

APPENDIX 3

NON-FIRM ENERGY SALE AGREEMENT

Dated April 30, 2010

between

THE MANITOBA HYDRO-ELECTRIC BOARD,

(hereinafter referred to as “MH”),

- and -

MINNESOTA POWER, an operating division of ALLETE, Inc.,

(hereinafter referred to as “MP”).

WHEREAS, MP and MH are the owners and operators of electric generation and transmission facilities in the United States of America and in Canada, respectively, and are engaged in the generation, transmission, distribution and sale of electric energy;

WHEREAS, the Parties have entered into discussions in respect of MP’s “Energizing Minnesota Power Resource Request February 2007” and other matters in respect of potential power purchase agreements being entered into by the Parties;

WHEREAS, MH anticipates having a quantity of surplus energy available under favorable water conditions for export to Markets outside of the province of Manitoba during the Contract Term;

WHEREAS, MP is seeking to enhance the environmental characteristics for its resource plan with a power purchase agreement for resources that are predominantly carbon neutral;

WHEREAS, MP and MH entered into the Term Sheet, the Energy Sale Transaction Agreement and the Short Term Non-Firm Energy Sale Agreement;

WHEREAS, MP desires to purchase and MH desires to sell the Non-Firm Energy in accordance with the terms, conditions and termination rights set forth in this Agreement;

WHEREAS, MP desires to purchase and MH desires to sell the MH Hydraulic Environmental Attributes associated with certain portions of the Non-Firm Energy in accordance with the terms, conditions and termination rights set forth in this Agreement;

WHEREAS, MP desires to use the said MH Hydraulic Environmental Attributes to assist, to the extent possible, in complying with current voluntary carbon reduction goals of MP and future state or federal carbon and/or renewable laws or regulations that are applicable to MP;

WHEREAS, in furtherance of MP's desire to use the said MH Hydraulic Environmental Attributes in the aforesaid manner, to the extent allowed by Applicable Law, MP may have the said MH Hydraulic Environmental Attributes qualified and recognized as environmental credits or offsets, if any; and

WHEREAS, MP is a member of the Midwest ISO and subject to applicable Midwest ISO tariffs, and MH is a coordinating member of Midwest ISO.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each Party to the other contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties covenant and agree as follows:

[REDACTED]

[REDACTED]

ARTICLE I INTERPRETATION

1.1 Defined Terms

Unless otherwise specified in this Agreement, the following terms shall, for purposes of this Agreement, have the following meanings:

“**250 MW System Power Sale Agreement**” shall mean a proposed agreement to be entered into by the Parties, for the sale by MH to MP of 250 MW of system power.

[REDACTED]

[REDACTED]

“**Affiliate**” shall mean in relation to any Person, an entity controlled directly or indirectly, by the Person, any entity that controls, directly or indirectly, the Person or any entity directly or indirectly under common control with the Person. For this purpose, “control” of any entity or Person means ownership of a majority of the voting power of the entity or Person.


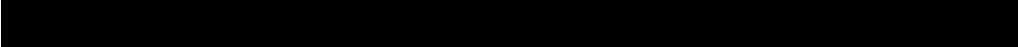
“**Agreement**” shall mean this Non-Firm Energy Sale Agreement including all appendixes to this Agreement, as amended or supplemented from time to time.

“**Allocated and Transferred Environmental Attributes**” shall have the meaning set forth in Section 6.1(1).

“**Applicable Law**” shall mean all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs, and orders of any Governmental Authority that apply to any one or both of the Parties or the terms hereof.

“**Bankruptcy**” shall mean a Party, or any Credit Support Provider of a Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) either:
 - (i) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official; or

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- (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a Person not described in clause (i) and either:
 - (A) results in a judgment of insolvency or bankruptcy or the entry of an order for the relief or the making of an order for its winding-up or liquidation; or
 - (B) is not dismissed, discharged, stayed or restrained in each case within thirty (30) calendar days of the institution or presentation thereof;
 - (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (f) seeks, or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets, provided such appointment is not dismissed, discharged, stayed or restrained within thirty (30) calendar days;
 - (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession or any such process is not dismissed, discharged, stayed

[REDACTED]

or restrained, in each case within thirty (30) calendar days thereafter;

- (h) causes or is subject to any event with respect to it which, under the Applicable Law, has an analogous effect to any of the events specified in clauses (a) to (g) above (inclusive); or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“**Bankruptcy Code**” shall have the meaning set forth in Title 11 of the United States Code.

“**Business Day**” shall mean Monday through Friday, excluding holidays recognized by NERC.

[REDACTED]

“**Commercially Reasonable Efforts**” shall mean, with respect to any action required to be made, attempted, or taken by a Party under this Agreement, such efforts as a reasonably prudent electric utility entity would, undertake for the protection of its own interests under the conditions affecting such action, taking into account the complexity and importance of the issue or problem being addressed and all other material matters including but not limited to the costs associated with such action, the amount of notice of the need to take such action, the duration and type of such action, and the risk to the Party required to take

action; provided that such action is also consistent with Applicable Law and applicable Market rules.

“**Commitment Date**” shall mean the last Business Day which is [REDACTED] prior to the start of each month during the Contract Term, for which MH may offer Product A to MP or such other date that the Parties may mutually agree upon.

“**Confidential Information**” shall have the meaning set forth in Section 16.1(a).

“**Contract Term**” shall have the meaning set forth in Section 2.1(2).

“**Credit Rating**” shall mean with respect to an entity, the issuer rating then assigned by Moody’s, S&P or DBRS to that entity.

“**Credit Support Provider**” shall mean an Affiliate or other entity reasonably acceptable to the Requesting Party with at least an Investment Grade Credit Rating and that provides a Guarantee Agreement.

“**Curtailed Event**” shall mean an event or circumstance resulting from:

- (a) a loss or capability reduction in the Firm Transmission Path or transmission service curtailments imposed on MH by its Transmission Provider(s); or
- (b) the unavailability of all or any portion of MH’s generation system, including MH’s HVDC system, which, without limiting the generality of the foregoing will include:
 - (i) forced outages of generating unit(s) and/or MH’s HVDC system; or

- [REDACTED]
- (ii) derates of generating unit(s), and/or MH's HVDC system;
or
 - (iii) scheduled outages of generating unit(s) and/or MH's HVDC system; or

(c) Force Majeure.

“DBRS” shall mean DBRS Limited or its successor rating agency.

[REDACTED]

[REDACTED]

“Day-Ahead Energy and Operating Reserve Market” shall have the meaning set forth in the TARIFF.

“Delivery Point” shall be the point or points where the transmission facilities operated by the applicable Transmission Provider cross the international boundary between Canada and the United States of America, unless otherwise mutually agreed. As of the Effective Date, the Delivery Point is the MHEB Node.

“Discloser” shall have the meaning set forth in Section 16.1.

“Dispatchable Interchange Schedule” shall have the meaning set forth in the TARIFF.

“Early Scheduled Date” shall mean that date, if any, prior to April 30, 2022, by which the obligation of MH to offer, pursuant to Section 3.1(1), the total of the quantities of Product A, Product B and Product C referred to in that section has been satisfied through decrementing that said obligation, pursuant to Section 3.4,

[REDACTED]

such that MH has no further obligation to offer any of the Non-Firm Energy pursuant to Section 3.1(1).

“**Early Termination Date**” shall mean that date specified, in a notice from either Party to the other Party, as the effective early termination date of this Agreement designated by the Party having the right to issue such notice in accordance with this Agreement, pursuant to Section 13.1(3) or Section 13.2(3) by MP to MH and pursuant to Section 13.1(4) or Section 13.2(4) by MH to MP.

“**Effective Date**” shall mean May 1, 2011.

“**Energy Sale Transaction Agreement**” shall mean the agreement between the Parties, dated March 7, 2008, to transact in non-firm energy during the period from May 1, 2008 to May 1, 2010 or such earlier end date of the term of the said agreement, as determined in accordance with the said agreement, as amended.

“**Executive Officers**” shall be, in the case of MH the Senior Vice-President of Power Supply or its successor, or such other officer designated by MH and in the case of MP the Senior Vice-President of Strategy and Planning or its successor, or such other officer designated by MP.

“**Existing MH Permit**” shall have the meaning set forth in Section 8.2(1).

[REDACTED]



“**Financial Schedule**” shall have the meaning set forth in the TARIFF.

“**Firm Power**” shall mean:

- (a) generating capacity and associated energy intended to be available at all times, except as agreed otherwise by the seller and the purchaser, and for which the seller maintains generation reserves; and/or
- (b) energy that was contracted to be supplied by the seller to the purchaser described as “Firm Power” in agreements entered into between MH and other Persons.

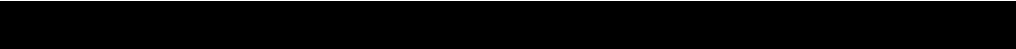
“**Firm Transmission Path**” shall mean the Firm Transmission Service reservations in Canada and the United States of America that MH requires, in MH’s sole discretion, for delivery of all or the applicable portion of the Non-Firm Energy offered under this Agreement.

“**Firm Transmission Service**” shall mean the “Firm Point-To-Point Transmission Service” defined pursuant to the OATT of a Party’s Transmission Provider(s), or in the event that a Party’s Transmission Provider(s) does not have an OATT, the highest priority transmission service available to that Party.

“**Force Majeure**” shall mean an event or circumstance that prevents one of the Parties from performing its obligations under this Agreement and that is not within the reasonable control of, or the result of the negligence of, the claiming Party, and that, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided, including but not restricted to, acts of God, floods, droughts, earthquakes, storms, fires, lightning, tornados, strikes, lockouts and other industrial disturbances, epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage or terrorism, civil insurrection, riots and civil disobedience, explosions, acts or omissions of any Governmental Authority taken on or after the first day of the Contract Term (including the adoption or change in any law or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if, and to the extent that, such action or inaction by such Governmental Authority prevents or delays performance and renders the Party unable, despite due diligence, to obtain any licenses, permits, or approval required by any Governmental Authority, and the issuance of any order, injunction, or other legal or equitable decree to the extent that any of the foregoing prevents or delays the performance of a Party’s obligations hereunder. Force Majeure shall not be based on:

- (a) the loss of MP’s Markets;
- (b) MP’s inability economically to use or resell the Non-Firm Energy and the Allocated and Transferred Environmental Attributes transferred to it under this Agreement; or
- (c) MH’s ability to sell the Non-Firm Energy and the Allocated and Transferred Environmental Attributes at a price greater than the prices provided for in this Agreement.

“**Good Utility Practice**” shall mean, at any particular time, any of the practices, methods, and acts engaged in or approved by a significant portion of the hydro-electric utilities located in North America during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment



in light of the facts known at the time a decision is made, could be expected to produce the desired result at a reasonable cost consistent with reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but includes a range of acceptable practices, methods, or acts.


“Governmental Authority” shall mean any federal, state, or provincial government, parliament, legislature, or any regulatory authority, agency, commission or board of any of the foregoing, or any political subdivision thereof, or any court, or, without limitation, any other laws, regulation or rule-making entity, having jurisdiction in the relevant circumstances, or any Person acting under the authority of any of the foregoing, or any other authority charged with the administration or enforcement of Applicable Law.

“Governmental Charges” shall mean any present or future tax, levy, impost, duty, charge, assessment, permits, adders, surcharges or fees of any nature including, without limitation, all applicable federal, state, provincial and local ad valorem, property, occupation, severance, generation, first use, conservation, Btu or energy, transmission, utility, gross receipts, privilege, sales, use consumption, excise and other taxes, charges, emission allowance costs (including interest, penalties, and additions thereto) that is imposed by any Governmental Authority or other taxing authority however styled or payable.

“Guarantee Agreement” shall mean a guarantee of a Party’s obligations under this Agreement from the Party’s Credit Support Provider in form and substance satisfactory to the Requesting Party acting reasonably.

“Integrated Power System” shall mean the system of electric generation and power transmission facilities in the province of Manitoba, owned and operated or operated by MH, which system is interconnected with other power utilities.

“Interest Rate” shall mean, for any date, the lesser of:

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- (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal (or successor) 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%); or
- (b) the maximum rate permitted by Applicable Law.

“Investment Grade Credit Rating” shall mean with respect to any entity, a rating of BBB- or above from S&P or Baa3 or above from Moody’s or BBB (low) or above from DBRS, then assigned to the entity, in each case with a “stable” outlook and provided however, that, in any case where the Person is rated at the minimum required rating level, such Person shall not be placed on credit watch or negative outlook by the rating agency, and provided further, that in the event that any of S&P, Moody’s or DBRS have issued a rating below the required level or has placed the Person on “credit watch” or “negative outlook”, the lowest such rating shall apply to this Agreement.

“Letter of Credit” shall mean an irrevocable, transferable, standby Letter of Credit, issued by a major commercial bank, as defined in either the Bank Act (Canada) or the Federal Deposit Insurance Act (United States of America), operating from an office in either Canada or the United States of America, reasonably acceptable to the Party to whose benefit the Letter of Credit is issued, whose Credit Rating is at such time at least “A-“ by S&P or “A3” by Moody’s or A(low) by DBRS, or an equivalent rating by any successor rating agency thereof (if any) with such changes to the terms in a form as the issuing bank may require and as may be reasonably acceptable to the Party in whose favor the Letter of Credit is issued.

[REDACTED]

“Letter of Credit Default” shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (a) the issuer of the Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s or A(low) by DBRS; (b) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (c) such Letter of Credit shall expire or terminate, or shall fail to cease to be in full force and effect at any time during the Contract Term; (d) any event analogous to an event specified in Section 13.1(2)(c) of this Agreement shall occur with respect to the issuer of such Letter of Credit; or (e) twenty (20) Business Days prior to the expiration or termination date of a Letter of Credit, such Letter of Credit is not extended or replaced with a Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced.

[REDACTED]

“Manitoba Import Transaction Agreement” shall mean a proposed agreement to be entered into by the Parties, consistent with the provisions of the Term Sheet, for the sale by MP to MH of the power product referred to in the Term Sheet.

