotes:

- a. Aggregate Quote only available for January – March: \$60/MWh.
- b. Immediate Prior Calendar year quotes for January, February, and March as follows:

January: \$42/MWh

February: \$45/MWh

March: \$40/MWh

- c. Calculations as follows:

- 1. Calculate Average price in (b) = \$42.33/MWh
- 2. Calculate monthly deviation from Average:

January: 99.2% ($\$42/\42.33)

February: 106.3% ($\$45/\42.33)

March: 94.5% ($\$40/\42.33)

- 3. Disaggregate the Aggregate Quote by applying percentages from c.(2) to the available aggregate quote:

January: \$59.53 ($\$60 \times 99.2\%$)

February: \$63.78 ($\$60 \times 106.3\%$)

March: \$56.69 ($\$60 \times 94.5\%$)

Mark-To-Market Example

Necessary Information from a Transaction Confirmation:		
Delivery Period	June 1, 2011 - May 31, 2012	
Bid Block	3	
Estimated Energy Quantity Per MWh Measure:		
	On-Peak MWh (O)	Off-Peak MWh (P)
Jan	11800	8300
Feb	13400	9100
Mar	9100	6400
Apr	7200	5000
May	8800	6200
Jun	13500	9000
Jul	15300	10600
Aug	16500	11200
Sep	9500	6700
Oct	8300	5800
Nov	9800	6900
Dec	10900	7600

Business Day on which M/M is Calculated:	
MW Measure:	50.0 MW (a)
Current Capacity PLC Per Bid Block:	90.0 MW (b)
Percent of On-Peak Hours Remaining in Current Month:	18.2% (c)
Percent of Off-Peak Hours Remaining in Current Month:	21.7% (d)

M/M Exposure Calculation									
	a	b	c	d	a-c	b-d	g	h	i
	On-Peak Initial Mark Price \$/MWh	Off-Peak Initial Mark Price \$/MWh	On-Peak Forward Price \$/MWh	Off-Peak Forward Price \$/MWh	Change in On-Peak Price \$/MWh	Change in Off-Peak Price \$/MWh	g On-Peak Estimated Energy Quantity MWh	h Off-Peak Estimated Energy Quantity MWh	i (-g)(c)+(d)g MM Expense
Jun-11	52.04	27.25	58.46	28.65	1.54	0.78	5,020	4,066	\$ 17,353
Jul-11	72.61	31.31	75.26	32.56	2.15	1.05	26,180	23,440	\$ 166,088
Aug-11	72.61	34.23	74.28	34.91	1.17	0.68	38,100	26,880	\$ 51,726
Sep-11	45.56	24.15	47.31	25.08	1.25	0.93	22,600	16,880	\$ 51,851
Oct-11	43.23	21.74	46.04	24.89	2.06	1.55	12,260	13,920	\$ 28,547
Nov-11	43.23	25.50	46.40	27.58	3.17	1.88	21,520	16,560	\$ 45,601
Dec-11	43.40	26.96	44.86	27.56	1.63	1.00	26,300	18,240	\$ 60,841
Jan-12	50.28	38.26	51.43	41.59	3.72	2.34	28,200	19,920	\$ 107,923
Feb-12	50.23	39.06	53.61	41.29	2.80	2.23	31,200	21,840	\$ 138,339
Mar-12	45.24	40.25	41.64	32.39	2.41	1.64	21,840	15,360	\$ 77,825
Apr-12	45.71	25.08	48.01	29.26	2.78	1.58	12,080	12,000	\$ 66,998
May-12	47.66	24.91	49.00	26.00	2.01	1.06	21,120	44,880	\$ 58,013
									\$ 1,105,490

EXHIBIT F
FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this "Guaranty") is made and entered into as of this day of _____, by _____ (the "Guarantor"), with an address at _____, in favor of Duquesne Light Company (the "Creditor"), with an address at [INSERT ADDRESS], in consideration of the Default Supply Master Agreement(s) (the "DSMA(s)") between Duquesne Light Company and _____ (the "Seller") dated _____, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Guarantor is the _____ of Seller.

