

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of )  
Grain Belt Express Clean Line LLC for a )  
Certificate of Convenience and Necessity )  
Authorizing It to Construct, Own, Operate, )  
Control, Manage and Maintain a High ) Case No. EA-2016-0358  
Voltage, Direct Current Transmission Line )  
and an Associated Converter Station )  
Providing an Interconnection on the )  
Maywood-Montgomery 345 kV )  
Transmission Line. )

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION'S OPPOSITION  
TO SHOW ME CONCERNED LANDOWNERS' MOTION TO STRIKE AND IN THE  
ALTERNATIVE TO DELAY SURREBUTTAL TESTIMONY AND HEARING DATES**

The Missouri Joint Municipal Electric Utility Commission ("MJMEUC") respectfully requests that this Commission deny Show Me's pending motion because MJMEUC's filing complies with the governing law and this Commission's October 19, 2016 Order Setting Procedural Schedule and Other Procedural Requirements ("Order"). Further, despite Show Me's protestations to the contrary, fair and sufficient disclosure of the substance of MJMEUC's pre-filed "rebuttal" testimony was provided to Show Me prior to that filing and there are thus no grounds for any delay or continuance of the dates remaining in the procedural schedule, including the dates set for the hearing in this matter.

**MJMEUC, an intervenor in this matter, pre-filed its testimony in compliance with the governing law and this Commission's Order.**

MJMEUC is not and cannot be, as Show Me suggests at Paragraph 6 of its motion, either an "applicant" or a "co-applicant" in this Matter.<sup>1</sup> The MJMEUC is a body corporate and politic

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<sup>1</sup> Show Me's argument that MJMEUC "is essentially a co-applicant," based only on the existence of a joint or common interest agreement between MJMEUC and the applicant is specious in light of Show Me's admission at Paragraph 9 of its motion that MJMEUC does not fall within the Commission's regulatory jurisdiction for receiving applications.

of the State of Missouri, organized as a joint municipal utility commission pursuant to RSMo Sec. 393.700 et seq., with authority to exercise the public powers of a political subdivision of the state for the benefit of the inhabitants of municipalities jointly contracting to establish the MJMEUC. Sixty-seven Missouri municipalities are current parties to the joint contract establishing the MJMEUC.

Thus, because the Commission does not regulate the MJMEUC, it cannot participate in this matter as either an applicant or a co-applicant.<sup>2</sup> Instead, MJMEUC applied to participate as an intervenor on September 13, 2016. Neither Show Me nor any other party objected to MJMEUC's application to intervene, and this Commission granted MJMEUC intervenor status on September 27, 2016.

Show Me participated fully in the September 28, 2016 hearing regarding the procedural schedule which would be set in this matter. Show Me did not object during that hearing to MJMEUC's alleged failure to pre-file direct testimony, nor did it object to MJMEUC being provided the right to pre-file rebuttal testimony at the appropriate time, and thus Show Me has waived the right to now object. Subsequent to that hearing, with Show Me's concurrence, Staff filed a proposed schedule for the filings and hearings that would occur in this matter, and on October 19, 2016, the Commission issued its Order. As MJMEUC is neither an applicant nor a co-applicant, it did not pre-file direct testimony.<sup>3</sup> The Order does not specifically provide for the

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<sup>2</sup> Show Me admits at Paragraph 9 of its motion that MJMEUC is self-regulated, rather than regulated by the Commission. Yet, Show Me argues that MJMEUC failed to submit to Commission regulation as an applicant or co-applicant and pre-file direct testimony, thus necessitating an order striking MJMEUC's pre-filed rebuttal testimony. Show Me cannot have it both ways.

<sup>3</sup> Pursuant to 4 CSR 240-2.130(10), however, both the Commission and the Presiding Officer have authority to permit the supplementation of the direct testimony pre-filed by the applicant in this matter. If the Commission is concerned that MJMEUC's pre-filed testimony "responds" to the pre-filed direct testimony (rather than rejecting or disagreeing, or proposing an alternative to

pre-filing of testimony by intervenors such as MJMEUC. Thus, under 4 CSR 240-2.130(9), the Commission or the presiding officer could order that MJMEUC's testimony be taken live at the hearing, providing Show Me with no advance notice. However, MJMEUC fully intended to provide notice of its testimony and so chose to pre-file on the first and earliest filing deadline provided by the Order - the January 24, 2017 deadline for pre-filing rebuttal testimony.

Finally regarding the controlling law, as noted in 4 CSR 240-2.130(1), the Commission's rules of evidence "supplement RSMo Sec. 536.070." And, RSMo Sec. 536.070(12) provides that "Any party...desiring to introduce an affidavit [testimony] in evidence at a hearing in a contested case may serve on all other parties...*at any time before the hearing....*" Show Me's motion to strike MJMEUC's pre-filed testimony is contrary to the controlling law, is not grounded in the Commission's procedural Order, and should be denied.

**Show Me has received fair and timely notice of the substance of MJMEUC's pre-filed testimony, and there are thus no equitable or due process grounds for delay or continuance of the remaining deadlines or the hearing date.**

At Paragraph 4 of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity filed on August 30, 2016, Show Me received notice that the applicant had entered "into a Transmission Service Agreement with the Missouri Joint Municipal Electric Utility Commission which has agreed to purchase 225 MW of capacity from the project,...."<sup>4</sup> Section III(A) of that Application provided more detail about the Transmission Service Agreement executed by the applicant and MJMEUC. Specifically, Paragraphs 24-26 disclose that MJMEUC intends to provide 200 MW of service from Kansas to Missouri, and 25 MW of service from Missouri into PJM. Further, Show Me is notified that MJMEUC estimates

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the pre-filed direct testimony), the Record in this matter would be more full, fair and complete if MJMEUC's pre-filed "rebuttal" testimony was re-characterized, rather than stricken from the Record.

<sup>4</sup> Show Me admits, at paragraph 4 of its pending motion, that it indeed received this notice.

that this Project will save its members \$10 million annually, and will "broaden MJMEUC's resource mix, and enable cost-effective compliance with present and future federal environmental regulations" as well as "allow MJMEUC to earn additional revenue from excess generation...to benefit MJMEUC's retail customers." And, at Section IV, Paragraph 55(4), Show Me is advised that the pre-filed direct testimony of Mark O. Lawlor will address "the Company's Transmission Service Agreement with MJMEUC...."