“Market” or **“Markets”** shall mean:

- (a) a centrally operated structure or structures bringing together buyers and sellers to facilitate the exchange of wholesale electricity products and or related services; and
- (b) the wholesale purchase and sale of electricity products and/or related services on a bilateral basis.

“Market Disruption Event” shall mean, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (b) the failure of trading to commence or the permanent

discontinuation or material suspension of trading in the Midwest ISO Market; (c)

the temporary discontinuance or unavailability of the Midwest ISO Market; or (d)

[REDACTED]

[REDACTED]

[REDACTED]

“Market Participant” shall have the meaning set forth in the TARIFF.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“MH Event of Default” shall have the meaning set forth in Section 13.1(1).

“MH Hydraulic Environmental Attributes” shall mean any current or future right or benefit related to the environmental impact resulting from the generation of electrical energy from MH’s hydraulic generating stations, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**MH Termination Event**” shall have the meaning given in Section 13.2(2).

“**MH’s Border Accommodation Power Sales**” shall mean those sales of Firm Power made by MH, as seller, which for some purposes are treated by MH as part of MH’s End-Use Load, to Persons located in provinces and states adjacent to the province of Manitoba in circumstances whereby electric service to those locations is not otherwise readily available from other power suppliers. In all cases, these sales are made over transmission systems lower than 115 kV.

“**MH’s End-Use Load**” shall mean:

- (a) the total load of Persons that purchase electric service from MH for their own consumption in the province of Manitoba and not for resale including any portion of that Person’s load that may from time to time not be supplied by MH but may be produced by that Person;
- (b) MH’s Border Accommodation Sales; and
- (c) those sales of power made by MH, as seller, which are treated by MH as part of MH’s End-Use Load, to Persons located in provinces and states adjacent to the Province of Manitoba in circumstances whereby electric service to those locations becomes separated due to forced outages, planned outages, or scheduled outages by the applicable Person or Persons, who direct the

operation of the contiguously interconnected electric transmission and sub-transmission facilities that transmits and distributes electrical energy from the said province or state adjacent to the Province of Manitoba and requires electric service to be provided by MH until electric service is restored.

“MH’s Firm Energy Sales” shall mean those sale agreements described as “Firm Energy Sales” in agreements entered into between MH and third Persons.

“MH’s Firm LD Energy Sales” shall mean those sale agreements described as “Firm LD Sales” in agreements entered into between MH and third Persons.

“MH’s HVDC System” shall mean MH’s high voltage direct current transmission system.

“MH’s Non-Firm Energy Sales” shall mean those sale agreements described as “Non-Firm Energy Sales” in agreements entered into between MH and third Persons, which for greater certainty includes this Agreement.

“MH’s Procedures” shall mean the procedures concerning the following that are established, by MH from time to time, including any amendments made by MH:

- (a) the methodology to be used to determine the amount of MH Hydraulic Environmental Attributes that are to be allocated and transferred;
- (b) the manner in which MH Hydraulic Environmental Attributes are to be allocated and transferred; and
- (c) such other matters related to the allocation and transfer of MH Hydraulic Environmental Attributes.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

“**Midwest ISO**” shall mean the Midwest Independent Transmission System Operator Inc. or its successor entity.

“**Midwest ISO Market**” shall mean a Market operated by the Midwest ISO.

“**Moody’s**” shall mean Moody’s Investors Service Inc. or its successor.

“**MP Event of Default**” shall have the meaning set forth in Section 13.1(2).

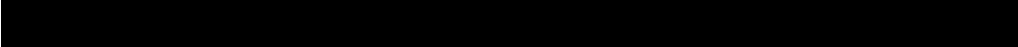
“**MP Termination Event**” shall have the meaning set forth in Section 13.2(1).

“**NERC**” shall mean the North American Electric Reliability Corporation or its successor.

“**New MH Permits**” shall have the meaning set forth in Section 8.2(2).

“**New Transmission Interconnection**” shall mean that certain new transmission interconnection with additional transfer capability that is the subject of the [REDACTED]
[REDACTED]

“**Non-Disclosure Agreement**” shall mean that certain non-disclosure agreement between the Parties, effective November 10, 2006, as amended.



“**Non-Firm Energy**” shall mean energy which does not include capacity or reserves and is subject to Curtailment Events in accordance with Section 3.3.

“**OATT**” shall mean the Open Access Transmission Tariff issued by either Party’s Transmission Provider.

“**Offer**” shall have the meaning set forth in the TARIFF.

“**On-Peak**” shall have the meaning set forth in the TARIFF.

“**On-Peak Energy**” shall mean energy that is traded in respect of that time period from the hour ending 07:00 through the hour ending 22:00 Eastern Standard Time for each Business Day.

“**Open Access Transmission, Energy and Operating Reserve Markets Tariff**” or “**TARIFF**” shall mean the Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midwest Independent Transmission System Operator, Inc. issued on February 3, 2009 filed to comply with *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,161 (2008) issued on November 10, 2008 in Docket Nos. EL07-86-000, EL07-88-000, and EL07-92-000, as amended, supplemented, or replaced from time to time.

“**Operating Committee**” shall have the meaning set forth in Section 14.1(1).

“**Party**” shall mean MH or MP and “**Parties**” means both MH and MP.

“**Performance Assurance**” shall mean:

- (a) additional credit support in the form of a Letter(s) of Credit; or
- (b) a Guarantee Agreement; or

- [REDACTED]
- (c) some combination of Letter(s) of Credit and Guarantee Agreement provided that the amounts of Letter(s) of Credit and Guarantee Agreement comprising the combination as aforesaid are reasonably satisfactory to the Requesting Party.

“**Person**” shall mean an individual, partnership, corporation, trust, unincorporated association, syndicate, joint venture, or other entity or Governmental Authority.

“**Product A**” shall mean that portion of the Non-Firm Energy offered by MH, in the sole discretion of MH, on a forward basis in accordance with Section 3.1 and Article IV during the Contract Term, on a flat schedule over 16 consecutive hours from the hour ending 07:00 through the hour ending 22:00 Central Prevailing Time for each Business Day for the particular month.

“**Product B**” shall mean that portion of the Non-Firm Energy offered by MH, in the sole discretion of MH, [REDACTED] in accordance with Section 3.1 and Article IV during the Contract Term, on each Business Day, between the hour ending 07:00 and the hour ending 22:00 Central Prevailing Time but not necessarily in continuous 16-hour periods, nor every Business Day.

“**Product C**” shall mean that portion of the Non-Firm Energy offered by MH, in the sole discretion of MH, on [REDACTED] in accordance with Section 3.1 and Article IV during the Contract Term, for any hour of any day.

“**Recipient**” shall have the meaning set forth in Section 16.1.

“**Representative**” shall have the meaning set forth in Section 16.1(b).

“**Requesting Party**” shall have the meaning given in Section 11.2(1).

[REDACTED]

“**S&P**” shall mean the Standard & Poor’s Rating Group (a division of The McGraw-Hill Inc.) or its successor.

“**Second Party**” shall have the meaning as given in Section 11.2(1).

“**Schedule**” or “**Scheduled**” or “**Scheduling**” shall mean the actions of MP submitting a Financial Schedule to the Midwest ISO and MH approving same with the [REDACTED] specified as the settlement node for the purposes of the Financial Schedule.

“**Short Term Non-Firm Energy Sale Agreement**” shall mean the agreement between the Parties, dated April 30, 2010 to transact in Non-Firm energy during the period from May 1, 2010 to April 30, 2011, or such earlier end date of the term of the said agreement, as determined in accordance with the said agreement, as amended.

[REDACTED]

“**Term Sheet**” shall mean the term sheet between the Parties dated as of December 12, 2007, as amended, for the proposed power sales agreements and other matters referred to in the Term Sheet.

“**Transmission Provider(s)**” shall mean, collectively, the Person or Persons, as applicable, who direct the operation of the Firm Transmission Service.

[REDACTED]

1.3 No Presumption

The Parties are both represented by counsel, have both participated in the negotiation and drafting of this Agreement, and have endeavoured to ensure that the terms of this Agreement are as clear as possible. Accordingly, in interpreting this Agreement there shall be no presumption in favour of or against any Party on the basis that it was or was not the drafter of this Agreement or any individual provision thereof.

ARTICLE II CONTRACT TERM

2.1 Contract Term

(1) This Agreement shall take effect as of the Effective Date and shall terminate on the earlier of:

- (a) the Early Termination Date in accordance with Section 13.1(3), 13.1(4), 13.2(3) or 13.2(4), if applicable; and
- (b) on the last day of the Contract Term; or
- (c) as otherwise provided for in this Agreement.

(2) The term of this Agreement shall be from the Effective Date through April 30, 2022 (the “**Contract Term**”), provided that the Contract Term shall be extended subject to and in accordance with the following provisions:

- (a) [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

and/or

- (b) if during the Contract Term, MH is not able to offer the Non-Firm Energy due to a Curtailment Event or MH reduces the amount offered as a result of a Curtailment Event in circumstances where all or any portion of MH's generation system including MH's HVDC system is unavailable but only where such unavailability is due to scheduled outages of generating unit(s) and/or MH's HVDC system, in each case in accordance with Section 3.3, the Contract Term shall be extended by the duration of the Curtailment Event, subject to the requirement that the extension of the Contract Term shall be of a sufficient time duration such that MH is experiencing [REDACTED] [REDACTED] during the extension time period.

ARTICLE III SUPPLY AND PURCHASE

3.1 Non-Firm Energy Sales

- (1) During the Contract Term:
 - (a) MH shall offer to MP one million (1,000,000) MWh of Product A which amount offered shall be accepted by MP and shall be Scheduled;
 - (b) MH shall offer to MP [REDACTED] [REDACTED] MWh of Product B which, if accepted by MP, shall be Scheduled; and

[REDACTED]

(c) MH shall offer to MP [REDACTED]
[REDACTED]

MWh of Product C which, if accepted by MP, shall be Scheduled,

in accordance with the terms and conditions of this Agreement. The Parties acknowledge that Product A, Product B and Product C constitute the components of the Non-Firm Energy that is to be offered pursuant to the provisions of this Agreement.

(2) MH shall not offer to MP the Non-Firm Energy during a Curtailment Event, unless MH waives the right to rely on that Curtailment Event for the amount offered. MH shall be entitled to offer to MP the Non-Firm Energy during a Curtailment Event if prior to that Curtailment Event being resolved MH waives its reliance on that Curtailment Event for the duration of that Curtailment Event.

(3) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

3.2 Payment

[REDACTED]

(1) Subject to an adjustment for quantities reduced due to a Curtailment Event, MP shall pay to MH for each calendar month during the Contract Term for the quantities of:

- (a) Product A offered by MH;
- (b) Product B offered by MH and accepted by MP; and
- (c) Product C offered by MH and accepted by MP,

for the applicable month, whether or not such quantities are Scheduled, with the payment amount to be determined in accordance with Article VII. For greater certainty, MP may decline to accept the quantities of Product B or Product C offered by MH without payment to MH for the amount of Product B or Product C that MP declined to accept.

(2) The Parties acknowledge that pursuant to the TARIFF that the Midwest ISO will charge MH and pay MP the [REDACTED] [REDACTED] for the applicable quantity of the Non-Firm Energy Scheduled and for the Financial Schedule submitted and this shall satisfy MH's obligation to offer and to sell in accordance with the provisions of this Agreement, the applicable quantity of Non-Firm Energy. The Parties further acknowledge that if during any day(s) of the month during the Contract Term, either or both of the Parties fail to Schedule the quantity of Product A, and/or Product B and/or Product C that was required to be Scheduled in accordance with this Agreement, during any day(s) in that month, and such failure is not due to a Curtailment Event as referred to in Section 4.3, then the amount to be paid by MP to MH, pursuant to Section 3.2(1) shall be reduced for the applicable month, by the amount determined in accordance with Sections 7.4(c), 7.4(f) and 7.4(i). Notwithstanding any other provision of this Agreement, the sole and exclusive remedy for the Parties, for either Party's failure to Schedule the quantity of Product A, and/or Product B and/or Product C that was required to be

[REDACTED]

Scheduled in accordance with this Agreement, shall be the reduction of the amount to be paid by MP to MH, pursuant to Section 3.2(1) for the applicable month, by the amount determined in accordance with Sections 7.4(c), 7.4(f) and 7.4(h). Failure to Schedule by both Parties or by either Party the quantity of Product A, and/or Product B and/or Product C that was required to be Scheduled in accordance with this Agreement shall not be deemed to be either an MH Event of Default or an MP Event of Default, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (3) Each Party shall pay its costs and expenses associated with the Scheduling of Non-Firm Energy under the applicable OATT, including, without limitation, any and all charges attributable to that Party arising out of a process of determining charges established and maintained at any time and from time to time by a Market or a Transmission Provider.

3.3 Offering Reductions due to a Curtailment Event

- (1) The Non-Firm Energy that has been offered by MH may be reduced by MH only due to a Curtailment Event. MP acknowledges that this Section 3.3 does not restrict or limit the rights of MH pursuant to or arising out of Article XIII to reduce Non-Firm Energy that has been offered.
- (2) For any Curtailment Events described in subpart (a) of the definition of “Curtailment Event”, the Non-Firm Energy offered by MH shall be reduced using the transaction curtailment priority applied by the Transmission Provider(s) pursuant to the provisions of that Transmission Provider’s OATT.
- (3) For any Curtailment Events described in subpart (b) of the definition of “Curtailment Event”, the Non-Firm Energy offered by MH shall, unless otherwise

[REDACTED]

specified through contractual obligations in other agreements, be reduced in accordance with the following priority criteria:

- (a) MH's End-Use Load shall have priority over all other power and energy sales of MH;
 - (b) any energy sale by MH that is associated with planning capacity shall take priority over all other energy sales by MH, except for MH's End-Use Load;
 - (c) except for those energy sales referred to in (a) and (b) above, all of MH's Firm LD Energy Sales and MH's Firm Energy Sales shall take priority over all other energy sales by MH, including MH's Non-Firm Energy Sales; and
 - (d) in the event that more than one energy sales of the same type exists in either of the time frames referred to in (c) of this Section 3.3 (3), curtailment with respect to such energy sales shall be determined on a pro rata basis.
- (4) Notwithstanding the priority criteria outlined above, MH has the right but not the obligation to reduce higher priority sales over lower priority sales whenever MH determines it will continue to provide service to a particular lower priority sale through purchases made from third Persons. Under these circumstances, reduction of higher priority sales over lower priority sales shall be restricted to the extent of the direct power purchases being made from third Persons.
- (5) MH shall provide as much notice as possible to MP if the Non-Firm Energy offered by MH is to be reduced due to a Curtailment Event as referred to in Section 3.3(1), and shall advise MP as to the anticipated duration. MH shall provide daily updates to MP in respect of the Curtailment Event.