1. Whereas, Supplier _____ is an affiliate of _____, will therefore benefit by Supplier entering into the DSMA with Creditor and _____ desires Creditor to enter into the DSMA with Supplier and to extend credit to Supplier thereunder. (May be revised if guarantor is not a parent or affiliate of supplier.)

1. Guaranty of Obligations.

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as primary obligor and not a surety with effect from date hereof, the prompt and complete payment when due of all of Seller's payment obligations under the DSMA (to the extent such payment obligations exceed the amount of any Performance Assurance provided to the Creditor by Seller as defined in and in accordance with the DSMA), whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the DSMA and giving effect to any applicable grace period, and, provided only that the Creditor is the prevailing party in any judicial suit, action or proceeding arising out of, resulting from, or in any way relating to this Guaranty, or if by mutual agreement by Guarantor and Creditor, all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of the Guarantor's obligations or collection under this Guaranty, including reasonable attorney's fees and expenses (collectively, the "Obligations"). [Optional provision: Notwithstanding anything to the contrary herein, the liability of the Guarantor under this Guaranty and Creditor's right of recovery hereunder for all Obligations is limited to a total aggregate amount of \$ _____ ("Guaranty Amount"), where Guaranty Amount shall be no less than Five Hundred Thousand US Dollars (\$500,000).]
- (b) The limitations on liabilities of the Seller set forth in Article 10 of the DSMA shall also apply to the liabilities of the Guarantor hereunder.

2. Nature of Guaranty; Waivers.

- (a) This is a guaranty of payment and not of collection and the Creditor shall not be required, as a condition of the Guarantor's liability, to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations. This is not a performance guaranty and the Guarantor is not obligated to provide power under the DSMA or this Guaranty.
- (b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the DSMA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of the Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the DSMA resulting from the conduct of the Creditor) or any part thereof.
- (c) Except as to any claims, defenses, rights of set-off or to reductions of Seller in respect of its obligations under the DSMA, (all of which are expressly reserved under this Guaranty), the Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Seller or the Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, laws, rules, regulations or powers), structure or ownership of Seller or the Guarantor; or (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or its assets; or (iii) the invalidity or unenforceability in whole or in part of the DSMA; or (iv) any provision of applicable law or regulations purporting to prohibit payment by Seller of amounts to be paid by it under the DSMA (other than any law or regulation that eliminates or nullifies the obligations under the DSMA).
- (d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any person exhaust any right to take any action against Seller or their assets or any other guarantor or person, provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. The Guarantor waives all defenses based on suretyship or impairment of collateral or any

other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Seller in respect of its obligations under the DSMA.

- (e) The Creditor at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (i) to the extent permitted by the DSMA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the DSMA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other person, including Seller, with respect to any Obligations in such manner as the Creditor deems appropriate at its sole discretion; (iv) substitute, exchange or release any guaranty; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. The Guarantor hereby represents and warrants that:

- (a) it is a [limited liability company, corporation, limited partnership, general partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation, organization, incorporation] and has the [corporate power] [power] and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;
- (b) it has the [corporate power] [power] and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary [corporate action] [action] to authorize its execution, delivery and performance of this Guaranty;
- (c) this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of Creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;
- (d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of law or contractual obligation of the Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on the Guarantor or this Guaranty);

- (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other person (including, without limitation, any stockholder or of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and
 - (f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor that would have a material adverse effect on this Guaranty.
4. Repayments or Recovery from the Creditor. If any demand is made at any time upon the Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Seller and if the Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor (subject to Sections 2 (e) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Creditor. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.
5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Seller arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Seller that may result from any such proceeding.
6. Postponement of Subrogation. Only to the extent that, at the relevant time, there are Obligations, or other amounts hereunder, that are then due and payable but unpaid, the Guarantor postpones and subordinates in favor of the Creditor any and all rights which the Guarantor may have to (a) assert any claim against the Seller based on subrogation rights with respect to payments made by Guarantor hereunder and (b) any realization on any property of the Seller, including participation in any marshalling of the Seller's assets. Upon payment of such due and unpaid Obligations, Creditor

agrees that Guarantor shall be subrogated to the rights of Creditor against Seller to the extent of Guarantor's payment to Creditor.