In its own Application to Intervene, filed September 13, 2016, MJMEUC fairly disclosed to Show Me and all other parties and intervenors at Paragraph 4 that it had "entered into a transmission service agreement to utilize the proposed HVDC transmission line to deliver power to MJMEUC members." Once the Commission granted MJMEUC's intervenor status on September 27, 2016, Show Me availed itself, on several occasions, of its right to serve on MJMEUC Data Requests directed at discovering the details of the Transmission Service Agreement executed by the applicant and MJMEUC. On behalf of MJMEUC, John Grotzinger responded on November 7, 2016 to Show Me's First Data Requests,<sup>5</sup> and his response MJM.25 is significant here. The Minutes of MJMEUC's June 2, 2016 Board of Directors Meeting are attached to response MJM.25. The Agenda for that meeting is set out in detail, and the first item identified as "New Business" is the "Grain Belt Transmission Agreement." (*See* Exhibit MJM.25, page number 1, Par. 4(a), attached). The summary of the New Business item is informative of the importance to MJMEUC of access to wind energy:

A significant additional option has developed. Clean Line Energy is developing a DC line referred to as the Grain Belt Express starting in Kansas, crossing Missouri and Illinois with a converter station near Illinois/Indiana state line. The

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<sup>5</sup> MJMEUC responded to Show Me's Third Data Requests Numbered 29-36 and 38-43 on December, 14, 2016. On January 17, 2017, a full week before the filing of Mr. Grotzinger's and Mr. Kincheloe's testimony (which Show Me seeks here to strike), MJMEUC responded to Show Me's Fifth Data Requests Numbered 54, 59 and 60.

addition a of a converter station in Missouri now planned to connect to MISO will allow Missouri utilities to take service from this line which starts in a prime wind development area in Kansas. MJMEUC is working with Clean Line for a transmission agreement to allow MJMEUC member access to the DC line, particularly to wind developments in SW Kansas where this line begins We will continue to develop wind options including those directly connected to this merchant line. (Exhibit MJM.25, page number 2).

The minutes of MJMEUC's June 2, 2016 board of directors' meeting also provided Show Me with a "sample" of the Long Term Power Purchase Agreement which was presented to MJMEUC's Board as a "no worse than" contract scenario for the Board's consideration as it made its decision. This "sample" Power Purchase Agreement specified the contract rate of "\$22.72/MWh, escalating at 2 percent (3%) annually beginning as of commercial operation. If less than 200 MW is taken, the price will drop, with a floor of \$22.08/MWh if 100 MW or less taken." (Exhibit MJM.25, page number 3). A draft copy of the then-unexecuted Transmission Service Agreement was provided as well. (Exhibit MJM.25, page numbers 4-39). Finally, Show Me was advised through this same data response that the board of directors approved the finalization of the Grain Belt Transmission Agreement. (Exhibit MJM.25, page numbers 40-41).

Despite receiving such detailed responses to the extensive discovery Show Me served on MJMEUC during the three months that preceded the pre-filing of MJMEUC's testimony, as well as the disclosures contained in the Application for a CCN and in MJMEUC's own Application to Intervene, Show Me now moves to strike MJMEUC's pre-filed testimony, arguing at Paragraph 7 that "equity and due process demand it." Alternatively, Show Me moves for a four month continuance of all deadlines, including the hearing itself, which indicates that Show Me's own desire for "more time" is actually at the heart of its pending motion.

Show Me has long had substantially the same information that was provided with MJMEUC's pre-filed testimony. Show Me has the opportunity to pre-file surrebuttal testimony

February 21, 2017, which provides the time frame to which it previously agreed. Equity and due process for all parties and intervenors require a full Record of evidence, compiled and maintained in accordance with the controlling law and this Commission's Order. MJMEUC respectfully requests the Commission issue an order denying Show Me Concerned Landowners' Motion to Strike and in the Alternative to Delay Surrebuttal Testimony and Hearing Dates.

Respectfully Submitted,

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***ATTORNEYS FOR MJMEUC***

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Opposition to Show Me's Motion to Strike was served by electronically filing with EFIS and emailing a copy to the following interested persons on this 6th day of February, 2017:

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/s/ Peggy A. Whipple  
Peggy A. Whipple

- c. General Counsel Report – Doug Healy
  - d. Environmental Report – Floyd Gilzow
  - e. Committee Reports
    - i. Engineering Committee – Rodney Bourne
    - ii. SPP Committee – Steve Stodden
    - iii. MISO Committee – Tad Johnsen
    - iv. Lineworker Committee – Mark Mustain
    - v. Other Reports
  - f. Other Reports
3. Old Business
    - a. Transmission Issues
    - b. Other
  4. New Business
    - a. Grain Belt Transmission Agreement
    - b. MoPEP Plum Point Dispute
    - c. Resolution 01-2016 on Non-Qualified Use of Bond-Financed Property
    - d. Other
  5. MMMPEP Business and Reports
    - a. Status Update
    - b. New Contract Discussion
    - c. Base Load Supply Agreement
    - d. Other
  6. MoPEP Business
    - a. Update on Wind and Solar Projects
    - b. Update on Green Retail Packages
    - c. Other
  7. Other Business
  8. Closed Session for Discussion of Legal Matters Pursuant to RSMo 610.021(1)
  9. Adjournment

*11:45 pm or immediately following conclusion of previous meeting.*

### **Joint RTO Committee Meeting**

(Chairs Steve Stodden and Tad Johnsen presiding)

The Missouri Joint Municipal Electric Utility Commission, the Municipal Gas Commission of Missouri and/or the Missouri Public Utility Alliance Joint Operating Committee may go into closed session at this meeting if such action is approved by a majority vote of the members who constitute a quorum, to discuss legal, confidential or privileged matters under Section 610.021(1) RSMo; personnel actions under Section 610.021(3), RSMo ; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law.)

## **Fredericktown**

The Fredericktown Energy Center remains available for operations in SPP. The two turbines were in an outage the week of April 18<sup>th</sup> for the regularly scheduled semi-annual turbine inspections and a “tune-up” for summer operations. In addition, several balance of plant items will be addressed in this outage.

## **Renewable Projects**

The renewable projects have continued to provide MoPEP with a nice mixture of renewable energy through the first five months of 2016. Solar Parks at Trenton, Butler and Macon are performing slightly better than expected, construction is proceeding on the Marshall Solar Park and construction of the new Rolla Solar Park is completed. Rolla Solar Park ribbon cutting took place on May 12<sup>th</sup> and it is beginning commercial operation. On March 17<sup>th</sup>, Groundbreaking Ceremonies for the new Waynesville Solar Park took place. The weather was great and there was a good turnout for the ceremony. The new wind farm in Marshall, Kansas recently went into commercial operations and now provides MoPEP with additional renewable resources. The landfill gas project, existing wind project and hydro projects continue to supply MoPEP with additional renewable generation.

## **Transmission**

We continue to look for opportunities to improve transmission resources and reduce costs for members. This is following many paths including the activity of SPP Committee and MISO Committee. We also continue to participate in looking for opportunities with GridLiance. The SPP selection on the Walkemeyer-Liberal proposed line was made in April. The results were a very interesting test of the SPP scoring system. GridLiance made a very competitive proposal but was not selected. The SPP scoring awarded 100 points for those that proposed the solution in the study phase, there was less than 100 points difference in the top 5 proposals. The incumbent local transmission owner ended up being selected. The good news for all of SPP is that the project proposal selected, and most proposals, were well under estimated cost by SPP, so the process can be credited with savings for transmission users. The MISO project process is proceeding with one competitive project expected. A 345 kV project referred to as Duff-Coleman will be MISO’s first competitive project and bidders are expected to be aggressive in providing responses. We continue to look at available transmission options for all members, both those connected to an RTO and those not connected to RTO’s, to improve reliability and keep costs low.

The MISO/Entergy transition caused major increases in thru and out point to point service on Entergy related transmission. MJMEUC has participated with a group of impacted utilities including AECI, KCPL, EDE, Southern, etc. A settlement filing has been announced with a positive outcome for the transmission customers. We have begun to see savings on MISO transmission bills and expect those savings to continue for years with a gradual tapering of those benefits. The current savings are approximately \$1/kW-month, the premium MISO added for through and out versus Entergy system costs. The full benefits for the past bills are not expected for some time with the total transition extending for years.