- [REDACTED]
- (6) If the Non-Firm Energy offered by MH is to be reduced for more than one calendar day, the reduction in the amount of Non-Firm Energy offered will end after the Curtailment Event has been resolved; provided however, upon MH advising MP that MH waives the right to rely on such Curtailment Event, MH may end the reduction of the amount of the Non-Firm Energy that was offered prior to the Curtailment Event being resolved.

3.4 Decrementing MH's Obligation

- (1) All Product A that is offered under this Agreement shall decrement the total quantity of Product A that MH is obligated to offer pursuant to Section 3.1(1); provided however, that if any portion of the Product A amount that was offered, is subsequently reduced by MH due to all or any portion of MH's generation system including MH's HVDC system being unavailable, but only where such unavailability is due to scheduled outages of generating unit(s) and/or MH's HVDC system and the scheduled outage constitutes a Curtailment Event in accordance with this Agreement, then MH's obligation pursuant to Section 3.1(1), shall not be decremented by the said reduced amount. For greater certainty the quantity of Product A that was offered by MH shall decrement the quantity of Product A that MH was obligated to offer pursuant to Section 3.1(1) notwithstanding that all or any portion of the amount offered was subsequently reduced due to the occurrence of any Curtailment Event other than the scheduled outage Curtailment Event described in the preceding sentence.
- (2) All Product B and Product C offered by MH, whether or not accepted by MP, shall decrement the total Non-Firm Energy quantity of Product B and Product C that MH is obligated to offer pursuant to Section 3.1(1); provided however that if any portion of the Product B or Product C amount that was offered, is subsequently reduced by MH due to all or any portion of MH's generation system including MH's HVDC system being unavailable, but only where such unavailability is due to scheduled outages of generating unit(s) and/or MH's



HVDC system and the scheduled outage constitutes a Curtailment Event in accordance with this Agreement, then MH's obligation pursuant to Section 3.1(1), shall not be decremented by the said reduced amount. For greater certainty the quantity of Product B or Product C that was offered by MH shall decrement the quantity of Product B or Product C that MH was obligated to offer pursuant to Section 3.1(1) notwithstanding that all or any portion of the amount offered was subsequently reduced due to the occurrence of any Curtailment Event other than the scheduled outage Curtailment Event described in the preceding sentence.

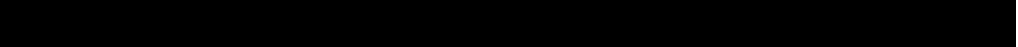
- (3) Notwithstanding any other provision of this Agreement:
 - (a) All of the quantity of MWh of Product A offered under the Energy Sale Transaction Agreement and the Short Term Non-Firm Energy Sale Agreement, shall decrement the total quantity of Product A that MH is obligated to offer pursuant to Section 3.1(1); provided however, that if any portion of the Product A amount that was offered, is subsequently reduced by MH due to all or any portion of MH's generation system including MH's HVDC system being unavailable, due to scheduled outages of generating unit(s) and/or MH's HVDC system and the scheduled outage constitutes a curtailment in accordance with the Energy Sale Transaction Agreement or the Short Term Non-Firm Energy Sale Agreement, as applicable, MH's obligation pursuant to Section 3.1(1), shall not be decremented by the said reduced amount. For greater certainty the quantity of Product A that was offered by MH shall decrement the quantity of Product A that MH was obligated to offer pursuant to Section 3.1(1) notwithstanding that all or any portion of the amount offered was subsequently reduced due to the occurrence of any Curtailment Event other than the scheduled outage Curtailment Event described in the preceding sentence; and

[REDACTED]

(b) All of the quantities of MWh of Product B and Product C offered under the Energy Sale Transaction Agreement and the Short Term Non-Firm Energy Sale Agreement shall decrement the total quantities of Product B and Product C that MH is obligated to offer pursuant to Section 3.1(1); provided however that if any portion of the Product B or Product C amount that was offered, is subsequently reduced by MH due to all or any portion of MH's generation system including MH's HVDC system being unavailable, due to scheduled outages of generating unit(s) and/or MH's HVDC system and the scheduled outage constitutes a curtailment in accordance with the Energy Sale Transaction Agreement or the Short Term Non-Firm Energy Sale Agreement, as applicable, MH's obligation pursuant to Section 3.1(1), shall not be decremented by the said reduced amount. For greater certainty the quantity of Product B or Product C that was offered by MH shall decrement the quantity of Product B or Product C that MH was obligated to offer pursuant to Section 3.1(1) notwithstanding that all or any portion of the amount offered was subsequently reduced due to the occurrence of any Curtailment Event other than the scheduled outage Curtailment Event described in the preceding sentence.

3.5 Additional Non-Firm Energy Sales

(1) MH shall offer to MP an additional [REDACTED] [REDACTED] of Product C for each complete Water Flow Year, if any, occurring after the Early Scheduled Date but prior to April 30, 2022, [REDACTED] [REDACTED] [REDACTED]

- 
- (2) All other terms and conditions set forth in this Agreement that relate to Product C shall govern the Parties' rights and obligations under this Section 3.5.

3.6 Delivery of Non-Firm Energy

MH has the right, but not the obligation to make the Non-Firm Energy available for delivery to the Midwest ISO Market at the Delivery Point using a Dispatchable Interchange Schedule with an Offer or any other market mechanism available to MH at such time. For greater certainty MH has no obligation under this Agreement to physically supply the Non-Firm Energy to any Market including the Midwest ISO Market.

3.7 Firm Transmission

- (1) The Parties acknowledge that MH's obligation to sell and MP's obligation to purchase the Non-Firm Energy pursuant to this Agreement are contingent upon MH having access to the Firm Transmission Path.
- (2) MH shall make Commercially Reasonable Efforts to reserve, if applicable, and have access to the Firm Transmission Path throughout the Contract Term, as it may be extended.
- (3) MH shall be responsible for the payment of any and all transmission and ancillary charges, congestion charges, transmission loss charges, transmission energy losses, and all other charges assessed by a Transmission Provider for the delivery to the Delivery Point of all or the applicable portion of the Non-Firm Energy.
- (4) MP shall be responsible for the payment of any and all transmission and ancillary charges, congestion charges, transmission loss charges, transmission energy losses, and all other charges assessed by a Transmission Provider for the delivery from the Delivery Point of all or the applicable portion of the Non-Firm Energy.

- [REDACTED]
- (5) Notwithstanding any provision in this Agreement, MH shall not be obligated to construct new transmission facilities to obtain Firm Transmission Service.

3.8 Non-Firm Energy

- (1) Notwithstanding any other provision of this Agreement, MP acknowledges and agrees that:

- (a) MH has the right, but not the obligation, to serve the Non-Firm Energy provided for under this Agreement from third-party purchases and/or Markets available to MH;
- (b) MH shall not be obligated to manage the supply of the Non-Firm Energy that is offered to MP in any particular manner;
- (c) except for the requirement set forth in Section 3.8(2), no provision of this Agreement restricts or limits MH to any specific type(s) of generating resources, to be used to supply the Non-Firm Energy that is offered to MP, which for greater certainty includes energy obtained from third party purchases and/or the Markets available to MH, regardless of the generation type used by the third party or which type of generating resources may have been attributable to the energy accessed through the Markets; and
- (d) no provision of this Agreement constitutes a representation or warranty by MH that the Non-Firm Energy that is offered is supplied from a particular generating resource.

- (2) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ARTICLE IV OFFERING AND SCHEDULING

4.1 Offering and Scheduling

(1) Subject to Section 3.3, the offering by MH of Product A, Product B and Product C and subject to Section 4.3, the Scheduling by the Parties of Product A, Product B and Product C shall be attended to, in accordance with the following provisions:

(a) On each Commitment Date, MH shall, provide notification to MP of the quantity, if any, of Product A to be offered to MP for the applicable month, which quantity shall be determined by MH in its sole discretion. Subject to Section 4.2 and Section 4.3, the Parties shall Schedule that quantity of Product A offered by MH to MP.

(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] offer to MP the quantity, if any, per hour of Product B, which quantity shall be determined by MH in its sole discretion. Unless otherwise mutually agreed, MP may accept the quantities of Product B offered by notifying MH [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] If so accepted, subject to Section 4.2 and Section 4.3, the Parties shall Schedule the quantities of Product B offered by MH and accepted by MP.

(c)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] offer to MP the quantity, if any, per hour of Product C, which quantity shall be determined by MH, in its sole discretion. Unless otherwise mutually agreed, MP may accept the quantities of Product C offered by notifying MH [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] If so accepted, subject to Section 4.2 and Section 4.3, the Parties shall Schedule the quantities of Product C offered by MH and accepted by MP.

For greater certainty MH has the discretion not to offer any quantity of the Non-Firm Energy for any particular time period and no notice shall be required to be provided by MH to MP, if MH makes such determination.

4.2 Offering and Scheduling Limits

The offering by MH of Product A, Product B and Product C and the Scheduling by the Parties of Product A, Product B and Product C shall be subject to the following offering and Scheduling limitations and conditions:

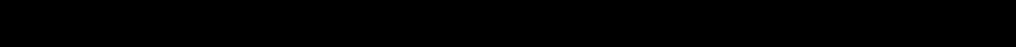
- (a) The maximum aggregate amount of the Non-Firm Energy, which is the total of Product A, Product B and Product C, permitted to be offered by MH, as well as Scheduled under this Agreement, during

any hour from the hour ending 07:00 through the hour ending 22:00 Central Prevailing Time of each applicable day shall be 150 MWh per hour, unless the Parties otherwise agree.

- (b) The maximum aggregate amount of Product C, permitted to be offered by MH, as well as Scheduled under this Agreement during any hour from the hour ending 01:00 through the hour ending 06:00 and from the hour ending 23:00 through the hour ending 24:00 Central Prevailing Time of each applicable day, shall be 100 MWh per hour, which quantity may be increased up to 200 MWh per hour by mutual agreement of the Parties.

4.3 Reduction in Financial Schedules due to a Curtailment Event

- (1) Financial Schedules made pursuant to this Agreement may be reduced by MH only due to a Curtailment Event. MP acknowledges that this Section 4.3 does not restrict or limit the rights of MH pursuant to or arising out of Article XIII to reduce Financial Schedules made pursuant to this Agreement.
- (2) For any Curtailment Events described in subpart (a) of the definition of “Curtailment Event”, Financial Schedules shall be reduced using the priority criteria applied by the Transmission Provider(s) pursuant to the provisions of that Transmission Provider’s OATT.
- (3) For any Curtailment Events described in subpart (b) of the definition of “Curtailment Event, Financial Schedules shall, unless otherwise specified through contractual obligations in other agreements, be reduced in accordance with the following priority criteria:
 - (a) MH’s End-Use Load shall have priority over all other power and energy sales of MH;

- 
- (b) any energy sale by MH that is associated with planning capacity shall take priority over all other energy sales by MH, except for MH's End-Use Load;
 - (c) except for those energy sales referred to in (a) and (b) above, all of MH's Firm LD Energy Sales and MH's Firm Energy Sales shall take priority over all other energy sales by MH, including MH's Non-Firm Energy Sales; and
 - (d) in the event that more than one energy sales of the same type exists in either of the time frames referred to in (c) of this Section 4.3 (3), curtailment with respect to such energy sales shall be determined on a pro rata basis.
- (4) Notwithstanding the priority criteria outlined above, MH has the right but not the obligation to reduce higher priority sales over lower priority sales whenever MH determines it will continue to provide service to a particular lower priority sale through purchases made from third parties. Under these circumstances, reduction of higher priority sales over lower priority sales shall be restricted to the extent of the direct power purchases being made from third parties.
 - (5) MH shall provide as much notice as possible to MP if Financial Schedules are to be reduced due to a Curtailment Event and shall advise MP as to the anticipated duration. MH shall provide daily updates to MP in respect of the Curtailment Event.
 - (6) If the Financial Schedules are reduced for more than one calendar day, the Parties agree to resume Scheduling, in accordance with Sections 4.1 and 4.2, after the Curtailment Event has been resolved; provided however, upon mutual agreement, the Parties may resume Scheduling prior to the Curtailment Event being resolved.