7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for the Creditor and the Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:
Phone:
Fax:
With a copy to:

Phone:
Fax:

or such other address as the Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:

Attn:
Phone:
Fax:

or such other address as the Guarantor shall from time to time specify to Creditor.

8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on the Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Creditor's action or inaction impair any such right or power. The Creditor's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Creditor may have under other agreements with the Guarantor, at law or in equity.
9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and

enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing signed by the Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.
11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Guarantor and the Creditor with respect to the subject matter hereof.
12. Successors and Assigns. This Guaranty will be binding upon and inure to the benefit of the Guarantor and the Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same persons as Creditor assigns the DSMA in accordance with Section 16.7(b) of the DSMA, and except that this Section 12 shall not limit the Guarantor's right to assign this Guaranty, along with substantially all of the Guarantor's assets and business to a successor entity or Affiliate that assumes all obligations thereunder and (i) where the successor Guarantor's Lowest Credit Rating is equal to or greater than the Guarantor's Lowest Credit Rating or where the successor Guarantor's Lowest Credit Rating is equal to or greater than BBB, as rated by S&P or Fitch, or Baa2, as rated by Moody's, and (ii) the Seller is in compliance with Article 14 of the DSMA. The "Lowest Credit Rating" shall mean the lowest of the senior unsecured long-term debt ratings determined by Moody's Investor Services, Inc. (or its successor) ("Moody's"), the Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., (or its successor) ("S&P"), or Fitch Investor Service, Inc. (or its successor) ("Fitch") immediately before such transfer and assumption. Upon any such delegation and assumption of obligations by a successor Guarantor, the Guarantor shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such delegation and assumption.
13. Interpretation. In this Guaranty, unless the Creditor and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or"; the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this

Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

(a) This Guaranty has been delivered to and accepted by the Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE CREDITOR AND THE GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES.

(b) The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of any federal court in the Commonwealth of Pennsylvania, but in the event that the Guarantor and the Creditor determine in good faith that jurisdiction does not lay with such court or that such court refuses to exercise jurisdiction or venue over the Guarantor and the Creditor or any claims made pursuant to this Guaranty, then the Guarantor and the Creditor agree to submit to the non-exclusive jurisdiction of the Pennsylvania state courts; provided that nothing contained in this Guaranty will prevent the Creditor from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county, state or other foreign or domestic jurisdiction. The Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both the Creditor and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. THE GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the DSMA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Seller under the DSMA is stayed upon the insolvency, bankruptcy or reorganization of Seller, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the DSMA shall nonetheless be payable by the Guarantor hereunder on written demand by Creditor.

The Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

ATTEST:

[Guarantor]

By: _____

Name: _____

Title: _____

EXHIBIT G
FORM OF NOTICE

Any notices required under this Agreement shall be made as follows:

Buyer:

Seller:

All Notices:

All Notices:

Street:

Street:

City/State/Zip:

City/State/Zip

Attn:

Attn:

Facsimile:

Facsimile:

Duns:

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Scheduling:

Scheduling:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Payments:

Payments:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Wire Transfer:

Wire Transfer

BNK:

BNK:

ABA:

ABA:

ACCT:

ACCT:

Credit and Collections:

Attn:
Phone:
Facsimile:

**With additional Notices of an
Event of Default to:**

Attn:
Phone:
Facsimile:

Credit and Collections:

Attn:
Phone:
Facsimile:

**With Additional Notices of an
Event of Default to:**

Attn:
Phone:
Facsimile:

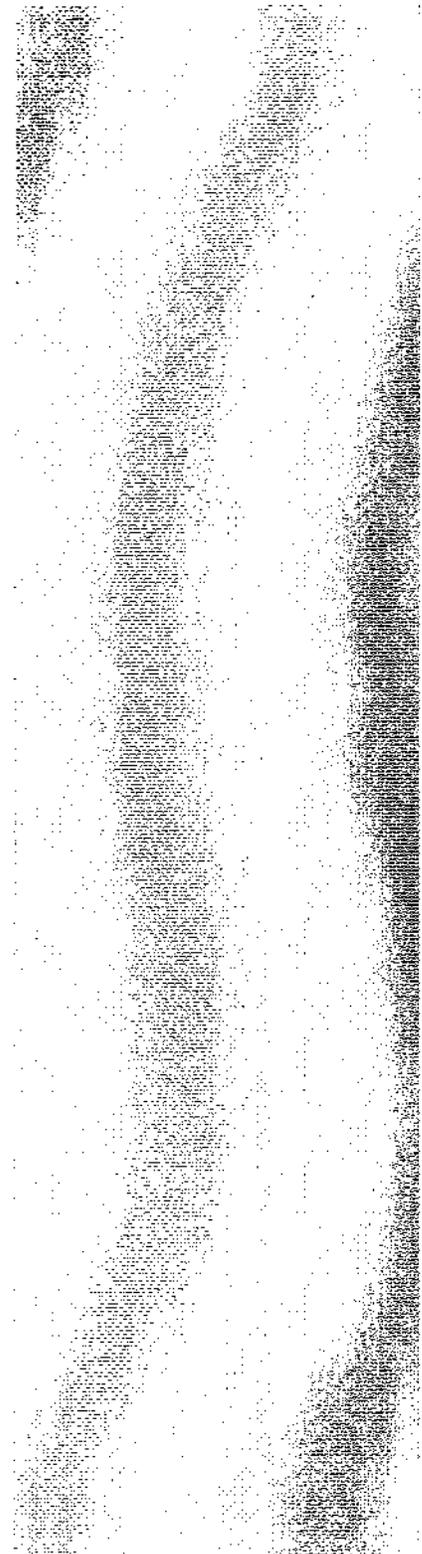


EXHIBIT H

PJM DECLARATION OF AUTHORITY

DECLARATION OF AUTHORITY

This Declaration of Authority ("Declaration") is made this _____ day of _____, 2013 by the following:

PARTY A: _____ ("Party A")

PARTY B: _____ ("Party B").

RECITALS

WHEREAS, PJM is a Regional Transmission Organization ("RTO") subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC");

WHEREAS, PJM Settlement, Inc ("PJM Settlement") is a Pennsylvania Non-Profit Corporation, incorporated for the purpose of providing billing and settlement functions and credit and risk management functions for PJM. References to "PJM" in this Declaration are intended to apply to PJM and/or PJM Settlement, as appropriate, with regard to their respective functions,

WHEREAS, PJM and PJM Settlement administer centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;

WHEREAS, PJM additionally exercises operational control over its members' transmission facilities whereby PJM provides open-access transmission service and control area functions, including economic dispatch and emergency response to ensure reliability;

WHEREAS, Party A is a PJM Member and seeks to obtain, or is obtaining, services provided or administered by PJM, seeks to participate, or is participating in, markets administered by PJM, or seeks to engage in, or is engaging in, operations that use or affect the integrated transmission system operated by PJM;

WHEREAS, such activities or contemplated activities by Party A and Party B are governed by rights and obligations established by or under the PJM Open Access Transmission Tariff ("Tariff"), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), the Reliability Assurance Agreement Among Load-serving Entities in the MAAC Control Zone ("RAA"), and other agreements, manuals, and practices of PJM (the Tariff, the Operating Agreement, the RAA, and such other agreements manuals, and practices of PJM, the "PJM Agreements"); and

WHEREAS, Party A and Party B desire to declare to PJM their respective authorities concerning such rights and obligations, intend that PJM rely upon such declaration, and acknowledge that PJM may rely upon such declaration to its detriment,

DECLARATION

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the declarations made below, Party A and Party B, as identified below, make the following declarations:

1. Exclusivity of Party B's Authority.

Pursuant to a binding, legally enforceable agreement, Party A has authorized Party B to act for Party A with respect to certain rights and responsibilities as specified in Section 2 of this Declaration ("the Authorized Rights and Responsibilities"). With respect to the Authorized Rights and Responsibilities, Party B is authorized to communicate and transact with PJM as Party A's sole and exclusive Party B, and PJM is authorized to communicate and transact directly and exclusively with Party B as Party A's Party B. With respect to Authorized Rights and Responsibilities, Party A will abide by any direction issued by PJM to Party B.