A significant additional option has developed. Clean Line Energy is developing a DC line referred to as the Grain Belt Express starting in Kansas, crossing Missouri and Illinois with a converter station near Illinois/Indiana state line. The addition of a converter station in Missouri now planned to connect to MISO will allow Missouri utilities to take service from this line which starts in a prime wind development area in Kansas. MJMEUC is working with Clean Line for a transmission agreement to allow MJMEUC members access to the DC line, particularly to wind developments in SW Kansas where this line begins. We will continue to develop wind options including those directly connected to this merchant line.

## **Renewables and Energy Efficiency**

Currently generating solar projects include: Butler solar (March 2014), Macon solar (May 2015), Trenton solar (November 2015) and Rolla solar (May 2016). Solar projects in Marshall and Waynesville are under construction. New renewable project proposals continue to be received. The Marshall County wind project inside SPP in the Westar footprint with desirable transmission interconnection for MoPEP, Independence, KPP, and KMEA is in

**Sample LONG TERM Power Purchase Agreement  
Including  
GRAIN BELT EXPRESS CLEAN LINE LLC Transmission Service and  
Wind Resource Connected  
to KS Converter Station  
with  
THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

**\*\*\*EXPECTED FINAL TERMS\*\*\***

**Grain Belt sourced Wind**

**Reserved Contract Capacity:** 200 MW available

**Beginning Date of Service:** Estimated approximately 2021

**Ending Date of Service:** 20 years after the Commencement Date, as elected by MJMEUC

**Point of Receipt:** The AC switchyard of the Kansas Converter Station

**Point of Delivery:** MISO Interconnection Point

**Contract Rate:** \$22.72/MWh, escalating at 2 percent (2%) annually beginning as of commercial operation. If less than 200 MW is taken, the price will drop, with a floor of \$22.08/MWh if 100 MW or less taken.

<b><u>Project Estimated Annual Energy Output</u></b>	The Project is anticipated to have a net capacity factor of approximately 53.68%, which will result in annual average output of approximately 939,803 MWh.
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**LONG-TERM TRANSMISSION SERVICE AGREEMENT**

**BY AND BETWEEN**

**GRAIN BELT EXPRESS CLEAN LINE LLC**

**AND**

**THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

**Dated as of June 2, 2016**

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**LONG-TERM TRANSMISSION SERVICE AGREEMENT  
BY AND BETWEEN  
GRAIN BELT EXPRESS CLEAN LINE LLC  
AND  
THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

This LONG-TERM TRANSMISSION SERVICE AGREEMENT (“Agreement”), dated as of June 2, 2016 is made and entered into by and between GRAIN BELT EXPRESS CLEAN LINE LLC (“Grain Belt Express” or “Transmission Provider”) and the MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION (“MJMEUC” or “Transmission Customer”). Transmission Provider and Transmission Customer may be referred to herein individually as “Party” and collectively as “Parties.”

**RECITALS**

**WHEREAS**, Grain Belt Express is developing the Grain Belt Express Clean Line, an approximately 780-mile overhead high-voltage direct current transmission line and associated facilities (the “Project”), which will interconnect to existing alternating current transmission systems in three places: (i) the point at which the Project interconnects with the transmission system under the operational control of Southwest Power Pool, Inc. (“SPP”) near the Spearville 345-kV substation in Ford County, Kansas, (ii) the point at which the Project interconnects with the transmission system under the operational control of the Midcontinent Independent System Operator, Inc. (“MISO”) system near the Maywood 345-kV substation in northern Missouri (the “MISO Interconnection Point”) and (iii) the point at which the Project interconnects with the transmission system under the operational control of PJM Interconnection, L.L.C. (“PJM”) near the Sullivan 345-kV/765-kV substation in Sullivan County, Indiana (the “PJM Interconnection Point”).

**WHEREAS**, MJMEUC is a body public and corporate formed by its municipal utility members. MJMEUC has grown to a membership of 67 municipally-owned retail electric systems ranging in size from approximately 230 to approximately 109,700 meters. These municipal and cooperative electric systems serve 347,000 retail customers and have a combined peak load of over 2,639 MW.

**WHEREAS**, MJMEUC is authorized to construct, operate and maintain jointly owned generation and transmission facilities for the benefit of members. MJMEUC has the authority to enter into contracts for power supply, transmission service, and other services necessary for the operation of an electric utility.

**WHEREAS**, in order to meet a portion of its demand for low-cost renewable energy, MJMEUC seeks to purchase long-term, firm transmission service on the Project from the Project’s high-voltage direct current converter station located in Ford County, Kansas (the “Kansas Converter Station”) to the MISO Interconnection Point and from the MISO Interconnection Point to the PJM Interconnection Point.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

## **SECTION 1. DEFINITIONS**

1.1 Defined Terms. For purposes of this Agreement, the following words and expressions when initially capitalized shall have the meaning assigned to them below.

“Affiliate” shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

“Ancillary Services” shall mean those services that are designated as ancillary services under Transmission Provider’s OATT, when filed and accepted for filing by FERC.

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

“Applicable Reliability Councils” shall mean the reliability councils applicable to the Project.

“Applicable Reliability Standards” shall mean the requirements and guidelines of NERC, the Applicable Reliability Councils and the relevant Balancing Authorities that are applicable to the Project.

“Arbitration Rules” shall have the meaning set forth in Section 14.2.

“Balancing Authority” shall mean the entity certified by the Applicable Reliability Council to integrate resource plans ahead of time and maintain load-interchange-generation balance within an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to, among other things, match at all times the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s) with the load within the electric power system(s).

“Business Day” shall mean any day other than a Saturday, Sunday or any other day on which the federal government is not open for business.

“Commencement Date” shall mean the date on which the Project begins commercial operations and is capable of providing the KS-MO Transmission Service and the MO-PJM Transmission Service.



“Confidential Information” shall mean all oral and written information relating to the business, strategy, policies, prospects, assets or plans of the other Party or any of the other Party’s Related Persons and, to the extent marked “Confidential” or otherwise identified with specificity in writing as confidential at the time of disclosure, all other information provided by the Parties to one another pursuant to this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (i) information that is or becomes generally available to the public (including pursuant to Missouri open records laws) other than as a result of a disclosure by the receiving Party in violation of this Agreement; (ii) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (iii) information that becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to the receiving Party; (iv) information that the receiving Party develops independently without using the Confidential Information; and (v) information that the disclosing Party approves for release in writing.

“Contract Capacity” shall mean, for any calendar month during the term of this Agreement, the amount of Firm Transmission Capacity set forth in Attachment 1, as such amount may be modified as reflected in Transmission Customer’s Notice of Decision in accordance with Section 3.4, which Transmission Provider agrees to sell and provide and Transmission Customer agrees to purchase and receive pursuant to the terms of this Agreement and, where not inconsistent with this Agreement, Transmission Provider’s OATT.

“Contract Rate” shall have the meanings set forth in Attachment 1.

“Contract Year” shall mean the twelve (12) month period beginning on the Commencement Date and each subsequent twelve (12) month period.