ARTICLE V ENERGY PRICING

5.1 Pricing

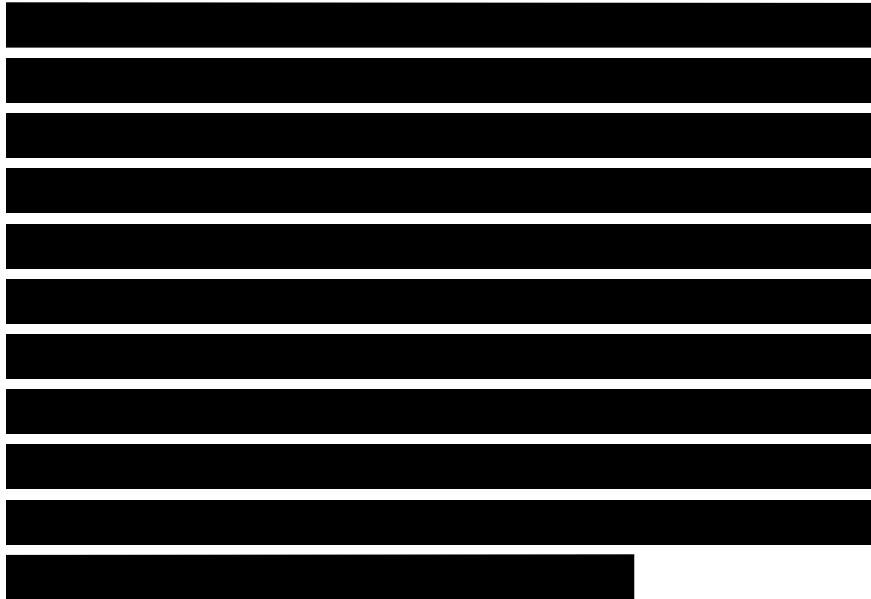
The price for Non-Firm Energy purchased and sold pursuant to this Agreement shall be as set forth in this Section 5.1:

Product A

- (a) The price for Product A in the applicable calendar month during the Contract Term shall be determined in accordance with the following formula:



where:



“m” shall be the applicable forward month for which Product A is to be offered to MP.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

where:

[Redacted]

“m” shall be the applicable forward month for which Product A is offered to MP.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Product B

- (b) The price for Product B shall be [REDACTED]
[REDACTED]
[REDACTED]

Product C

- (c) The price for Product C shall be [REDACTED]
[REDACTED]
[REDACTED]

5.2 Market Disruption Event

If a Market Disruption Event occurs during any day where a price for a Product B or Product C is calculated, the Parties shall negotiate in good faith to attempt to agree on the applicable price for the affected day, and if the Parties have not so agreed on or before the twelfth Business Day following the applicable day on which the Market Disruption Event occurred or existed, then, unless otherwise provided in this Agreement, the price for Product B or Product C as applicable shall be determined by MH in good faith by taking the average of two quotes from energy commodity dealers which satisfies the credit rating criteria that MH applies generally at the time in deciding to offer or to make an extension of credit.

[REDACTED]

ARTICLE VI ALLOCATED AND TRANSFERRED ENVIRONMENTAL ATTRIBUTES

6.1 MH Hydraulic Environmental Attributes Transfer

(1) Throughout the Contract Term, MH shall in accordance with Section 6.1(2), allocate and transfer to MP the MH Hydraulic Environmental Attributes associated with the quantities of MWh of:

- (a) Product A offered by MH less quantities of Product A reduced due to a Curtailment Event in accordance with Section 3.3;
- (b) Product B offered by MH and accepted by MP less quantities of Product B reduced due to a Curtailment Event in accordance with Section 3.3; and
- (c) Product C offered by MH and accepted by MP less quantities of Product C reduced due to a Curtailment Event in accordance with Section 3.3,

(collectively, the “**Allocated and Transferred Environmental Attributes**”).

(2) The determination of the amount of MH Hydraulic Environmental Attributes that constitute the Allocated and Transferred Environmental Attributes from time to time to be allocated and transferred by MH to MP, and the manner in which the MH Hydraulic Environmental Attributes that constitute the Allocated and Transferred Environmental Attributes are from time to time to be allocated and transferred by MH to MP and such other matters related to the allocation and transfer of MH Hydraulic Environmental Attributes that constitute the Allocated and Transferred Environmental Attributes, [REDACTED]

[Redacted]

[Redacted]

(3)

[Redacted]

(4)

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

(5) Unless otherwise mutually agreed, on April 1, 2012, and thereafter on April 1st of each year until the end of the Contract Term, MH shall in respect of the allocation, and transfer of the Allocated and Transferred Environmental Attributes to MP, determined in accordance with Section 6.1(2), for the preceding calendar year, provide MP with transfer and attestation documentation substantially in accordance with MH's Procedures. Notwithstanding any other provision of this Agreement or MH's Procedures, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Parties acknowledge and agree that the determination of the source of the Non-Firm Energy referred to in this report shall be used by the Parties to identify, in any filings or reporting, that either of the Parties may be required to make to any Person, as to the source of the Non-Firm Energy referred to in Section 6.1(1).

(6) MP may request that MH provide the aforesaid report and/or transfer and attestation documentation for the Allocated and Transferred Environmental Attributes more frequently than as provided in Section 6.1(5). MH may, in its sole discretion, agree to provide the transfer and attestation documentation more frequently than once each calendar year.

(7) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (8) MH acknowledges that its most current form of MH's Procedures have been provided to MP.

6.2 Use

MP may use any of the Allocated and Transferred Environmental Attributes at its sole discretion and for MP's sole benefit, including without limitation the re-sale of the Allocated and Transferred Environmental Attributes.

6.3 Rights Conferred by Law

In the event that the Allocated and Transferred Environmental Attributes are

[REDACTED]

6.4 MP Qualification

To the extent allowed by Applicable Law, MP may have the Allocated and Transferred Environmental Attributes qualified and recognized as environmental credits or offsets, if any. MH shall cooperate in such qualification and recognition in accordance with the procedures that it uses or applies generally to the qualification and recognition of MH Hydraulic Environmental Attributes or products that have substantially all of the characteristics of the MH Hydraulic Environmental Attributes. Without limiting the generality of Section 6.5 and Section 17.1, neither Party makes any representation or warranty with respect to any future action or failure to act, or approval or failure to approve, by any

Governmental Authority or any other third Person in respect of the allocation and transfer of the Allocated and Transferred Environmental Attributes.

6.5 Disclaimer

WITH RESPECT TO THE ALLOCATED AND TRANSFERRED ENVIRONMENTAL ATTRIBUTES TO BE TRANSFERRED UNDER THIS AGREEMENT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, MH EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MH MAKES NO REPRESENTATION OR WARRANTY HEREUNDER REGARDING THE SUITABILITY OR LIKELIHOOD OF THE ALLOCATED AND TRANSFERRED ENVIRONMENTAL ATTRIBUTES TO MEET OR QUALIFY UNDER ANY VOLUNTARY OR MANDATORY PROGRAM PERTAINING TO THE GENERATION OF “GREEN” OR CARBON NEUTRAL ELECTRIC POWER OR REGARDING ANY CREATION OF A FEDERAL, STATE OR LOCAL MANDATORY RENEWABLE PORTFOLIO STANDARD OR CARBON OFFSET OR ALLOWANCE TRADING PROGRAM UNDER WHICH THE ALLOCATED AND TRANSFERRED ENVIRONMENTAL ATTRIBUTES COULD BE SOLD, TRANSFERRED OR USED FOR COMPLIANCE.

ARTICLE VII BILLING

7.1 Dollar Amounts and Payment in U.S. Dollars

All dollars set forth in this Agreement, monetary transactions, and cost calculations between MH and MP shall be determined and stated in lawful money of the United States of America. Payment of all invoices pursuant to this Agreement shall be made in lawful money of the United States of America.



7.2 Method of Payment of Invoices

Payment of all invoices pursuant to this Agreement shall be made by the Party required to make the payment to the Party entitled to receive the payment by electronic bank transfer or by other mutually agreeable method(s) to the bank designated in Appendix A attached hereto. A Party may change the designation of the bank set out in Appendix A by notice to the other Party in accordance with Section 18.1 hereof. Payment shall be deemed made when received by the bank designated in Appendix A.

7.3 Rendering Invoices

Unless otherwise specifically agreed upon by the Parties, the calendar month shall be the standard billing period for all invoices rendered under this Agreement. As soon as practicable after the end of each month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

7.4 Payment Amounts

The amount payable by MP to MH for each month during the Contract Term shall be determined as follows:

Product A

- (a) The price for Product A (in dollars per MWh) applicable in that month, determined in accordance with Section 5.1(a), multiplied by the applicable quantity of Product A offered by MH for that month, determined in accordance with Section 4.1(a), whether or not Scheduled;





minus

- (b) The price for Product A (in dollars per MWh) applicable in that month, determined in accordance with Section 5.1(a), multiplied by the applicable quantity of Product A that was reduced pursuant to Section 3.3. that had been offered by MH for that month;

minus

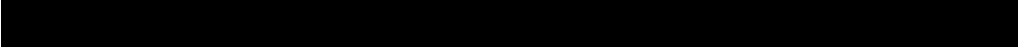
- (c) The sum of the amount determined for each applicable hour that a quantity of Product A was not Scheduled, for any reason other than a Curtailment Event as referred to in Section 4.3, that had been offered by MH during any day for that month determined for each applicable hour as follows:

- (i) The  applicable for  each applicable hour of each applicable day, multiplied by all or a portion of the applicable quantity of Product A not Scheduled for any reason other than a Curtailment Event as referred to in Section 4.3, that had been offered by MH for the corresponding applicable hour of the applicable day for that month;

plus

Product B

- (d) The sum of the amount determined for each applicable hour that a quantity of Product B was offered by MH and accepted by MP



during any day for that month determined for each applicable hour as follows:

(i) The price for Product B (in dollars per MWh) applicable for each applicable hour of each applicable day in that month, determined in accordance with Section 5.1(b), multiplied by the applicable quantity of Product B offered by MH and accepted by MP for the corresponding applicable hour of the applicable day for that month, determined in accordance with Section 4.1(b), whether or not Scheduled;

minus

(e) The sum of the amount determined for each applicable hour that a quantity of Product B was reduced pursuant to Section 3.3 that had been offered by MH and accepted by MP during any day for that month determined for each applicable hour as follows:

(i) The price for Product B (in dollars per MWh) applicable for each applicable hour of each applicable day in that month determined in accordance with Section 5.1(b), multiplied by all or a portion of the applicable quantity of Product B reduced pursuant to Section 3.3 that had been offered by MH and accepted by MP for the corresponding applicable hour of the applicable day for that month;

minus

(f) The sum of the amount determined for each applicable hour that a quantity of Product B was not Scheduled, for any reason other than a Curtailment Event as referred to in Section 4.3, that had been

[REDACTED]

offered by MH and accepted by MP during any day for that month determined for each applicable hour as follows:

- (i) [REDACTED] applicable for each applicable hour of each applicable day, multiplied by all or a portion of the applicable quantity of Product B not Scheduled for any reason other than a Curtailment Event as referred to in Section 4.3, that had been offered by MH and accepted by MP for the corresponding applicable hour of the applicable day for that month;

plus

Product C

- (g) The sum of the amount determined for each applicable hour that a quantity of Product C was offered by MH and accepted by MP during any day for that month determined for each applicable hour as follows:

- (i) The price for Product C (in dollars per MWh) applicable for each applicable hour of each applicable day in that month, determined in accordance with Section 5.1(c), multiplied by the applicable quantity of Product C offered by MH and accepted by MP for the corresponding applicable hour of the applicable day for that month, determined in accordance with Section 4.1(c), whether or not Scheduled;

minus



(h) The sum of the amount determined for each applicable hour that a quantity of Product C was reduced pursuant to Section 3.3 that had been offered by MH and accepted by MP during any day for that month determined for each applicable hour as follows:

(i) The price for Product C (in dollars per MWh) applicable for each applicable hour of each applicable day in that month determined in accordance with Section 5.1(c), multiplied by all or a portion of the applicable quantity of Product C reduced pursuant to Section 3.3 that had been offered by MH and accepted by MP for the corresponding applicable hour of the applicable day for that month;

minus

(i) The sum of the amount determined for each applicable hour that a quantity of Product C was not Scheduled, for any reason other than a Curtailment Event as referred to in Section 4.3, that had been offered by MH and accepted by MP during any day for that month determined for each applicable hour as follows:

(i) The [REDACTED] applicable for each applicable hour of each applicable day, multiplied by all or a portion of the applicable quantity of Product C not Scheduled for any reason other than a Curtailment Event as referred to in Section 4.3, that had been offered by MH and accepted by MP for the corresponding applicable hour of the applicable day for that month.

Provided that if the total amounts determined pursuant to Sections 7.4(b), (c), (e), (f), (h) and (i), exceeds the total of the amounts determined pursuant to Sections 7.4(a), (d) and (g), MH shall pay MP the difference between the total of the amounts determined pursuant Sections 7.4(b), (c), (e), (f), (h) and (i) and the total of the amounts determined pursuant to Sections 7.4(a), (d) and (g).

An example of the amount to be paid to MH by MP for Product A for a one month period is set out in Appendix B. The example is provided for illustration purposes only and is not intended to be representative or based on estimated amounts.

7.5 Payment Date

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Any amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Interest Rate and such interest shall be calculated from and including the due date to, but excluding, the date the delinquent amount is paid in full.

7.6 Estimates

In the event that not all of the information necessary for the preparation of the monthly invoice is known in time for the preparation of the monthly invoice, good-faith estimates may be used on the monthly invoice to be followed with an adjustment on the next month's invoice to reflect actual charges if necessary. In the event that the amount paid or payable on any invoice or invoices delivered pursuant to this Agreement is based, in whole or in part, upon third party invoices and the third party subsequently adjusts its invoice, MH shall charge or credit MP

[REDACTED]

for the change in such third party invoice in the next invoice to MP after MH's receipt of such adjusted third party invoice.

7.7 Preliminary Billing Information

The Parties shall exchange preliminary billing information in accordance with the accounting and billing procedures established by the Operating Committee.

7.8 Billing Adjustments and Disputes

If a Party disputes all or any part of an invoice, that Party shall nevertheless pay the full amount of the invoice when due and payable and shall give notice to the Party rendering the invoice within three hundred sixty (360) days from the date the invoice is rendered, setting forth the specific details upon which the invoice is disputed and the amount thereof in dispute. The disputing Party shall not be entitled to any adjustment on account of any disputed charges for which notice is not given in accordance with this Section 7.8. If the resolution of a dispute regarding an invoice results in a refund, interest thereon shall accrue at the Interest Rate and shall be compounded daily on the amount to be refunded, from the date of receipt of payment of the disputed invoice until the date upon which refund is made. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section within three hundred sixty (360) days after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within ninety (90) days after the close of the applicable month, the right to payment for such performance is waived.