2. Specification of Authorized Rights and Responsibilities.

In the following parts (a) through (h), Party A and Party B specify the rights and responsibilities with respect to which Party B is authorized to act for Party A. Specification shall be effective only if both Party A and Party B have placed the initials of their authorized representatives in the space provided for each applicable right or responsibility from among the options provided below:

(a) Load Server Responsibilities.

Party B is authorized to satisfy Party A's obligations as a Load-Serving Entity under the RAA, including, without limitation, its obligations to provide Unforced Capacity, submit capacity plans, provide or arrange for Capacity Resources, satisfy Accounted-for Obligations and Peak Season Maintenance Obligations, comply with any capacity audits, make payment of all deficiency, data submission, and emergency procedure charges incurred, coordinate planning and operation of Capacity Resources with other parties; and develop and submit planned outage schedules.

Party B is authorized to satisfy Party A's obligations under the Tariff, RAA and to provide or arrange for transmission service to its loads; provide or arrange for sufficient reactive capability, voltage control facilities, and black start capability for service to its loads; submit firm transmission service schedules, and designate Network Resources and other points of receipt and delivery for transmission service. Party B is authorized to request changes to the transmission service required for service to Party A's loads, and to enter into, on Party A's behalf, any feasibility, system impact, facilities study, or other agreements required to process such request for a change in service.

Party B is authorized to satisfy Party A's rights and obligations under the Tariff and Operating Agreement to submit bids on, obtain, administer, and receive payments or credits for Financial Transmission Rights and Auction Revenue Rights with respect to service to Party A's loads.

Party B is authorized to provide data required by PJM with respect to service to Party A's loads, including, but not limited to, data required for coordination of operations, accounting for all interchange transactions, preparation of required reports and maintenance schedules, and analysis of system disturbances.

Party B is authorized to provide the facilities and personnel required to coordinate operations with PJM and other PJM Members.

(b) Electric Distributor Responsibilities.

Party B is authorized to satisfy Party A's rights and obligations as an Electric Distributor under the Operating Agreement, including, but not limited to, assuring the continued compatibility of its local energy management, monitoring, and telecommunications systems with PJM's technical requirements; providing or arranging for the services of a 24-hour local control center to coordinate with PJM; providing to PJM all system, accounting, customer tracking, load forecasting, and other data necessary or appropriate to implement or administer the Operating Agreement, RAA; shedding connected load, initiating active load management programs, and taking such other coordination actions as may be necessary in accordance with PJM's directions in Emergencies; maintaining or arranging for a portion of its connected load to be subject to control by automatic underfrequency, under-voltage, or other load-shedding devices; and complying with the underfrequency relay obligations and charges specified in the Operating Agreement.

(c) Generator Responsibilities.

Party B is authorized to operate the Party A's generation resources in all events, including, but not limited to, in the event of Emergencies, and shall operate such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

Party B is authorized to ensure that the required portion of Party A's Capacity Resources have the ability to go from a shutdown condition to an operating condition and start delivering power without assistance from the power system.

- Or -

Party B is authorized to direct the operation of Party A's generation resources by relaying PJM's instructions to the resource in all events, including, but not limited to, in the event of Emergencies, and shall direct such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

Party B is authorized to communicate with PJM in all matters concerning the provision of capacity, energy, or ancillary services from Party A's generation resources, including, without limitation, information required in connection with Capacity Resources, dispatch of any unit, provision of reactive power, regulation, synchronous condensing, spinning or other reserves, establishment or maintenance of a unit as a Black-Start Unit, satisfaction of must-run obligations, and costs or revenue requirements for any product or service offered by any such unit.

Party B is authorized to provide information on outages of Party A's generation facilities, whether planned, forced, or for maintenance, and to coordinate such outages with PJM

Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Feasibility Study, System Impact Study, or Facilities Study Agreements.

Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Construction Service Agreements.

Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Interconnection Service Agreements.

Party B is authorized to receive from PJM historic and real time data collected by PJM from, or provided to PJM by, Party A with respect to Party A's generation resources.

Party B is authorized to act on behalf of Party A for the following specific unit(s) in Party A primary and subaccounts:

Resource Name: _____ Resource ID: _____

(d) Market Buyer/Market Seller Responsibilities.