“Damages” shall mean any and all claims, liabilities, losses, damages, causes of action, fines interest, awards, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, costs and expenses (including reasonable attorneys’ fees, court costs and other costs of suit, arbitration, dispute resolution or other similar proceedings), including for injury, illness or death and including those owed to third parties (whether asserted in contract, in warranty, in tort, by statute or otherwise), except for any damages excluded by Section 15.2.

“Defaulting Party” shall have the meaning set forth in Section 6.1.

“Effective Date” shall have the meaning set forth in Section 5.1.

“Event of Default” shall have the meaning set forth in Section 6.1.

“Extension Rights” shall have the meaning set forth in Section 3.2.

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

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

“Financing Parties” shall mean lenders and/or equity investors (including any trustee or agent on behalf of such lenders and/or equity investors (including tax equity investors)) providing equity and/or debt financing or refinancing to either Transmission Provider or Transmission Customer, as applicable whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

“Firm Transmission Capacity” shall mean firm, non-interruptible point-to-point transmission service over the Project, as measured by the capability to receive electricity at the Point of Receipt and deliver such electricity at the Point of Delivery, as determined and implemented in accordance with Good Utility Practice.

“Force Majeure” shall mean an event or circumstance which prevents a Party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of such Party, and which by the exercise of Good Utility Practice, such Party is unable to overcome or avoid or cause to be avoided. Provided that the criteria in the first sentence are met, Force Majeure shall include any act of God, war, insurrection, riot, fire, storm or flood, vandalism, act of the public enemy, terrorism, epidemic, civil disturbances, strike, labor disturbances, work slowdown or stoppage, blockades, sabotage, labor or material shortage, or national emergency. A Force Majeure event does not include (i) acts of intentional wrongdoing by the Party claiming Force Majeure or (ii) explosion, breakage, accident or other failure of or damage to machinery or equipment unless caused by external forces of the type described herein as Force Majeure.

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

“Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority (including FERC, NERC, and the Applicable Reliability Councils) having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Customer, Transmission Provider, or any Affiliate thereof.

“Grain Belt Express” shall have the meaning set forth in the preamble.

“Indemnified Person” shall have the meaning set forth in Section 15.1.

“Indemnifying Party” shall have the meaning set forth in Section 15.1.

“Initial Term” shall have the meaning set forth in Section 2.1.2.

“Kansas Converter Station” shall have the meaning set forth in the recitals.

“KS-MO Transmission Service” shall have the meaning set forth in Section 2.1.1.

“Metering Equipment” shall mean all metering equipment installed or to be installed pursuant to this Agreement, as specified in Section 8.1.

“Metering Points” shall mean the Points of Receipt and the Points of Delivery.

“MISO” shall have the meaning set forth in the recitals.

“MISO Interconnection Agreement” shall mean the interconnection agreement allowing the Project to interconnect with the transmission system under the operational control of MISO.

“MISO Interconnection Point” shall have the meaning as defined generally in the recitals and as defined in detail in the MISO Interconnection Agreement.

“MJMEUC” shall have the meaning set forth in the preamble.

“MO-PJM Transmission Service” shall have the meaning set forth in Section 2.1.2.

“MPSC Approval” shall mean an order issued by the Missouri Public Service Commission authorizing Transmission Provider to operate as a public utility in the State of Missouri.

“MW” shall mean megawatt.

“MWh” shall mean MW-hour.

“NERC” shall mean the North American Electric Reliability Corporation or any entity that assumes its responsibility as the Electric Reliability Organization, as defined in the Federal Power Act.

“Non-Excused Outage” shall mean any outage of the Project or a reduction in the total transfer capability of the Project that is caused by any reason other than a Force Majeure event.

“Non-Defaulting Party” shall have the meaning set forth in Section 6.1.

“Notice of Commencement Date” shall have the meaning set forth in Section 2.4.

“Notice of Construction” shall have the meaning set forth in Section 3.3.

“Notice of Dispute” shall have the meaning set forth in Section 14.1.

“OASIS” shall mean Transmission Provider’s Open Access Same-Time Information System.

“OATT” shall mean Open Access Transmission Tariff.

“Person” shall mean any individual, entity, firm, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority, committee, department, authority or any other body, incorporated or unincorporated, whether having distinct legal personality or not.

“PJM” shall have the meaning set forth in the recitals.

“PJM Interconnection Agreement” shall mean the interconnection agreement allowing the Project to interconnect with the transmission system under the operational control of PJM.

“PJM Interconnection Point” shall have the meaning as defined generally in the recitals and as defined in detail in the PJM Interconnection Agreement.

“Point of Delivery” shall have the meanings set forth in Attachment 1 with respect to KS-MO Transmission Service and MO-PJM Transmission Service.

“Point of Receipt” shall have the meanings set forth in Attachment 1 with respect to KS-MO Transmission Service and MO-PJM Transmission Service.

“Project” shall have the meaning set forth in the recitals.

“Real Power Losses” shall mean energy consumed by the electrical impedance characteristics of the Project, including converter and transformer losses.

“Related Persons” shall mean, in respect of a referenced Person, (i) its owners (direct and indirect), members and Affiliates, (ii) its subcontractors and (iii) the respective directors, officers, employees and agents of the referenced Person and the Persons described in clauses (i) and (ii) of this definition.

“SPP” shall have the meaning set forth in the recitals.

“SPP Interconnection Agreement” shall mean the interconnection agreement allowing the Project to interconnect with the transmission system under the operational control of SPP.

“Transmission Customer” shall have the meaning set forth in the preamble.

“Transmission Provider” shall have the meaning set forth in the preamble.

“Transmission Service Charge” shall have the meaning set forth in Section 3.5.

1.2 Interpretation. In this Agreement, unless otherwise indicated:

1.2.1 any reference to this Agreement means such agreement and any attachments thereto as the same may be amended, supplemented or otherwise modified and in effect from time to time, and shall include a reference to any document that amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;

1.2.2 each reference to any Applicable Law and Regulation shall be deemed to refer to such Applicable Law and Regulation as the same may be amended, supplemented or otherwise modified from time to time;

1.2.3 any reference to a Person in any capacity includes a reference to its permitted successors and assigns in such capacity and, in the case of any Governmental Authority, any Person succeeding to any of its functions and capacities;

1.2.4 references to days shall refer to calendar days unless Business Days are specified;

1.2.5 references to weeks, months or years shall be to calendar weeks, months or years, respectively;

1.2.6 the table of contents and section headings and other captions therein are for the purpose of reference only and do not affect the interpretation of this Agreement;

1.2.7 Section and Attachment references within this Agreement are in reference to Sections and Attachments of this Agreement unless the context requires otherwise;

1.2.8 defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;

1.2.9 the words “hereof”, “herein” and “hereunder”, and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

1.2.10 the words “include,” “includes” and “including” are deemed to be followed by the phrase “without limitation” unless the context specifically indicates otherwise;

1.2.11 where the terms of this Agreement require that the approval, opinion, consent or other input of any Party be obtained, such requirement shall be deemed satisfied only where the requisite approval, opinion, consent or other input is given by or on behalf of the relevant Party in writing; and

1.2.12 any reference to “recitals” shall be a reference to the paragraphs immediately following the header of “recitals.”