7.9 Unpaid Invoices

If any invoice from MH remains unpaid by MP after the due date, then MH, may, in addition to all other remedies available to it, and after giving MP at least five (5) Business Days' notice of intention to do so, discontinue the obligation to offer



the Non-Firm Energy and to transfer any Allocated and Transferred Environmental Attributes so long as any amount due remains unpaid. The maximum amount of Non-Firm Energy that could have been offered in accordance with Section 4.2 for each applicable day during the aforementioned time period shall decrement the amount that MH was to offer to MP in accordance with Section 3.1. Such discontinuance shall not be construed as a breach of contract by MH, and shall not relieve MP of its obligations to pay for Non-Firm Energy, as set forth in Section 7.4.

7.10 Impact of Performance Assurance

Unless the Party benefiting from Performance Assurance notifies the other Party in writing and except in connection with a termination in accordance with Article XIII, all amounts to be paid pursuant to this Article shall not take into account or include any Performance Assurance which may be in effect to secure a Party's performance under this Agreement.

7.11 Accounting and Billing Procedures

The Operating Committee may make and implement decisions regarding the creation and revision, from time to time, of accounting and billing procedures necessary to implement the terms and conditions of this Agreement including the provisions of Article V.

7.12 Preliminary Billing Information

The Parties shall exchange preliminary billing information in accordance with the accounting and billing procedures established by the Operating Committee.

ARTICLE VIII GOVERNMENTAL CHARGES AND PERMITS

8.1 Governmental Charges

Each Party shall be solely responsible for and shall pay or cause to be paid all Governmental Charges imposed on that Party in respect of any matters related to this Agreement. In the event MH is required by law or regulation to remit or pay Governmental Charges that are MP's responsibility hereunder, MH shall promptly notify MP and MP shall promptly reimburse MH for such Governmental Charges. In the event MP is required by law or regulation to remit or pay Governmental Charges that are MH's responsibility hereunder, MP shall promptly notify MH and MH shall promptly reimburse MP for such Governmental Charges.

8.2 Governmental Permits

- (1) The Parties further acknowledge that MH has a permit from the National Energy Board of Canada with permit number EPE-269 which permits MH to export electricity at points on the international boundary between Canada and the United States of America (the "**Existing MH Permit**") and which will expire on October 31, 2010.
- (2) MH shall use Commercially Reasonable Efforts to secure a new permit or permits from the National Energy Board of Canada to replace: (a) the Existing MH Permit; and (b) any expiring permit or permits referred to in (a) above that were obtained to replace the Existing MH Permit (collectively the "**New MH Permits**") and shall use Commercially Reasonable Efforts to maintain the New MH Permit(s), if obtained, during the Contract Term.
- (3) The New MH Permit(s) shall, if obtained, be utilized in this Agreement for the export of the Non-Firm Energy from Canada to the United States of America.

8.3 Maintain Authorizations

Each Party shall use all Commercially Reasonable Efforts to maintain in full force and effect all consents of any Governmental Authority that are required to be

obtained by it with respect to this Agreement and will use all Commercially Reasonable Efforts to obtain any consents of any Governmental Authority that may become necessary in the future.

8.4 Documentation

Upon reasonable demand by a Party, the other Party shall deliver as soon as reasonably practicable, any form or document that may be required or reasonably requested in writing in order to allow such other Party or its Credit Support Provider to make a payment under this Agreement without any deduction or withholding for or on account of any Government Charges or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not prejudice the legal or commercial position of the Party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other Party and to be executed and to be delivered with any reasonably required certification.

ARTICLE IX CONDITIONS PRECEDENT

9.1 MP's Condition Precedent

The obligation of MP to complete the transactions referenced herein shall be subject to and contingent upon the fulfillment of the following condition precedent to the satisfaction of MP, as certified or waived in writing by MP, by the date specified:

- (a) the final non-appealable approval of this Agreement by the Minnesota Public Utilities Commission within two hundred ten (210) days after MP files its application. MP shall file an

application for approval of this Agreement with the said commission within one hundred twenty (120) days after both Parties' execution of this Agreement.

9.2 MH's Conditions Precedent

The obligation of MH to complete the transactions referenced herein shall be subject to and contingent upon the fulfillment of the following conditions precedent to the satisfaction of MH, as certified or waived in writing by MH, by the date specified:

- (a) MH maintaining its Existing MH Permit and obtaining the New MH Permits referred to in Section 8.2(2)(a) by October 31, 2010; and
- (b) no notice is properly given by April 30, 2011 by either Party, in accordance with the terms of the Short Term Non-Firm Energy Sale Agreement, designating an Early Termination Date (as such term is defined in the Short Term Non-Firm Energy Sale Agreement), excluding any notice given by MP due to an "MH Event of Default" (as such term is defined in the Short Term Non-Firm Energy Sale Agreement).

9.3 Required Approvals


MP shall use Commercially Reasonable Efforts to attempt to ensure that the condition precedent in Section 9.1 is satisfied, including providing information as reasonably required. If for any reason any of the conditions precedent referred to in Sections 9.1 or 9.2 are not satisfied or waived by the applicable Party(ies) on or before the date specified herein, then this Agreement, in its entirety, shall terminate as to the Parties' commitments hereunder without liability of either Party unless otherwise mutually agreed to by the Parties.




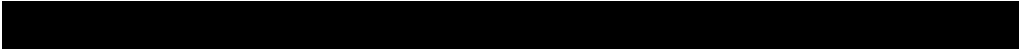
ARTICLE X REPRESENTATIONS AND WARRANTIES

10.1 General and US Bankruptcy Representations and Warranties

- (1) Each Party makes the following representations and warranties to the other Party as of the date of the execution of this Agreement, as of the Effective Date and upon the date of each delivery of Non-Firm Energy and Allocated and Transferred Environmental Attributes attestation documentation throughout the Contract Term:
- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
 - (b) subject to Sections 8.2(2) and 8.2(3) 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 and each other document executed by it and delivered in accordance with this Agreement constitute its legally valid and binding obligation, enforceable against it in accordance with its terms, subject to any equitable defenses;
 - (e) it is a Market Participant as of the date of the execution of this Agreement;

- 
- (f) it or its Credit Support Provider, if any, is not in Bankruptcy and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in its, or its Credit Support Provider, if any, being or becoming Bankrupt;
 - (g) there is not pending or, to its knowledge, threatened against it, its Credit Support Provider, if any or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
 - (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, is capable of assessing and understanding the merits, and understands and accepts, the terms, conditions and risks of this Agreement;
 - (i) it has entered into this Agreement in connection with the conduct of its business;
 - (j) this Agreement and all transactions pursuant to it constitute “forward contracts” within the meaning of the Bankruptcy Code or a “swap agreement” within the meaning of the Bankruptcy Code;
 - (k) this Agreement constitutes a “master netting agreement” and all transactions pursuant to it constitute “forward contracts” within the meaning of the Bankruptcy Code or a “swap agreement” within the meaning of the Bankruptcy Code;

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- (l) it is a “forward contract merchant” within the meaning of the Bankruptcy Code with respect to any transactions that constitute "forward contracts" and a “swap agreement” with respect to any transactions that constitute “swap agreements”;
 - (m) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code;
 - (n) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code;
 - (o) it is a “master netting agreement participant” within the meaning of the Bankruptcy Code;
 - (p) this Agreement grants each Party the contractual right to “cause the liquidation, termination or acceleration” of the transactions within the meaning of Section 556, 560 and 561 of the Bankruptcy Code as they may be superseded or replaced from time to time;
 - (q) upon a Bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbour provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be superseded or replaced from time to time;
 - (r) it is an “eligible contract participant” as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(12);



- (s) it (i) is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this Agreement, or the products or byproducts thereof; and (ii) is offered or enters into this Agreement solely for purposes related to its business as such; and
 - (t) for the purposes of this Agreement, it is not a "utility" as such term is used in 11 U.S.C. Section 366 with respect to the other Party under this Agreement, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.

- (2) MH makes the following additional representation and warranty to MP as of the date of the execution of this Agreement and as of the Effective Date:
 - (a) no MH Event of Default and no MH Termination Event has occurred and is continuing; and
 - (b) no MH Event of Default and no MH Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.

- (3) MP makes the following additional representation and warranty to MH as of the date of the execution of this Agreement and as of the Effective Date:
 - (a) no MP Event of Default and no MP Termination Event has occurred and is continuing; and
 - (b) no MP Event of Default and no MP Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.



10.2 MH Tax Representations

MH makes the following representations and warranties to MP as of the date of the execution of this Agreement, as of the Effective Date and upon the date of each delivery of Non-Firm Energy and Allocated and Transferred Environmental Attributes attestation documentation throughout the Contract Term:

- (a) it is a “foreign person” (as that term is used in section 1.6041-4(a)(4) of the United States Treasury Regulations) for United States of America federal income tax purposes and its U.S. Taxpayer identification number is 98-0126210; and
- (b) no part of any payment received or to be received by MH in connection this Agreement is attributable to a trade or business carried on by it in the United States of America.

10.3 MP Tax Representations

MP makes the following representations and warranties to MH as of the date of the execution of this Agreement, as of the Effective Date and upon the date of each delivery of Non-Firm Energy and Allocated and Transferred Environmental Attributes attestation documentation throughout the Contract Term :

- (a) it is a "U.S. person” (as that term is used in section 1.1441-4(a) (3) (ii) of the United States Treasury Regulations) for United States of America federal income tax purposes and its U.S. Taxpayer identification number is 41-0418150; and
- (b) no part of any payment received or to be received by MP in connection this Agreement is attributable to a trade or business carried on by it in Canada.



10.4 Survival of Representations and Warranties of the Parties

The representations and warranties of the respective Parties contained in Sections 10.1 through 10.3 of this Agreement shall continue in full force and effect for a period of three (3) years following termination of this Agreement.

ARTICLE XI CREDITWORTHINESS

11.1 Credit Review Procedures

For the purpose of determining whether a Party is able to meet its obligations pursuant to this Agreement, a Party may require reasonable credit review procedures. If requested by a Party, the other Party shall deliver unless such financial statements are available on “EDGAR” or SEDAR” or on such other Party’s internet website (i) within 120 calendar days following the end of each fiscal year, a copy of such Party’s annual report containing audited consolidated financial statements for such fiscal year and (ii) within 90 calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or such other principles then in effect, provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such Party shall diligently pursue the preparation, certification and delivery of the statements.

11.2 Performance Assurances

- (1) Should a Party have reasonable grounds to believe that the other Party’s creditworthiness, or performance under this Agreement has become unsatisfactory



to the other Party in such other Party's commercially reasonably exercised judgment, the dissatisfied Party (the "**Requesting Party**") may require the other Party (the "**Second Party**") to provide Performance Assurance, the type of which shall be at the Second Party's option, but subject to the Requesting Party's acceptance based upon commercially reasonably exercised judgment.

- (2) Events which may trigger the Requesting Party to require the Second Party to provide Performance Assurance include, but are not limited to, the following:
 - (a) the Requesting Party having knowledge that the Second Party (or its Credit Support Provider, if applicable) is in default under other contracts that are material to the Second Party's (or the Credit Support Provider's, if applicable) ability to conduct its business;
 - (b) the Second Party's, or its Credit Support Provider's failing to maintain an Investment Grade Credit Rating; and
 - (c) other material adverse changes in the Second Party's financial condition, which would reasonably be expected to have a material adverse impact on the Second Party's ability to perform its obligations under this Agreement.

ARTICLE XII FORCE MAJEURE

12.1 Force Majeure

Neither Party shall be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure, provided that:

- (a) the non-performing Party shall give the other Party notice promptly (and within two (2) Business Days if practicable) after the non-performing Party's knowledge of the commencement of the Force Majeure, with written confirmation to be supplied within ten (10) calendar days after the commencement of the Force Majeure further describing the particulars of the occurrence of the Force Majeure;
- (b) the delay in performance due to Force Majeure shall be of no greater scope and of no longer duration than is directly caused by the Force Majeure;
- (c) the Party whose performance is delayed or prevented shall proceed with Commercially Reasonable Efforts to overcome the Force Majeure which is preventing or delaying performance and shall provide weekly written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure, the schedule for such actions and the expected date by which performance shall no longer be affected by the Force Majeure; and
- (d) when the performance of the Party claiming the Force Majeure is no longer being delayed or prevented, that Party shall give the other Party prompt notice to that effect.

A Force Majeure that is a Curtailment Event shall be governed by the provisions of this Agreement related to Curtailment Events, to the extent that such provisions may conflict with the provisions set forth in this Article XII.

ARTICLE XIII DEFAULT/ TERMINATION

13.1 Events of Default

(1) MH Events of Default Defined

The occurrence at any time with respect to MH of any of the following events, conditions or circumstances (each an “**MH Event of Default**”):

- (a) the failure of MH or any Credit Support Provider of MH to make any payment to MP as required by this Agreement if such amount remains unpaid within five (5) Business Days after the date MH receives notice from MP that the amount is overdue;
- (b) the failure by MH to perform or observe any material obligation to MP under this Agreement, including without limitation its obligations under Sections 3.8(2) and 6.1, that is not excused by an event of Force Majeure, other than obligations for the payment of money, if such failure is not remedied within fifteen (15) Business Days of notice thereof by MP to MH;
- (c) the Bankruptcy of MH or its Credit Support Provider;
- (d) the failure by MH to provide Performance Assurance within five (5) Business Days of the date that the Performance Assurance was to be provided in accordance with Section 11.2;

[REDACTED]

(e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(f) the occurrence of a Letter of Credit Default by MH that remains uncured for five (5) Business Days;

(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(h) the failure by MH to cure or obtain waiver of an event of default by MH under the 250 MW System Power Sale Agreement (all as determined in accordance with that agreement);

(i) the failure by MH to cure or obtain waiver of an event of default by MH under the Manitoba Import Transaction Agreement (all as determined in accordance with that agreement);

(j) MH or any Credit Support Provider of MH consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to or reorganizes or reincorporates or reconstitutes into or as another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity fails to assume, if applicable, all the obligations of MH or such Credit Support Provider under this Agreement to which it or its predecessor was a party and, in the case of a Credit

Support Provider, MH has failed to provide a replacement Guarantee Agreement within five (5) Business Days; or

- (k) any representation or warranty made by MH in this Agreement that is proven to have been false in any material respect when made and which fact has had, or could reasonably be expected to have, a material adverse impact on MP's rights under this Agreement or on MH's ability to perform its obligations under this Agreement.