Party B is authorized to satisfy Party A's rights and obligations as a Market Buyer or Market Seller under the Operating Agreement, including, but not limited to, arranging for a Market Operations Center capable of real-time communication with PJM during normal and Emergency conditions; reporting to PJM sources of energy available for operation; providing to PJM scheduling and other information, including, but not limited to, maintenance and other anticipated outages of generation or transmission facilities, scheduling and related information on bilateral transactions and self-scheduled resources, and implementation of active load management, interruption of load, and other load reduction measures; obtaining Spot Market Backup for bilateral transactions; submitting to PJM binding offers to purchase or sell energy and ancillary services in compliance with all applicable Offer Data specifications; responding to PJM's directives to start, shut down or change output levels of generation units, or change scheduled voltages or reactive output levels; responding to PJM's directives to schedule delivery or change delivery schedules for external resources; and following PJM's directions to take actions to prevent, manage, alleviate or end an Emergency.

(e) Billing and Payment Responsibilities.

In connection with all rights and responsibilities specified by Party A and Party B in any of subparts (a) through (d) of this Section, Party B shall be billed for, and shall make payment to PJM for, all charges, penalties, costs and fees. (If this option is not specified, PJM will issue billings to, and collect amounts due from, Party A.)

In connection with all rights and responsibilities specified by Party A and Party B above, Party B is entitled to receive from PJM in Party B's account all credits, revenues, distributions, and disbursements. (If this option is not specified, PJM will pay such amounts to Party A.)

(f) General Membership Responsibilities.

Party B is authorized to participate and vote in all PJM committees, working groups, and other stakeholder bodies on Party A's behalf.

Party B is authorized to participate on Party A's behalf in the regional transmission expansion planning process.

Party B is authorized to provide information or otherwise cooperate on Party A's behalf in connection with any investigation or request for information by PJM or the PJM Market Monitoring Unit in accordance with the Operating Agreement and Attachment M to the Tariff. (If this option is specified, PJM and the PJM Market Monitoring Unit shall have the right to request and obtain such information from Party B and/or Party A.)

Party B shall be billed for, and shall make payment of, Party A's costs of membership in PJM, including payment of the Membership fee, and payment of any other general assessments on the PJM members, including, but not limited to, amounts assessed as a consequence of defaults by other Members.

(g) Additional Responsibilities.

Party B has been Authorized other rights and responsibilities of Party A as specified on Attachment "A" to this Declaration.

(Initial)

(h) Limitation on Responsibilities.

The rights and responsibilities specified in parts (a) through (f) above apply to a limited portion of Party A's facilities or loads located in the PJM Region, as specified on Attachment "B" to this Declaration, and to no other facilities or loads of Party A.

3. Continuing Responsibilities and Liabilities of Party A.

3.1 The Authorized Rights and Responsibilities are the only rights and responsibilities under the PJM Agreements for which Party B is authorized to act for Party A, and Party A retains all rights and responsibilities under the PJM Agreements not specified by Party A and Party B in Section 2.

3.2 With respect to the Authorized Rights and Responsibilities, and notwithstanding any other provision of this Agreement, Party A shall remain liable to PJM for all amounts due or to become due to PJM under the PJM Agreements, and Party B's authorization to make payment of any such amounts hereunder (if specified in Section 2) shall not release Party A from liability for any financial obligations to PJM not satisfied by Party B.

4. Reliance and Indemnity, Duty to Inform, Liability Waiver, and Rules of Construction.

4.1 Party A and Party B each recognizes, accepts and intends that PJM will rely upon on the truth, accuracy and completeness of the declarations herein in matters including but not limited to creditworthiness and in assuring compliance with the PJM Agreements. Party A and Party B each recognizes and accepts that PJM or its members may suffer losses and damages if any declaration is or becomes untrue, inaccurate or incomplete, and each agrees to indemnify PJM for any such losses and damages.