**SECTION 2.**  
**TRANSMISSION PROVIDER’S RIGHTS AND OBLIGATIONS**

2.1 Sale of Firm Transmission Capacity.

2.1.1 KS-MO Transmission Service. From and after the Commencement Date and continuing for a term of between fifteen (15) and twenty-five (25) years, as elected by Transmission Customer in the Notice of Decision pursuant to Section 3.4, Transmission Provider shall make available to Transmission Customer two tranches of Firm Transmission Capacity equal to the Contract Capacities set forth in Attachment 1 to deliver electricity from the AC switchyard of the Kansas Converter Station to the MISO Interconnection Point, subject to the provisions of this Agreement and Transmission Provider’s OATT, the terms and conditions of which shall be incorporated into and made a part of this Agreement to the extent such terms are not inconsistent with this Agreement (“KS-MO Transmission Service”). Such KS-MO Transmission Service shall enable Transmission Customer to deliver electric energy and capacity to and at the MISO Interconnection Point consistent with Transmission Provider’s rights under the SPP Interconnection Agreement and the MISO Interconnection Agreement and shall include any Ancillary Services necessary to effect such deliveries, but shall not include any services that are not provided under those interconnection agreements that must be obtained by Transmission Customer or Transmission Provider under the OATT or rate schedule of any third-party transmission provider to effect deliveries of electric energy or capacity from the MISO Interconnection Point into the transmission system of any such third-party transmission provider, including any transmission withdrawal rights from a transmission system. Such KS-MO Transmission Service shall be subject to curtailment or interruption as a result of outages of the Project or reductions in the total transfer capability of the Project; provided, however, that Transmission Customer shall be entitled to credits under Section 3.6 and Attachment 2 if Non-Excused Outages result in curtailments or interruptions that exceed a certain allowance as specified in Attachment 2.

2.1.2 MO-PJM Transmission Service. From and after the Commencement Date and continuing for an initial term of two (2) years (“Initial Term”) and any additional terms resulting from Transmission Customer’s Extension Rights pursuant to Section 3.2, Transmission Provider shall make available to Transmission Customer Firm Transmission Capacity equal to the Contract Capacity set forth in Attachment 1 to deliver electricity from the MISO Interconnection Point to the PJM Interconnection Point, subject to the provisions of this Agreement and Transmission Provider’s OATT, the terms and conditions of which shall be incorporated into and made a part of this Agreement to the extent such terms are not inconsistent with this Agreement (“MO-PJM Transmission Service”). Such MO-PJM Transmission Service shall enable Transmission Customer to deliver electric energy and capacity to and at the PJM Interconnection Point consistent with Transmission Provider’s rights under the MISO Interconnection Agreement and the PJM Interconnection Agreement and shall include any Ancillary Services necessary to effect such deliveries, but shall not include any services that are not provided under those interconnection agreements that must be obtained by Transmission Customer or Transmission Provider under the OATT or rate schedule of any third-party

transmission provider to effect deliveries of electric energy or capacity from the PJM Interconnection Point into the transmission system of any such third-party transmission provider, including any transmission withdrawal rights from a transmission system. Such MO-PJM Transmission Service shall be subject to curtailment or interruption as a result of outages of the Project or reductions in the total transfer capability of the Project; provided, however, that Transmission Customer shall be entitled to credits under Section 3.6 and Attachment 2 if Non-Excused Outages result in curtailments or interruptions that exceed a certain allowance specified in Attachment 2.

2.2 Other Terms of Service. Certain specific terms of the transmission service that will be provided pursuant to this Agreement are included in Attachment 1 hereto, which are hereby incorporated into and made a part of this Agreement.

2.3 Operations and Maintenance. From and after the Commencement Date, Transmission Provider shall operate and maintain the Project (a) in accordance with Good Utility Practice, (b) in compliance with all Applicable Laws and Regulations and all Applicable Reliability Standards and (c) in compliance with all applicable operating instructions and manufacturers' warranties for the Project. Transmission Provider shall also mitigate or remedy any Force Majeure or other outage or reduction in capacity of the Project consistent with Good Utility Practice.

2.4 Notice of Commencement Date. No sooner than ninety (90) days prior to the Commencement Date, Transmission Provider shall provide Transmission Customer written notice of the anticipated Commencement Date (the "Notice of Commencement Date").

### **SECTION 3. TRANSMISSION CUSTOMER'S RIGHTS AND OBLIGATIONS**

3.1 Purchase of Firm Transmission Capacity. From and after the Commencement Date and continuing for the terms of KS-MO Transmission Service and MO-PJM Transmission Service, respectively, Transmission Customer shall purchase and receive the Firm Transmission Capacity and shall pay the Transmission Service Charge on a monthly basis calculated in accordance with Section 3.5 and Attachment 1. Through its purchase of Firm Transmission Capacity from Transmission Provider and the payment of the Transmission Service Charge, Transmission Customer shall be entitled to schedule, for any hour, the transmission of electricity over the Project up to the Contract Capacities applicable for that hour. Transmission Customer shall not be entitled to change the Points of Delivery or Points of Receipt set forth in Attachment 1.

3.2 Extension Rights. Unless earlier terminated in accordance with the terms hereof, Transmission Customer shall have the right, upon expiration of the Initial Term set forth in Section 2.1.2, to extend the term of MO-PJM Transmission Service under this Agreement for up to twelve (12) successive two-year periods upon written notice to Transmission Provider provided no later than one (1) calendar year prior to the expiration of the Initial Term or extended term, as applicable ("Extension Rights"). Upon Transmission Customer's exercise of its Extension Rights set forth in this Section 3.2, the Contract Rate set forth in Attachment 1 and all other terms and conditions in this Agreement will remain in effect for each successive period.

In addition, and notwithstanding any inconsistency with the foregoing, Transmission Customer's Extension Rights shall include the right to extend the term of the MO-PJM Transmission Service hereunder for a period of five (5) years (which five-year period shall not extend the term of service beyond the twenty-sixth (26<sup>th</sup>) anniversary of the Commencement Date), or such other extension of the MO-PJM Transmission Service as may be necessary in order for Transmission Customer to be eligible to exercise roll-over rights pursuant to the terms of Transmission Provider's OATT after termination of this Agreement.

3.3 Option for Additional Firm Transmission Capacity. Transmission Provider shall provide Transmission Customer with written notice (the "Notice of Construction") at least one-hundred twenty (120) days prior to Transmission Provider issuing a notice to proceed for the construction of the Project to its construction contractor. After Transmission Customer's receipt of the Notice of Construction, but no later than thirty (30) days prior to the issuance of the notice to proceed, Transmission Customer shall have the option to reserve an additional 25 MW of Firm Transmission Capacity to deliver electricity from the MISO Interconnection Point to the PJM Interconnection Point at the then-prevailing rate set forth in Transmission Provider's OATT and otherwise subject to the provisions of Transmission Provider's OATT and this Agreement. Except with respect to rate, the terms and conditions of this Agreement will control to the extent such terms and conditions are inconsistent with the terms and conditions in Transmission Provider's OATT. Such Firm Transmission Capacity shall be subject to curtailment or interruption as a result of outages of the Project or reductions in the total transfer capability of the Project; provided, however, that Transmission Customer shall be entitled to credits under Section 3.6 and Attachment 2 if Non-Excused Outages result in curtailments or interruptions that exceed certain thresholds.