(2) **MP Events of Default Defined**

The occurrence at any time with respect to MP of any of the following events, conditions or circumstances (each an “**MP Event of Default**”):

- (a) the failure of MP or any Credit Support Provider of MP to make any payment to MH as required by this Agreement if such amount remains unpaid within five (5) Business Days after the date MP receives notice from MH that the amount is overdue;
- (b) the failure by MP to perform or observe any material obligation to MH under this Agreement that is not excused by an event of Force Majeure, other than obligations for the payment of money, and such failure is not remedied within fifteen (15) Business Days of notice thereof by MH to MP;
- (c) the Bankruptcy of MP or its Credit Support Provider;
- (d) the failure by MP to provide Performance Assurance within five (5) Business Days of the date that the Performance Assurance was to be provided in accordance with Section 11.2;

[REDACTED]

(e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(f) the occurrence of a Letter of Credit Default by MP that remains uncured for five (5) Business Days;

(g) [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

(h) the failure by MP to cure or obtain waiver of an event of default by MP under the 250 MW System Power Sale Agreement (all as determined in accordance with that agreement);

(i) the failure by MP to cure or obtain waiver of an event of default by MP under the Manitoba Import Transaction Agreement (all as determined in accordance with that agreement);

(j) MP or any Credit Support Provider of MP consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to or reorganizes or reincorporates or reconstitutes into or as another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution, the resulting, surviving or transferee entity fails to assume, if applicable, all the obligations of MP or such Credit Support Provider under this Agreement to which it or its predecessor was a party and, in the case of a Credit

Support Provider, MP has failed to provide a replacement Guarantee Agreement within five (5) Business Days; or

- (k) any representation or warranty made by MP in this Agreement that is proven to have been false in any material respect when made and which fact has had, or could reasonably be expected to have, a material adverse impact on MH's rights under this Agreement or on MP's ability to perform its obligations under this Agreement.

(3) **Right to Terminate following an MH Event of Default**


If at any time an MH Event of Default has occurred and is then continuing beyond any applicable cure period, MP may, by not less than twenty (20) calendar days' notice to MH specifying the relevant MH Event of Default, designate a Business Day not earlier than the day such notice is effective as an Early Termination Date and shall be able to exercise any other remedy available to it at law or in equity.

(4) **Right to Terminate following an MP Event of Default**

If at any time an MP Event of Default has occurred and is then continuing beyond any applicable cure period, MH may, by not less than twenty (20) calendar days' notice to MP specifying the relevant MP Event of Default, designate a Business Day not earlier than the day such notice is effective as an Early Termination Date and shall be able to exercise any other remedy available to it at law or in equity.

(5) **Suspension of Performance following an MH Event of Default**

Notwithstanding any other provision of this Agreement, if an MH Event of Default has occurred and is continuing beyond any applicable cure period, MP, upon notice to MH, shall have the right:

- 
- (a) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than (10) Business Days unless an Early Termination Date has been declared and notice thereof given pursuant to Section 13.1(3); and
 - (b) to exercise any remedy available at law or in equity.

(6) **Suspension of Performance following an MP Event of Default**

Notwithstanding any other provision of this Agreement, if an MP Event of Default has occurred and is continuing beyond any applicable cure period, MH, upon notice to MP, shall have the right:

- (a) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than (10) Business Days unless an Early Termination Date has been declared and notice thereof given pursuant to Section 13.1(4); and
- (b) to exercise any remedy available at law or in equity.

13.2 Termination Events

(1) **MP Termination Events**

MP has the right, but not the obligation, to terminate this Agreement in the manner described in this Section 13.2 following an occurrence of any of the events, conditions or circumstances specified below (each a “**MP Termination Event**”); provided however, if such event, condition, or circumstance constitutes an MH Event of Default or an MP Event of Default, then the Parties’ rights and obligations shall be governed by Section 13.1:

- [REDACTED]
- (a) immediately upon providing notice to MH, if after giving effect to any applicable provisions in this Agreement, at any time during the Contract Term: (i) either Party is no longer a Market Participant; or (ii) the Midwest ISO Market no longer exists; or (iii) the TARIFF no longer exists; or (iv) the TARIFF is amended or revised to the extent, that MP will have been materially adversely impacted when such amendments or revisions are considered in the context of the impact they will have on the Parties continued compliance with the requirements of this Agreement and in accordance with Section 14.1 changes to this Agreement to address the material adverse impact such amendments or revisions to the TARIFF had on the Parties has not been developed and agreed to by the Parties within forty-five (45) Business Days of notice by MP to MH; or (v) [REDACTED] [REDACTED] as referred to in Section 5.1 are no longer available to be used in the establishment of the price for Product A and in accordance with Section 14.1 an alternative mechanism has not been developed within fourteen (14) Business Days of notice by MP to MH; provided however, upon notice to MH, MP shall have the right, but not the obligation, to suspend performance under this Agreement during the time periods described in subparts (iv) and (v) of this paragraph;
- (b) immediately upon providing notice to MH, if after giving effect to any applicable provisions in this Agreement, due to an event or circumstance (other than any action taken by MP or, if applicable, any Credit Support Provider of MP) it becomes unlawful under any Applicable Law on any day for MP or any Credit Support Provider of MP to perform any absolute or contingent obligation under this Agreement, to make a payment or delivery in respect of this

[REDACTED]

Agreement, to receive a payment of delivery in respect of this Agreement or to comply with any other material provision of this Agreement;

- (c) immediately upon providing notice to MH, if after giving effect to any applicable provisions in this Agreement, either Party is by reason of Force Majeure (including a Curtailment Event due to Force Majeure) prevented from complying with any material provision of this Agreement for a period of 180 consecutive calendar days;
- (d) immediately upon providing notice to MH, in the event that the Allocated and Transferred Environmental Attributes are conferred by statute or other legal instrument to MH and MH does not have the legal authority to allocate and/or transfer the Allocated and Transferred Environmental Attributes to MP;
- (e) immediately upon five (5) Business Days' notice to MH, as described in Section 6.1(4) of this Agreement;
- (f) immediately upon five (5) Business Days' notice to MH, if MH fails to reserve, if applicable and have access to the Firm Transmission Path;
- (g) upon one hundred eighty (180) days' notice being provided to MH, if the obligations of either of the Parties to complete the transactions referenced in the 250 MW System Power Sale Agreement or the Manitoba Import Transaction Agreement are contingent upon a condition or conditions precedent to the satisfaction of the applicable Party, excluding any condition or conditions, that is an event, condition or circumstance referred to

[REDACTED]

in Sections 13.2(2)(g) to 13.2(2)(l) inclusive, and such condition or conditions are not fulfilled or waived by the applicable Party, by the date(s) specified in the applicable agreement;

- (h) upon one hundred eighty (180) days' notice being provided to MH, if any of the [REDACTED]
[REDACTED]
[REDACTED] 250 MW System Power Sale Agreement, or the Manitoba Import Transaction Agreement are terminated by a Party to the applicable agreement after the satisfaction or waiver of all conditions precedent referred to in the applicable agreement, except if the right to terminate the applicable agreement, arises out of:
 - (i) an uncured event of default by MP as determined under the terms of the applicable agreement; or
 - (ii) an event, condition or circumstance referred to in Sections 13.2(2)(g) to 13.2(2)(l) inclusive.

(2) **MH Termination Events**

MH has the right, but not the obligation, to terminate this Agreement in the manner described below following an occurrence of any of the events, conditions or circumstances specified below (each a “**MH Termination Event**”) provided however, if such event, condition, or circumstance constitutes an MP Event of Default, or an MH Event of Default, then the Parties’ rights and obligations shall be governed by Section 13.1:

- (a) immediately upon providing notice to MP, if after giving effect to any applicable provisions in this Agreement, at any time during the Contract Term: (i) either Party is no longer a Market Participant; or

[REDACTED]

(ii) the Midwest ISO Market no longer exists; or (iii) the TARIFF no longer exists; or (iv) the TARIFF is amended or revised to the extent, that MH will have been materially adversely impacted when such amendments or revisions are considered in the context of the impact they will have on the Parties continued compliance with the requirements of this Agreement and in accordance with Section 14.1 changes to this Agreement to address the material adverse impact such amendments or revisions to the TARIFF had on the Parties has not been developed and agreed to by the Parties within forty-five (45) Business Days of notice by MH to MP;

[REDACTED]
[REDACTED] as referred to in Section 5.1 are no longer available to be used in the establishment of the price for Product A and in accordance with Section 14.1 an alternative mechanism has not been developed within fourteen (14) Business Days of notice by MH to MP; provided however, upon notice to MP, MH shall have the right, but not the obligation, to suspend performance under this Agreement during the time periods described in subparts (iv) and (v) of this paragraph;

- (b) immediately upon providing notice to MP, if after giving effect to any applicable provisions in this Agreement, due to an event or circumstance (other than any action taken by MH or, if applicable, any Credit Support Provider of MH) it becomes unlawful under any Applicable Law for MH or any Credit Support Provider of MH to perform any absolute or contingent obligation under this Agreement, to make a payment or delivery in respect of this Agreement, to receive a payment or delivery in respect of this Agreement or to comply with any other material provision of this Agreement;



(c) immediately upon providing notice to MP, if, after giving effect to any applicable provisions in this Agreement, either Party is by reason of Force Majeure (including a Curtailment Event due to Force Majeure) prevented from complying with any material provision of this Agreement for a period of 180 consecutive calendar days;

(d) immediately upon providing notice to MP, if MH fails to reserve, if applicable, or have access to the Firm Transmission Path;

(e) immediately upon providing notice to MP, if MH is unable to maintain or obtain, as applicable, the New MH Permits;

(f) [Redacted text block]

(g) [Redacted text block]

[REDACTED]

(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(i) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(j) upon one hundred eighty (180) days' notice to MP, if the Parties have not received the necessary presidential permit as referred to in the 250 MW System Power Sale Agreement, by the date specified in such agreement, unless this constitutes an event of default under that agreement;

(k) upon one hundred eighty (180) days' notice to MP, if the Parties have not received the necessary presidential permit as referred to in the Manitoba Import Transaction Agreement, by the date specified in such agreement, unless this constitutes an event of default under that agreement;

(l) unless the right of MH to terminate this Agreement is specifically addressed in any of Sections 13.2(2)(a) to 13.2(2)(j) inclusive, in which case the provisions of that Section shall govern, one hundred eighty (180) days' notice to MP, if the obligations of either of the Parties to complete the transactions referenced in the 250 MW System Power Sale Agreement or the Manitoba Import

Transaction Agreement are contingent upon a condition or conditions precedent to the satisfaction of MH, with the exception of conditions related to:

- (i) the construction of new hydraulic generating stations (not including the Wuskwatim generating station), that will be an addition to MH's electric generation facilities; or
- (ii) the actual commencement of construction of new power transmission facilities within the province of Manitoba which MH has determined are required for the transmission of the output of the new hydraulic generating station referred to above,

and such condition or conditions are not fulfilled or waived by MH, by the date(s) specified in the applicable agreement unless the failure to satisfy such condition(s) constitutes an event of default under that agreement;

- (m) unless the right of MH to terminate this Agreement is specifically addressed in any of the Sections 13.2(2)(a) to 13.2(2)(j) inclusive, in which case the provisions of that section shall govern the termination rights of MH, upon one hundred eighty (180) days' notice to MP, if any of the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 250 MW System Power Sale Agreement, or the Manitoba Import Transaction Agreement is terminated except if the right to terminate the applicable agreement, arises out of an event of default by MH under the terms of the applicable agreement;

- (n) immediately upon providing notice to MP if the Allocated and Transferred Environmental Attributes are conferred by statute or other legal instrument to MH, and MH does not have the legal authority to allocate and/or transfer the Allocated and Transferred Environmental Attributes to MP, unless MP elects to waive this obligation of MH, in which case it will not constitute an MH Termination Event; or
- (o) immediately upon providing notice to MP, if the 250 MW System Power Sale Agreement and the Manitoba Import Transaction Agreement are not executed by September 30, 2011 or such other date as the Parties may mutually agree upon.

(3) **Right of MP to Terminate Following an MP Termination Event**

If an MP Termination Event occurs, MP shall, promptly upon becoming aware of it, notify MH, specifying the nature of that MP Termination Event and shall give MH such other information about that MP Termination Event as MH may reasonably require. If an MP Termination Event has occurred and is then continuing, MP may, by providing notice to MH in the time period specified in such MP Termination Event and if no time period is specified, by not less than twenty (20) days' notice to MH, designate a Business Day not earlier than the day such notice is effective as an Early Termination Date.

(4) **Right of MH to Terminate Following an MH Termination Event**

If an MH Termination Event occurs, MH shall, promptly upon becoming aware of it, notify MP, specifying the nature of that MH Termination Event and shall give MP such other information about that MH Termination Event as MP may reasonably require. If an MH Termination Event has occurred and is then continuing, MH may, by providing notice to MP in the time period specified in

such MH Termination Event and if no time period is specified, by not less than twenty (20) days' notice to MP, designate a Business Day not earlier than the day such notice is effective as an Early Termination Date.