4.2 Party A and Party B each has a continuing duty to notify PJM if and when any declaration herein ceases to be truthful, accurate or complete. Until such time as PJM receives written notification of any change to any declaration, in accordance with the terms contained herein, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with Party A and Party B as to the subject matter of this Declaration. Written notice of changes to the declarations contained herein must be provided by Party A (PJM Member) to PJM at least thirty days in advance of their effectiveness. If Party B is also a PJM Member, then both parties will be required to provide thirty days prior written notification in order for such changes to be effective. Such notification is required for changes to the declarations and responsibilities contained herein and/or termination of this Declaration. Upon such termination, all rights, responsibilities and accounts will revert back to the original status quo prevailing before the Declaration became effective. Should less than thirty days notice be provided, PJM shall use its best efforts to accommodate and process the declarations herein, but all attempts should be made to provide such notice.

4.3 Nothing in this Declaration shall be construed to create or give rise to any liability on the part of PJM and Party A and Party B expressly waive any claims that may arise against PJM under this Declaration. This Declaration shall not be construed to modify any of the PJM Agreements and in the event of conflict between this Declaration and a PJM Agreement, the applicable PJM Agreement shall control.

4.4 Capitalized terms used herein that are not defined herein have the meanings given in the PJM Agreements, as applicable.

4.5 The Recitals are hereby incorporated into the body of this Declaration.

IN WITNESS WHEREOF, Party A and Party B execute this Declaration to be effective as of the date written above or upon receipt of a fully executed original by PJM, whichever date is later.

<u>PARTY A:</u>	<u>PARTY B:</u>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Company Name: _____	Company Name: _____

~~This Declaration of Authority ("Declaration") is a statement and certification made this _____ day of _____, by Duquesne Light Company ("PARTY A") and [Seller] ("PARTY B") for the benefit of PJM Interconnection, LLC.~~

~~RECITALS~~

~~WHEREAS, PJM is a Regional Transmission Organization ("RTO") subject to the jurisdiction of the Federal Energy Regulatory Commission, ("FERC");~~

~~WHEREAS, PJM administers centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;—~~

~~WHEREAS, PJM additionally exercises operational control over its members' transmission facilities whereby PJM provides control area functions, including economic dispatch, the scheduling of transmission service and emergency response to ensure reliability across an integrated transmission system; and~~

~~WHEREAS, in capacities more fully described below, PARTY A and PARTY B seek to participate either directly or indirectly in the markets administered by PJM or engage in operations that use or affect the integrated transmission system operated by PJM.~~

~~DECLARATION~~

~~NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the statements made below, PARTY A and PARTY B, as indicated below, provide the following certifications:~~

~~1. Certification:~~

- ~~(a) PARTY B hereby certifies that in all activities with PJM regarding PARTY B's provision of energy, capacity, scheduling and procurement of transmission service, congestion management and all other required products and services necessary to serve the load obligation assumed by PARTY B, PARTY B shall be billed and be primarily liable to PJM for all costs associated in its procurement of such products and services; provided, however, that charges for Duquesne Light Company for Network Integration Transmission Service, Expansion Cost Recovery assessed to Network Integration Transmission Service customers, Transmission Enhancement assessed to Network Integration Transmission Service customers, credits for Non-firm Point-to-Point Transmission, and ancillary services shall be billed to PARTY A and remain the sole and primary responsibility of PARTY A.~~

2. Reliance By PJM On Certifications:

- (a) ~~Each of PARTY A and PARTY B recognizes and accepts that PJM is relying on the truth, accuracy and completeness of the certifications herein made in making its assessments as to creditworthiness and in assuring PJM's own compliance with its tariff, operating agreement, reliability agreement and business practices.~~
- (b) ~~Each of PARTY A and PARTY B recognizes and accepts that each has a continuing duty to notify PJM if and when the certifications herein made cease to be accurate or complete. Until such time as PJM receives written notification of any changes to such certifications, signed by both PARTY A and PARTY B, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with PARTY A and PARTY B as to the subject matter of this Declaration. Any written notice of changes to the certifications herein made must be provided to PJM at least thirty days in advance of their effectiveness.~~
- (c) ~~Each of PARTY A and PARTY B recognize and acknowledge that PJM will receive and rely on individually modeled Seller accounts that contain only zonal specific DEFAULT SERVICE load to manually adjust the accounts to move the applicable billing line items' amounts in their entirety from the applicable Seller's account to the applicable EDC's account.~~
- (d) ~~PARTY A and PARTY B recognize and acknowledge that they have entered into a Default Supply Master Agreement (DSMA) and that this Certification is not intended in any way to change, revise or redistribute the rights and obligations of the PARTY A or PARTY B under the DSMA. If this Certification is determined to be inconsistent with any provision of the DSMA, with respect to the rights and obligations of PARTY A and PARTY B under the DSMA, the provisions of the DSMA shall be controlling on PARTY A and PARTY B.~~