3.4 Notice of Decision. After Transmission Customer's receipt of the Notice of Commencement Date pursuant to Section 2.4, but no later than sixty (60) days prior to the Commencement Date stated in the Notice of Commencement Date, Transmission Customer shall provide its Notice of Decision specifying the term of the KS-MO Transmission Service and whether Transmission Customer has elected to reserve the first tranche of KS-MO Transmission Service or both tranches. In addition, Transmission Customer may, through the Notice of Decision, reduce any or all of the Contract Capacities under this Agreement without limit or penalty. All other terms and conditions in this Agreement will remain in effect with respect to such Contract Capacities, if any, that remain after such reduction. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, (i) the final KS-MO Transmission Service Contract Capacity as reflected in the Notice of Decision may be any amount between 0 and 200 MW; (ii) if Transmission Customer's total KS-MO Transmission Service amount is less than or equal to 100 MW, such Contract Capacity shall all be subject to the pricing, terms and conditions applicable to the first tranche; (iii) if Transmission Customer's total KS-MO Transmission Service amount exceeds 100 MW, the amount of Contract Capacity that exceeds 100 MW shall be subject to the pricing, terms and conditions applicable to the second tranche; (iv) unless Transmission Customer has elected the additional 25 MW pursuant to Section 3.3, the final MO-PJM Transmission Service Contract Capacity as reflected in the Notice of Decision may be any amount between 0 and 25 MW and shall be subject to the pricing, terms and conditions of this Agreement other than Section 3.3; and (v) if Transmission Customer has elected the additional 25 MW pursuant to Section 3.3, the final MO-PJM Transmission Service Contract Capacity as reflected in the Notice of Decision may be any amount between 0 and 50



MW, and if such Contract Capacity exceeds 25 MW, the amount of the Contract Capacity that exceeds 25 MW shall be subject to the pricing, terms and conditions stated in Section 3.3.

3.5 Transmission Customer Payment. For service commencing on the Commencement Date and for each calendar month thereafter for the respective terms of KS-MO Transmission Service and MO-PJM Transmission Service under Section 2.1, Transmission Customer shall pay Transmission Provider the sum of the products of the Contract Capacity and the Contract Rate set forth in Attachment 1 for each tranche of KS-MO Transmission Service and MO-PJM Transmission Service (“Transmission Service Charge”).

3.6 Annual Availability Adjustment. At the end of each Contract Year, Transmission Provider shall determine the amount of the credits, if any, due to Transmission Customer pursuant to Attachment 2 as the result of any Non-Excused Outages during the Contract Year. If any such credits are due, they shall be provided on Transmission Customer’s next monthly invoice.

3.7 Real Power Losses. Transmission Customer shall be responsible for all Real Power Losses associated with MO-PJM Transmission Service between the Point of Receipt and the Point of Delivery by supplying at the Point of Receipt the quantity of electricity associated with such losses, as determined by Transmission Provider (in accordance with the loss factor(s) approved by FERC and set forth in Transmission Provider’s OATT); provided, however, that following FERC’s acceptance of Transmission Provider’s OATT for filing, Transmission Customer shall have the option to financially settle with Transmission Provider for Real Power Losses in accordance with Transmission Provider’s OATT. Transmission Customer shall not be responsible for any Real Power Losses associated with KS-MO Transmission Service between the Point of Receipt and the Point of Delivery.

#### **SECTION 4. BILLING AND PAYMENT**

4.1 Initiation of Payment Obligation. All payment obligations for the provision of Firm Transmission Capacity under the terms of this Agreement shall commence as of the Commencement Date. In no event shall Transmission Customer have any payment obligation to Transmission Provider under this Agreement until the Commencement Date.

4.2 Invoices. Within seven (7) Business Days after the first day following the end of each calendar month after the Commencement Date, Transmission Provider shall submit an invoice to Transmission Customer for the Transmission Service Charge for the preceding calendar month, and Transmission Customer shall pay the amounts set forth in the invoice within twenty (20) days following its receipt of such invoice. All payments shall be made in immediately available funds payable to Transmission Provider by wire transfer to a bank named by Transmission Provider, in accordance with wiring instructions provided to Transmission Customer by Transmission Provider in writing. Transmission Provider shall be entitled to change the place or recipient for payment by thirty (30) days’ prior written notice to Transmission Customer. To the extent that information required to prepare an invoice is not available to Transmission Provider at the time of Transmission Provider’s invoice, Transmission Provider may issue such invoice on an estimated basis using the best available information that it

has at that time and then include an adjustment pursuant to Section 4.3 to reflect the actual information in the next invoice after such information becomes available to Transmission Provider.

4.3 Reconciliation. In the event that either Party to this Agreement discovers an error in billings or payments under this Agreement due to metering, billing or other errors, or a prior invoice was prepared on an estimated basis pursuant to Section 4.2, each Party shall be entitled to an adjustment of the amount payable hereunder to reflect such revised price, error discovery, or the availability of actual (as opposed to estimated) invoicing information. A Party that seeks an adjustment to invoices as described in this Section 4.3 must provide the other Party with notice and a description of the desired adjustment within one (1) year of the date the invoice that is to be adjusted was received by Transmission Customer. Such notice shall include a calculation of the payment necessary to correct the prior invoice. Any invoice that has not been challenged pursuant to this Section 4.3 within one (1) year of the date it was received by Transmission Customer shall be deemed final and not subject to adjustment under this Section 4.3.

4.4 Interest. All interest payable under this Section 4.4 shall be calculated pursuant to 18 C.F.R. § 35.19a(a), as such regulation (or any successor thereto) is in effect during the period during which such interest is due. Interest on refunds owed to Transmission Customer by Transmission Provider shall begin to accrue on the amount subject to refund, as originally invoiced, from the earlier to occur of the due date or the date of payment on the monthly invoices to which the refund relates and shall continue to accrue until the date of payment of such refund.

4.5 Billing Disputes. Transmission Customer may, in good faith, dispute the correctness of any invoice rendered under this Agreement. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of such invoice shall be required to be made when due, with notice of the objection given to Transmission Provider in writing and stating the basis for the dispute (including all supporting calculations). Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made (and any overpayment shall be refunded) within fifteen (15) Business Days after such resolution and shall include interest as calculated pursuant to Section 4.4.

4.6 Record-keeping. Transmission Provider shall create and keep (a) meter records and other records substantiating amounts due from Transmission Customer to Transmission Provider under this Agreement and (b) all other records required to be kept by Transmission Provider according to Applicable Laws and Regulations. Transmission Provider shall maintain the records that it is required to create and keep under this Section 4.6 according to Good Utility Practice and, if applicable, generally accepted accounting practices, consistently applied. Transmission Provider shall keep and maintain those records for a period of at least four (4) years after the respective records are created, and Transmission Customer may inspect and audit those records during normal business hours upon reasonable advance notice. Each Party's costs of audits will be borne by such Party.

**SECTION 5.**  
**EFFECTIVE DATE, TERM AND GOVERNMENTAL APPROVALS**

5.1 Effective Date. This Agreement shall become effective and enforceable to the extent permitted by Applicable Laws and Regulations as of the date of execution by both Parties (the “Effective Date”). The term of this Agreement shall continue until the twenty-sixth (26<sup>th</sup>) anniversary of the Commencement Date, unless terminated earlier in accordance with the terms hereof; provided, that either Party may terminate this Agreement at any time following the expiration of the term of KS-MO Transmission Service under Section 2.1.1 if Transmission Customer is no longer utilizing MO-PJM Transmission Service.