13.3 Effect of Designation of an Early Termination Date

(1) Effect of Designation

- (a) If notice designating an Early Termination Date is properly given in accordance with the terms of this Agreement, the Early Termination Date will occur on the date so designated, whether or not the relevant MH Event of Default, MP Event of Default, MH Termination Event or MP Termination Event is continuing on such Early Termination Date.
- (b) Upon the effective designation of an Early Termination Date, MH shall have no further obligation to offer or Schedule, and MP shall have no further obligation to accept or Schedule, Non-Firm Energy pursuant to the terms hereof, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date arising out of an MH Termination Event or an MP Termination Event shall be determined pursuant to Section 13.3(2).

(2) Payment on Early Termination

On or as soon as practicable following the effective designation of an Early Termination Date arising out of an MH Termination Event or an MP Termination Event, MH shall calculate the amounts due and owing by MP to MH, and MP shall calculate the amounts due and owing by MH to MP, for the period up to and including the Early Termination Date, and each Party shall deliver an invoice to

the other Party for the amount due which shall be payable in accordance with Section 7.2, Section 7.3 and Section 7.6.

ARTICLE XIV OPERATING COMMITTEE


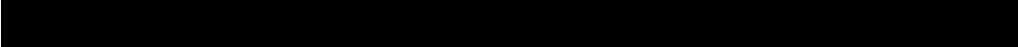
14.1 Operating Committee

- (1) A committee (the “**Operating Committee**”) is hereby constituted consisting of the Division Manager of Power Sales & Operations or delegate from MH and Director of Energy Supply and Asset Optimization or delegate from MP. Both MH and MP shall have one vote, and all decisions of the Operating Committee must be unanimous to be effective; provided however, the members of the Operating Committee shall consider issues in good faith in an attempt to reach consensus on all issues before the Operating Committee.
- (2) Unless such meeting is earlier requested by either member, within forty-five (45) Business Days after the Effective Date, the Operating Committee shall meet to develop the administration procedures of the Operating Committee.
- (3) The Operating Committee shall meet, at the request of either of its members within ten (10) Business Days of receipt of such request. Written minutes of all meetings shall be kept in accordance with the procedures established by the Operating Committee, and copies of such minutes shall be distributed to the Operating Committee members in accordance with the administration procedures developed by the Operating Committee.
- (4) The Operating Committee may:
 - (a) make and implement decisions regarding the creation and revision, from time to time, of accounting and billing procedures necessary

[REDACTED]

to implement the terms and conditions of this Agreement in accordance with Article VII;

- (b) make and implement decisions and procedures regarding offering, acceptance, and Scheduling of the Non-Firm Energy, from time to time, as necessary to implement the terms and conditions of this Agreement in accordance with Article IV;
- (c) if the TARIFF is amended or revised to the extent that one or both of the Parties has been materially adversely impacted, when such amendments or revisions are considered in the context of the impact they will have on the Parties continued compliance with the requirements of this Agreement, make recommendations to the Parties to make changes to this Agreement to address the material adverse impact such amendments or revisions to the TARIFF had on the Parties;
- (d) if [REDACTED]
[REDACTED] as referred to in Section 5.1 are no longer available to be used in the establishment of the price for Product A make recommendations to the Parties to establish an alternative mechanism to be used in the establishment of the price for Product A in accordance with Section 5.1;
- (e) make recommendations to the Parties to amend and revise this Agreement in the establishment of a price for Product A in accordance with Section 5.1 by [REDACTED]
[REDACTED]
[REDACTED] which would then be used in this Agreement as a component of a new pricing formula in a revised Section 5.1;

- 
-
- 
- (f) make recommendations to the Parties concerning amendment and revision of this Agreement, provided that the Operating Committee shall not have the authority to modify the terms and conditions of this Agreement;
 - (g) perform any other obligations expressly provided in this Agreement, and any other matters as the Parties may agree from time to time; and
 - (h) review and attempt to resolve any controversy, claim or dispute prior to referring such matters to the Executive Officers of MP and MH for resolution in accordance with Section 15.1(1).

ARTICLE XV DISPUTE RESOLUTION

15.1 Condition Precedent to Arbitration

Prior to initiation of arbitration, any controversy, claim or dispute shall be first referred in writing to the Operating Committee for review and attempted resolution. If the controversy, claim or dispute is not resolved within 30 calendar days after referral to the Operating Committee, the matter will be referred to the Executive Officers for review and decision. Any decision by the Executive Officers to resolve a controversy, claim or dispute must be unanimous. If the controversy, claim or dispute is not resolved within 30 calendar days after referral to the Executive Officers, either Party may proceed to arbitration.

15.2 Initiation

Arbitration proceedings must be initiated within 120 calendar days of the date the controversy, claim or dispute was first referred to the Executive Officers and shall be initiated by notice to the other Party setting forth the point or points in dispute.

Unless otherwise agreed to in writing by the Parties, failure to initiate arbitration within such 120 calendar day period shall be deemed a waiver of the right to arbitrate that controversy, claim or dispute. Provided however, that any such waiver shall not preclude a Party from initiating arbitration proceedings in respect of a similar claim, controversy or dispute based on facts which arise subsequent to the date the controversy, claim or dispute was first submitted to the Executive Officers.

15.3 Arbitration Proceedings

Subject to Section 15.1 above, any and all controversies, claims or disputes between the Parties arising out of or relating to this Agreement or an alleged breach thereof, shall be settled by arbitration. For greater clarity and certainty, arbitration shall not be available to anyone who is not a Party to this Agreement, and the aforesaid requirement to arbitrate shall not preclude a Party from seeking contribution, indemnification or damages from another Party in proceedings instituted by third parties in courts of competent jurisdiction. Unless otherwise provided in this Article or otherwise agreed by the Parties, the arbitration shall be conducted before three arbitrators and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as amended and then in effect. The American Arbitration Association or its successor, shall submit to each Party an identical list of names of persons eligible to be chosen as arbitrators, which list shall contain an equal number of persons ordinarily resident in the United States of America and ordinarily resident in Canada. All arbitrators shall be competent by virtue of education and experience in the particular matter subject to arbitration. Before proceeding with the first hearing, each arbitrator shall take an oath of office. Each Party shall be entitled to select one arbitrator and the two arbitrators chosen by the Parties shall select the third arbitrator. The arbitrators shall require witnesses to testify under oath administered by a duly qualified person. The arbitrators shall have jurisdiction and authority only to interpret, apply or determine compliance with the provisions

of this Agreement insofar as shall be necessary to determine the particular matter subject to arbitration. The arbitrators shall not have jurisdiction or authority to add to, detract from, or alter the provisions of this Agreement or any Applicable Law or rule of civil procedure. The arbitrators shall have the power to order specific performance under any and all provisions of this Agreement, and no Party can avoid specific performance based on an argument that the other Party has an adequate remedy at law. Unless otherwise required by the arbitrators, all arbitration shall be held on an equal number of days in Winnipeg, Manitoba and Duluth, Minnesota.

15.4 Jurisdiction

The arbitrators may rule on their own jurisdiction, including any objections with respect to the existence or validity of this Agreement. For that purpose, this Article shall be treated as an agreement independent of the terms of the balance of this Agreement. A decision by the arbitrators that this Agreement is null and void shall not entail *ipso jure* the invalidity of this Article. If a Party disputes the authority or jurisdiction of the arbitrators, it shall notify the other Party promptly after the matter alleged to be beyond the authority or jurisdiction of the arbitrators is raised during the arbitration proceedings. The arbitrators may rule on the issue as to whether or not they have the authority or jurisdiction in dispute, either as a preliminary question or in an award on the merits.

15.5 Discovery

Each Party shall have the rights of discovery in accordance with the applicable rules of the Court of Queen's Bench of Manitoba. All issues subject to discovery shall be determined by order of the arbitrators upon motion made to them by any Party. When a Party is asked to reveal material which the Party considers to be proprietary information or trade secrets, the Party shall bring the matter to the

attentions of the arbitrators who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

15.6 Continuation of Performance

Pending the final decision of the arbitrators, the Parties agree to diligently proceed with the performance of all obligations, including without limitation offering of Non-Firm Energy and the payment of all sums required by this Agreement. Interest shall accrue at the Interest Rate and shall be compounded daily on all overpayments and underpayments which occur pending resolution of a controversy, claim or dispute.

15.7 Costs

All fees, costs and expenses of the American Arbitrators Association and the arbitrators incurred in connection with the arbitration shall be allocated by the arbitrators between the Parties. The nature of the dispute and the outcome of the arbitrations shall be factors considered by the arbitrators when allocating such fees, costs and expenses. Fees, costs and expenses to be allocated shall not include those associated with the Party's own employees, expert consultants and attorneys, or the costs of the Party's own exhibits and other incidental costs, all of which shall be the sole responsibility of such Party.

15.8 Enforcement

Any decision (including orders arising out of disputes as to the scope or appropriateness of a request for, or a response to, discovery) of an arbitrator may be enforced in a court of competent jurisdiction with all costs, including court costs and reasonable attorney's fees and disbursements, required to be paid by the Party found to be in default or in error. Judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction and may be

enforced in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

15.9 Correction and Interpretation of Award: Additional Award

Within 30 calendar days after receipt of an arbitration award, a Party, with notice to the other Party, may request the arbitrators to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature, or may request the arbitrators to give an interpretation of a specific point or a part of the award. If the arbitrators consider the request to be justified, they shall make the correction or give the interpretation within 30 calendar days after receipt of the request. The interpretation shall form part of the award. The arbitrators may correct any error as herein-before referred to on their own initiative within 30 calendar days after the date of award. In addition, within 30 calendar days after receipt of an award, a Party with notice to the other Party may request the arbitrators to make an additional award as to claims presented in the arbitration but omitted from the award. If the arbitrators consider the request to be justified, they shall make an additional award within 60 calendar days after receipt of the request. The arbitrators may extend, at their sole discretion if necessary, the period of time within which they must make a correction, interpretation or an additional award.

ARTICLE XVI CONFIDENTIALITY

16.1 Confidentiality

The Parties confirm that Confidential Information (as defined in the “Non-Disclosure Agreement”) had been disclosed by each Party to the other Party during the course of negotiating this Agreement and acknowledge that the provisions of the Non-Disclosure Agreement governs the disclosure of all such Confidential Information that was disclosed up to the date that this Agreement is executed. The Parties (each a “**Discloser**”) also recognize that there is a need pursuant to this Agreement for each Party to disclose Confidential Information,

after the date this Agreement is executed, to the other Party (each a “**Recipient**”) and that the provisions of this Agreement will govern the disclosure of such information and not the Non-Disclosure Agreement and the Parties wish to protect the Confidential Information in the following manner:

- (a) “**Confidential Information**” shall mean all information and any idea in whatever form, tangible or intangible, whether disclosed to or observed or learned by the Recipient pertaining in any manner to the business, operations or plans of the Discloser or to the Discloser's affiliated companies, consultants, business associates or customers, excepting any such information that Recipient can prove: (i) is or has become publicly known other than as a result of disclosure by the Recipient; (ii) was rightfully in the Recipient's possession or part of the Recipient's general knowledge on a non-confidential basis prior to receipt thereof by Recipient from Discloser; (iii) is disclosed by a third party to the Recipient, without the Recipient's actual knowledge of a confidential or proprietary restriction; or (iv) was independently developed by Recipient without reliance on, use of, or reference to any of the Discloser's Confidential Information. "Confidential Information" includes, without limitation, the following: (i) schematics, techniques, development tools and processes, computer printouts, computer programs, design drawings and manuals, and improvements; (ii) information about pricing, costs, profits, markets, and sales; (iii) plans for future development and new product concepts; (iv) analytical tools, methods, mathematical algorithms, software designs, concepts and specifications, procedures for the evaluation of financial instruments, deals and products; and (v) all documents, books, papers, drawings, models, sketches, and other data of any kind and description, including electronic data recorded or retrieved by any means, that have been or will be given or made available to the Recipient by the Discloser, as well as written or oral advice, instructions or comments.

- [REDACTED]
- [REDACTED]
- (b) Except as hereinafter provided, Recipient shall hold all Confidential Information in confidence and shall not disclose any Confidential Information to any third party. Recipient shall take all reasonable measures to protect the confidentiality of, and avoid the unauthorized use, disclosure, publication, or dissemination of Confidential Information. Recipient may disclose Confidential Information to its directors, officers employees, members, agents or advisors, including, without limitation, its attorneys, accountants, consultants and financial advisors who need to know such information for the purposes of the transactions contemplated by this Agreement (each a “**Representative**”), and to third parties, only with the prior written consent of the Discloser.
- (c) If the Recipient or its Representatives are required to disclose the Confidential Information by law, regulation, ruling of a governmental agency or by court order, then to the extent legally permissible, before the Recipient or its Representatives disclose any Confidential Information, the Recipient or its Representatives shall give the Discloser timely notice (at least 10 Business Days prior to the required disclosure) of the requirement for disclosure and use Commercially Reasonable Efforts to secure a protective order to limit disclosure of such Confidential Information only to parties agreeing to be bound by the terms of a confidentiality agreement in a form and content satisfactory to the Discloser, acting reasonably.
- (d) Notwithstanding the foregoing, MP must under Section 9.1(a) file this Agreement for approval with the Minnesota Public Utilities Commission accompanied by an application. Therefore, MP agrees to seek protection of the Confidential Information in this Agreement under the Minnesota Public Utilities Commission’s Minnesota Rule 7829.0500. The Parties will cooperate reasonably to prepare a public version of this Agreement for inclusion in the public record at the Minnesota Public Utilities

Commission. The Parties agree that the public version of this Agreement will redact only such Confidential Information that properly constitutes proprietary information, trade secrets, or other privileged information as defined by the Minnesota Public Utilities Commission.

- (e) Recipient shall be liable for any use or disclosure of Confidential Information by its Representatives which is not in compliance with the obligations imposed upon the Recipient pursuant to this Agreement.
- (f) All rights, title and interest in and to the Confidential Information are reserved by, and remain the sole property of the Discloser. The Recipient does not acquire any intellectual property rights under this Agreement. Nothing in this Agreement shall be construed as a grant of, or intention or commitment to grant any right, title or interest of any nature whatsoever in or to the Confidential Information.