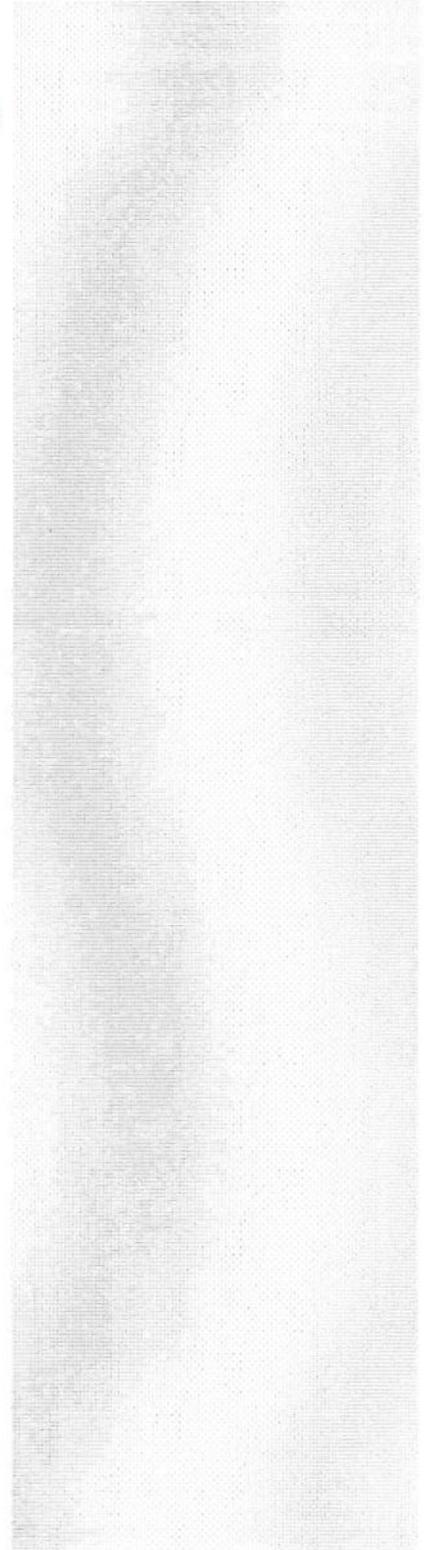
3. Duration. ~~Each of PARTY A and PARTY B acknowledge and agree that this Declaration shall terminate upon the termination of the DSMA in accordance with its terms. To this end, within 30 days prior to the termination of the DSMA in accordance with its terms or as soon thereafter as is practicable, each of PARTY A and PARTY B will provide written notice to PJM of the termination of this Declaration.~~

IN WITNESS WHEREOF, PARTY A and PARTY B execute this Declaration to be effective as of the date written above.

PARTY A _____ **PARTY B**
Duquesne Light Company,

NAME: _____ NAME: _____

TITLE: _____ TITLE: _____



SUBSTITUTIONS TO SMALL C&I CUSTOMER AND RESIDENTIAL CUSTOMER CONTRACTS

The term "Small C&I" will replace the term "Medium C&I" in the Small C&I Default Supply Master Agreement, and the following definition will be substituted for the definition of "Medium C&I Customer":

"Small C&I Customer" means any commercial or industrial retail customer of Buyer receiving POLR service from Buyer that has a demand less than 25 kw.

The term "Residential" will replace the term "Medium C&I" in the Residential Default Supply Master Agreement, and the following definition will be substituted for the definition of "Medium C&I Customer":

"Residential Customer" means any residential customers using the Company's standard low voltage service for lighting, appliance operation and general household purposes supplied at 240 volt (or less) single phase service, as well as lighting customers who use the service for street lighting, architectural lighting and other equipment such as traffic signals.