5.2 FERC Filing Requirements.

5.2.1 After the MPSC Approval has been obtained, but no less than ninety (90) days prior to the Commencement Date, Transmission Provider will file this Agreement with FERC pursuant to Section 205 of the Federal Power Act. Notwithstanding Section 5.1, this Agreement shall become effective as a FERC rate schedule upon the effective date established by FERC in its order accepting this Agreement for filing. Transmission Customer shall provide Transmission Provider with any information reasonably required by Transmission Provider in order to prepare and submit this Agreement to FERC, and Transmission Customer agrees to file an intervention and comments supporting FERC’s acceptance of Transmission Provider’s FERC filing without modification or condition. If FERC requires the Parties to make any material modification of this Agreement before it can be accepted for filing, the Parties will endeavor in good faith to agree upon such modification; provided, that if either Party believes that any such modification changes the balance of considerations hereunder in a material way, such Party may reject such modification and the Agreement shall be terminated unless the Parties can convince FERC to modify its order requiring such modification.

5.2.2 After the MPSC Approval has been obtained, but no less than ninety (90) days prior to the Commencement Date, Transmission Provider will file an OATT with FERC pursuant to Section 205 of the Federal Power Act. Transmission Customer shall have the right to challenge the filing or any FERC ruling thereon solely on the basis that (a) the terms and conditions for the provision of the transmission service provided thereunder are not “consistent with or superior to” the FERC’s *pro forma* OATT adopted in Order Nos. 890 and 890-A, except for any proposed OATT provisions that are included in this Agreement, which Transmission Customer shall not challenge, or (b) the terms and conditions of the OATT that are inconsistent with this Agreement, diminish Transmission Customer’s rights under this Agreement, or increase the rates or diminish the value to Transmission Customer of the services provided hereunder. To the extent there is a conflict between this Agreement and any provision of Transmission Provider’s OATT, as accepted by FERC, this Agreement shall govern.

5.3 Cooperation. From and after the Effective Date, the Parties shall cooperate with each other to obtain all Governmental Approvals that are required for Transmission Provider to construct and operate the Project and put this Agreement fully into effect, including making any

filing in support of another Party's application for any such approval as requested by the Party seeking such approval. From and after the Execution Date, the Parties shall not take any action, or seek any relief, before any other Governmental Authority that is inconsistent with the terms and conditions of this Agreement.

5.4 Material Adverse Changes in Regulation. In the event there is a change in Applicable Laws and Regulations or a Governmental Authority issues an order that changes the balance of considerations hereunder in a way that is materially adverse to one or both Parties, then upon the request of either Party, the Parties shall reasonably cooperate in good faith to determine whether the change at issue requires further action and take such further action, including amendment of this Agreement or such other commercially reasonable action, so as to maintain the benefit of this Agreement to each Party. Any amendment or modification to this Agreement made pursuant to this Section 5.4 must be filed with FERC. If the amendment or modification is the subject of mutual agreement, Transmission Provider shall file the proposed amendment or modification under Section 205 of the Federal Power Act, and such proposed amendment or modification shall be required to satisfy the normal "just and reasonable" standard, consistent with the general rule for filing of amendments or modifications that are mutually agreed to, as set forth in Section 17. If the Parties cannot agree on modifications to be made to this Agreement pursuant to this Section 5.4, either or both of the Parties may file under Section 206 of the Federal Power Act to propose modification of the Agreement and such proposed modification(s) shall be required to satisfy the most restrictive legally permissible "public interest" standard, consistent with the general rule for filings that seek unilateral changes to this Agreement, as set forth in Section 17.

5.5 Transmission Provider Participation in Regional Transmission Organization. In the event that (a) Transmission Provider becomes a transmission-owning member of any regional transmission organization and (b) Transmission Provider transfers functional control of the Project to such regional transmission organization, then Transmission Provider will make commercially reasonable efforts to ensure that Transmission Customer is provided service in a manner materially consistent with its commercial rights under this Agreement. Such commercially reasonable efforts shall include Transmission Provider's consistent support, in its interactions with the regional transmission organization and any filings with FERC regarding the integration of the Project into the regional transmission organization, for proposals that will provide Transmission Customer service under such tariff in a manner that preserves its commercial benefits under this Agreement. Transmission Customer shall have the right to reduce or terminate the affected service(s) by providing notice to Transmission Provider within ninety (90) days after any determination by the regional transmission organization or FERC that Transmission Customer will not be able to obtain service under the regional transmission organization's tariff in a manner that preserves Transmission Customers' commercial benefits under this Agreement. In such event, the reduction or termination of transmission service shall take effect as of the date specified by Transmission Customer in its notice. Transmission Customer shall also have the right to terminate service hereunder upon ninety (90) days' notice following any determination by the regional transmission organization or FERC that network customers within such regional transmission organization taking new service over the Project will not be charged an incremental rate in addition to base network service charges in connection with such service.

**SECTION 6.**  
**EVENTS OF DEFAULT**

6.1 If any of the following events occur, then an “Event of Default” shall exist as to such Party (the “Defaulting Party”) and the other Party (the “Non-Defaulting Party”) shall be entitled to exercise the remedies set forth in Section 6:

6.1.1 Failure to Pay. A Party fails to make, when due, any payment required pursuant to this Agreement (other than amounts disputed in good faith), and such failure is not remedied within thirty (30) days after written notice of such failure from the other Party;

6.1.2 Material Breach. A Party is in material breach of its obligations under this Agreement (other than an obligation to make payment under Section 6.1.1, an obligation that is otherwise specifically set forth in this Section 6.1 as a separate Event of Default, or an obligation in respect of which this Agreement provides a remedy that is stated to be an exclusive remedy), and such breach is not remedied within thirty (30) days after written notice of such breach from the other Party (provided, that to the extent such breach is not reasonably capable of being remedied within the thirty (30) day remedy period specified above but is reasonably capable of being remedied, such Party shall have such additional time as is reasonably necessary to remedy such breach);

6.1.3 Misrepresentation. A Party’s representation or warranty made in this Agreement proves to have been false in any material respect and (a) the underlying facts are not corrected or cured so as to make such representation and warranty either correct or immaterial within thirty (30) days after written notice of such misleading or false representation or warranty from the other Party (provided, that to the extent such inaccuracy is not reasonably capable of being remedied within the thirty (30) day remedy period specified above but is reasonably capable of being remedied, such Party shall have such additional time as is reasonably necessary to remedy such inaccuracy, so long as such Party promptly commences and diligently pursues such remedy) or (b) if such inaccuracy is not capable of a remedy but the other Party’s Damages can be ascertained, the payment of Damages is not made within ten (10) Business Days after the amount of such Damages is agreed upon by the Parties or is determined by a final and non-appealable judgment or order;

6.1.4 Bankruptcy. A Party (a) either (i) files a petition or otherwise commences, or authorizes the commencement of, a proceeding or cause under any bankruptcy, insolvency, receivership or similar law for the protection of creditors; (ii) has such a petition filed or proceeding commenced against it, which remains un-dismissed for ninety (90) days; (iii) files an answer or pleading admitting or failing to contest the material allegations of any such petition; (iv) takes any action for its winding up, liquidation or dissolution; (v) is otherwise adjudged bankrupt or insolvent under any bankruptcy, insolvency, receivership or similar law for the protection of creditors; or (vi) consents to any of the actions described in the preceding clauses (i) through (v) and (b) fails to perform its obligations under this Agreement and such failure is not remedied within fifteen (15) days after written notice of such failure from the other Party; or

6.1.5 Unauthorized Assignment. A Party assigns or transfers this Agreement or any portion thereof in violation of Section 11 of this Agreement.