Recipient agrees that the unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury the amount of which may be difficult to ascertain or quantify, thus, making any remedy at law or in damages inadequate. Therefore, Recipient agrees that Discloser shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Section and for any other relief Discloser deems appropriate. This right shall be in addition to any other remedy available to Discloser in law or equity.

ARTICLE XVII LIMITATION OF LIABILITY

17.1 Limitation of Liability

THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT ANY 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 IN THIS AGREEMENT, 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 ARE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

ARTICLE XVIII GENERAL

18.1 Notices

- (1) Any notices, demands, consents, or requests (other than those operational matters identified by the Operating Committee, notices of which shall be delivered in accordance with Section 18.2), required or authorized by this Agreement shall be in writing and may be delivered by hand delivery, mail, electronic mail, confirmed fax, or overnight courier service to:

if to the Manitoba Hydro-Electric Board:

Division Manager
Power Sales & Operations



Manitoba Hydro
360 Portage Avenue
Post Office Box 815
Winnipeg, Manitoba R3C 2P4
Email: adcormie@hydro.mb.ca
Fax: 204-360-4752

With copies to:

General Counsel
Manitoba Hydro
360 Portage Avenue
Post Office Box 815
Winnipeg, Manitoba, R3C 2P4
Email: kmtennenhouse@hydro.mb.ca
Fax: 204-360-1647

if to Minnesota Power:

Senior Vice-President Strategy & Planning
Minnesota Power
30 West Superior St.
Duluth, MN 55802
E-mail: enorberg@mnpower.com
Fax (218) 723-3915

With copies to:

General Counsel
Minnesota Power
30 West Superior Street
Duluth, MN 55802

E-mail: damberg@allete.com

Fax (218) 723-3955

- (2) Notice by hand delivery shall be effective at the close of business on the day actually received, if received during the recipient's business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight mail, or courier, shall be effective on the next Business Day after it was deposited with such overnight mail or courier, if deposited during business hours on a Business Day and if not, such notice shall be effective on the second Business Day after deposit. Notice by electronic mail or confirmed fax shall be effective at the close of business on the day actually received, if received during the recipient's business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. The designation of the persons to be notified or the address of such persons may be changed at any time by similar notice.

18.2 Operational Matters

All issues related to operational matters and notices in respect thereto, as identified by the Operating Committee, shall be directed to the appropriate operations personnel at MH and MP. MH and MP shall each provide to the other Party a list of contacts for notification on operational matters which shall be updated from time to time as required.

18.3 Governing Law

This Agreement shall be governed and construed in accordance with the laws of the province of Manitoba.

18.4 Records

Each Party shall keep complete and accurate records and memoranda of its operations under this Agreement and shall maintain such data as may be necessary to determine with reasonable accuracy any item required hereunder. With respect to invoicing records, each Party shall maintain such records, memoranda and data for the current calendar year plus a minimum of the five (5) previous calendar years. Each Party or its respective designee, shall have the right, at its sole expense, upon reasonable prior notice during the other Party's regular business hours at such other Party's primary place of business to inspect, review and make copies of the other Party's records as far as such records concern monetary matters or other issues under this Agreement and may be reasonably necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of cost or other matters relating to transactions hereunder. Each Party shall treat and shall take reasonable steps to cause its designee to treat, such information so inspected, reviewed, or copied as Confidential Information.

18.5 Recording of Communications

Each Party hereby grants its consent to the other Party to record offering, acceptance, and Scheduling telephone calls and electronic communications for the purpose of this Agreement. All written records and recordings of telephone calls and electronic communications, regardless of form, shall be admissible as proof of the contents thereof in any arbitration or other legal proceeding arising out of this Agreement.

18.6 Indemnity

- (1) As between the Parties, MH shall be deemed to be in exclusive control of the Non-Firm Energy to the Delivery Point and shall be responsible for, and shall indemnify MP from, any damages or injury MP or any third party may suffer or incur, caused thereby except to the extent such damages or injury were caused by the gross negligence or willful misconduct of MP. MP shall be deemed to be in exclusive control of the Non-Firm Energy from and after the Delivery Point and

shall be responsible for, and shall indemnify MH from, any damages or injury MH or any third party may suffer or incur, caused thereby except to the extent such damages or injury were caused by the gross negligence or willful misconduct of MH. For the purposes of this Section,

- (a) “gross negligence or willful misconduct” does not include merely negligent acts or omissions by a Party, and
 - (b) “damages or injury” includes indirect, incidental and consequential damages, and without restricting the generality of the foregoing, expenses or liabilities associated with the interruption of Non-Firm Energy or related services to any third Person, excepting damages or injury where said interruption is contemplated and authorized pursuant to the terms of this Agreement.
- (2) Each Party shall promptly notify the other Party of claims, demands or actions which may result in a claim for indemnity. Failure to notify will not relieve the other Party from its indemnification obligations unless, and then only to the extent that such failure results in the forfeiture by such other Party of a substantial right or defense. No settlement of any claim which may result in a claim for indemnity may be made by either Party without the prior consent of the other Party, which consent may not be unreasonably withheld or unduly delayed. Neither Party shall be liable under this Agreement in respect of any settlement of a claim unless it has consented in writing to such settlement.

18.7 Foreign Sovereign Immunities Act

MH hereby irrevocably waives the protections of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, et seq., in connection with this Agreement.




18.8 Surviving Termination

All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement, including, the provisions relating to the payment for and billing of the Non-Firm Energy in accordance with Article III and Article VII, the indemnity obligations set forth in Section 18.6, and the confidentiality provisions pursuant to Article XVI shall survive the Contract Term.

18.9 Enurement

This Agreement shall be binding upon and its benefits enure to the Parties and their permitted successors and assigns. This Agreement shall not create the relationship between the Parties of a joint venture or a partnership.

18.10 Assignment

This Agreement shall not be assignable in whole or in part unless written consent is received from the other Party and such consent may be withheld in that Party's discretion except either Party may, upon not less than ten (10) Business Days' notice to the other Party but without the other Party's consent, assign this Agreement to an Affiliate, provided such assignment shall not relieve the assignor of its obligations and liabilities under this Agreement and provided that any such assignee shall agree in writing to also be bound by the provisions of this Agreement.

18.11 Waiver and Amendment

Unless otherwise specifically provided herein, this Agreement may be altered, modified, or varied, in whole or in part, only by supplementary written document signed by the Parties. Any obligation of a Party may be waived only in a document executed on behalf of the other Party, and unless otherwise specified in such document, a waiver of an obligation shall not constitute a continuing or

permanent waiver of the other Party's future failure to comply with such obligation.

18.12 Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

18.13 Existing Agreements

Each of the Parties is a party to existing agreements with each other and with other power suppliers which provided for interconnection, pooling and interchange of electrical services. Without limiting the generality of each Party's representation and warranty set forth in Section 10.1(1)(c), this Agreement shall not affect the obligations and rights of a Party with respect to such existing agreements except as expressly referred to in this Agreement or in any of such existing agreements.

18.14 Market Participant

This Agreement shall not be construed to require either Party to take or refrain from taking any action in its sole discretion concerning remaining a Market Participant or otherwise participating in the Midwest ISO Market after the Effective Date.

18.15 No Other Rights

This Agreement is not intended to and shall not create rights of any character whatsoever in favor of any Person other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party to this Agreement, nor shall any provision of this

Agreement give any third Persons any right of subrogation or action over against any Party to this Agreement.

18.16 Waiver of Right to Trial by Jury

Each Party hereby irrevocably waives to the fullest extent permitted by applicable law, any and all rights it may have to trial by jury with respect to any legal proceeding arising out of or relating to this Agreement and any agreement executed or contemplated to be executed in conjunction with this Agreement. This provision is a material inducement to each of the Parties for entering into this Agreement. Each Party hereby waives any right to consolidate any action, proceeding, or counterclaim arising out of or in connection with this Agreement and any other agreement executed or contemplated to be executed in conjunction with this Agreement, or any matter arising hereunder or thereunder in which a jury trial has not or cannot be waived.

18.17 Entire Agreement

This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written proposals and communications between the Parties pertaining hereto.

18.18 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or between any Party and the other Party's Credit Support Provider or Affiliates, or to impose any partnership obligation or partnership liability upon either Party or their Credit Support Providers or Affiliates. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

Signed by the Parties this 30th of April, 2010.




The Manitoba Hydro-Electric Board

By: _____

A.D. Cormie

Division Manager

Power Sales and Operations

I have authority to bind The Manitoba Hydro-Electric Board

Minnesota Power, an operating division of ALLETE, Inc.

By: _____

Eric R. Norberg

Senior Vice President

Strategy & Planning

I have authority to bind ALLETE, Inc.

APPENDIX A

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

APPENDIX B

Example of the calculation of the amount to be paid by MP to MH for the Product A offered by MH during a one month time period

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

6

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

7

[REDACTED]

RIDER FOR FUEL AND PURCHASED ENERGY ADJUSTMENT

FUEL AND PURCHASED ENERGY ADJUSTMENT

Applicable to electric service under all Company's Retail Rate Schedules except Competitive Rate Schedules - Rate Codes 53, 59, 73 and 79, and Erie Mine Site Service Schedule - Rate Code 72.

There shall be added to or deducted from the monthly bill an amount per kilowatt-hour determined as the amount by which the Fuel and Purchased Energy Cost divided by the actual Kilowatt-Hour Sales is greater than or less than the Base Cost of Energy as specified below.

The System Average Fuel and Purchased Energy (FPE) Cost shall be the FPE Cost divided by the Kilowatt-Hour Sales. The System Average FPE Adjustment shall be the System Average FPE Cost less the System Average Base Cost of Energy. During the interim rate period, the FPE Adjustment-Interim component of the FPE Adjustment shall be shown separately on customer bills. The applicable FPE Adjustment-Interim amount and the FPE Adjustment in the Resource Adjustment will be included monthly on each customer's bill according to customer's rate class.

AVERAGE FUEL AND PURCHASED ENERGY COST

The Fuel and Purchased Energy Cost shall be the sum of the following during the first two of the preceding three months: (a) the fossil and nuclear fuel consumed in Company's generating stations, (b) the net energy cost of energy purchases, exclusive of capacity or demand charges (irrespective of the designation assigned to such transaction) when such energy is purchased on an economic dispatch basis, this encompasses energy being purchased to substitute for Company's own higher cost energy, (c) the actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in (b) above, (d) the cost of steam from other sources used in the generation of electricity at the Company's generating stations, (e) the cost of the Released Energy Credit paid to Customer(s) for avoided energy purchases under the Rider for Released Energy, (f) the cost of the Buyback Energy Credit paid to Customer(s) for avoided energy purchases under the Rider for Voluntary Energy Buyback, (g) fuel and purchased energy expenses incurred by the Company over the duration of any Commission approved contract, as provided for by Minnesota Statutes, Section 216B.1645, to satisfy the renewable energy obligations set forth in Minnesota Statutes, Section 216B.1691, (h) all MISO costs net of revenues allowed to flow through the FPE Adjustment by Commission's December 20, 2006 Order in Docket No. E-015/M-05-277, excluding the MISO Day 2 costs that are recovered under provision (b) of the FPE Rider, and (i) the cost of the purchase of SO₂ allowances, and less (j) revenues from the sale of SO₂ allowances, ~~and~~ (k) the cost of fossil and nuclear fuel and the cost of steam from other sources recovered through inter-system sales including the fuel and steam costs related to economy energy sales and other energy sold on an economic dispatch basis and (l) net revenues from the sale of environmental attributes from any Commission approved contract. The Kilowatt-Hour Sales shall be Company's total kilowatt-hour Sales

Filing Date ~~August 31~~ ~~September 1, 2010~~ ~~November 2, 2009~~ MPUC Docket No.
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Approved by: _____
M. Podratz
Director - Rates

RIDER FOR FUEL AND PURCHASED ENERGY ADJUSTMENT

of Electricity, excluding inter-system sales referred to in (k) above; all for the first two of the preceding three months.

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RIDER FOR FUEL AND PURCHASED ENERGY ADJUSTMENT

CLASS COST FACTORS

A separate Class Cost Factor shall be applied to calculate the Base Cost of Energy and FPE Adjustment for each Rate Class.

Rate Class	Class Cost Factor
Residential	1.07417
General Service	1.06038
Large Light & Power	1.02027
Large Power	0.97763
Municipal Pumping	0.97793
Lighting	0.76944

BASE COST OF ENERGY

The System Average Base Cost of Energy is 1.018¢/kWh. The class-specific Base Cost of Energy for each rate class is obtained by multiplying 1.018¢/kWh by the applicable Class Cost Factor.

Rate Class	Base Cost of Energy
Residential	1.094¢/kWh
General Service	1.079¢/kWh
Large Light and Power	1.039¢/kWh
Large Power	0.995¢/kWh
Municipal Pumping	0.996¢/kWh
Lighting	0.783¢/kWh

FUEL AND PURCHASED ENERGY ADJUSTMENT - INTERIM

The System FPE Adjustment-Interim is 0.958¢/kWh. The class-specific FPE Adjustment-Interim is obtained by multiplying 0.958¢/kWh by the Class Cost Factor.

Rate Class	FPE Adjustment-Interim
Residential	1.029¢/kWh
General Service	1.016¢/kWh
Large Light & Power	0.977¢/kWh
Large Power	0.937¢/kWh
Municipal Pumping	0.937¢/kWh
Lighting	0.737¢/kWh

FUEL AND PURCHASED ENERGY ADJUSTMENT IN RESOURCE ADJUSTMENT

The FPE Adjustment for each rate class shall be determined by multiplying the System Average FPE Adjustment by the applicable Class Cost Factor. The FPE Adjustment in the Resource Adjustment shall be the FPE Adjustment for each rate class less the FPE Adjustment-Interim for that rate class.

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RIDER FOR FUEL AND PURCHASED ENERGY ADJUSTMENT

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