6.2 Any dispute over whether an Event of Default has occurred shall be resolved in accordance with Section 14.

## **SECTION 7. REMEDIES**

7.1 Termination. If an Event of Default occurs and is continuing, the Non-Defaulting Party shall have the right to exercise one or more of the following remedies: (a) to terminate this Agreement early by providing notice to the Defaulting Party and (b) to exercise such remedies as are otherwise provided in this Agreement available at law or in equity, including the right to specific performance in the event of Transmission Provider's default for failure to make available to Transmission Customer Firm Transmission Capacity, up to the Contract Capacities, as required hereunder and the right to Damages arising out of the Event of Default, including, in the case of termination of this Agreement as a result of an Event of Default, Damages suffered by the Non-Defaulting Party as a result of such termination. Further, whether or not this Agreement is terminated, either Party may assert any claims available to it under this Agreement or at law or in equity, so as to recover Damages against the other Party resulting from any breach of or default under this Agreement by such other Party. Each Party shall use commercially reasonable efforts to mitigate its Damages resulting from the other Party's breach of or default under this Agreement, including upon any termination hereof as a result of an Event of Default of the other Party.

7.2 Suspension. In addition to (and without limiting) the remedies for an Event of Default set forth in Section 7.1 or otherwise available under this Agreement, at law or in equity, during the existence of an Event of Default, the Non-Defaulting Party may, by written notice to the Defaulting Party, suspend (in whole or in part) its performance under this Agreement, but without relieving the Defaulting Party of its obligations to pay any Damages arising out of such Event of Default.

7.3 Resumption of Performance following Cure. If a Non-Defaulting Party has suspended under Section 7.2, then after the Defaulting Party's cure of such Event of Default (prior to any valid termination of this Agreement by the Non-Defaulting Party, and provided there is no other Event of Default by such Defaulting Party then occurring and remaining uncured), the Non-Defaulting Party will resume performance of its obligations under this Agreement as soon as possible thereafter.

7.4 Waiver of Other Rights to Terminate or Suspend. Notwithstanding anything to the contrary, except for the rights to terminate or suspend expressly set forth in this Section 7, Section 5.1, Section 5.2.1, or Section 13, neither Party shall have any right to terminate this Agreement or suspend its performance.

7.5 Payment of Damages. Promptly upon any termination of this Agreement pursuant to Section 7.1, the Non-Defaulting Party shall determine in a commercially reasonable manner its Damages, and any payments then due to the Non-Defaulting Party for prior performance (net

of payments owed to the Defaulting Party for prior performance, if any). The Non-Defaulting Party shall provide, by notice to the Defaulting Party, its determination of Damages, together with reasonable supporting material. The Defaulting Party shall pay such Damages within thirty (30) days of such notice. Any dispute concerning the determination of Damages shall be resolved in accordance with Section 14.

7.6 Inability to Perform Due to Breach. If a breach by a Party to this Agreement shall wholly or partly prevent the performance (or the ability to perform) of the other Party under this Agreement, then the performance of the Non-Defaulting Party shall be excused to the extent prevented by the breach.

7.7 No Cross-Default. This Agreement shall not be affected in any manner by any cross-default or other provision in any other agreement or document (whether between the Parties, any of their Affiliates or any other Persons and whether entered into before or after the Effective Date) unless the other agreement or document is entered into by the Parties after the Effective Date and expressly provides that the cross-default or other provision applies to this Agreement.

7.8 Remedies Cumulative. Except as expressly provided otherwise herein, all remedies set forth herein are cumulative and not exclusive of any rights, privileges and remedies provided by Applicable Laws and Regulations.

7.9 Rights Upon Termination or Expiration. Applicable provisions of this Agreement shall continue in effect after the date of termination or expiration of this Agreement only to the extent necessary (a) to provide for final billings and adjustments related to the period prior to the date of termination or expiration or as may be otherwise applicable after such date and (b) to give effect to a Party's surviving rights and remedies under Sections 7, 12, 14, 15, 19.4, 19.5 and 19.8.

## **SECTION 8. METERING**

8.1 General. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Metering Points prior to any operation of the Project and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Project shall be measured at the Metering Points. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Transmission Customer upon request.

8.2 Data Sharing. To the extent permitted under the SPP Interconnection Agreement, MISO Interconnection Agreement and PJM Interconnection Agreement, Transmission Customer will have the right to receive, in analog or digital form, metering quantities collected pursuant to such agreements.

8.3 Standards. Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.

8.4 Testing of Metering Equipment. Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two

(2) years thereafter. If requested to do so by Transmission Customer, Transmission Provider, at Transmission Customer's expense, shall inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Transmission Customer may have representatives present at the test or inspection. If, at any time, Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Transmission Provider's expense, in order to provide accurate metering. If Metering Equipment fails to register, or if the measurement made by the Metering Equipment during a test varies by more than two percent (2%) from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which the Metering Equipment was in error by using Transmission Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

8.5 Metering Data. At Transmission Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered to the Metering Points.

## **SECTION 9. RESALE OF TRANSMISSION SERVICE**

9.1 Transmission Customer's Resale Rights. If and to the extent that Transmission Customer determines, from time to time and in its sole discretion, that the Firm Transmission Capacity over the Project exceeds Transmission Customer's needs, Transmission Customer shall have the right to resell, assign or transfer such unused capacity to third parties, including owners and operators of generating facilities, in accordance with Transmission Provider's OATT, Applicable Laws and Regulations and, as applicable, the OATTs of SPP, MISO and/or PJM.

9.2 Capacity Releases for Daily and Hourly Use. From and after the Commencement Date, if and to the extent that Transmission Customer, by the applicable scheduling deadline, schedules electrical energy for delivery over the Project in a quantity utilizing less than the Contract Capacity, Transmission Customer shall have the right to sell the unused Contract Capacity to third parties by posting such capacity on Transmission Provider's OASIS, in accordance with Transmission Provider's OATT, Applicable Laws and Regulations and, as applicable, the OATTs of SPP, MISO and/or PJM. Transmission Provider shall have the right to sell any unused Firm Transmission Capacity to third parties up to the applicable Contract Capacity that Transmission Customer has purchased but does not schedule for its own use, post for resale or resell on any particular day or in any particular hour.

## **SECTION 10. REPRESENTATIONS AND WARRANTIES**

10.1 On and from the Effective Date, each Party hereby represents and warrants (or shall be deemed to represent or warrant, as applicable) to the other Party as follows:



10.1.1 Good Standing. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation and is in good standing and qualified to do business in each jurisdiction where the failure to so qualify could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement or on the business, operations or financial condition of such Party.

10.1.2 Authority. It has all necessary company power and authority to execute, deliver and perform its obligations hereunder.

10.1.3 No Conflict. Its execution, delivery and performance of this Agreement (a) has been duly authorized by all necessary company action, (b) does not violate any of the terms or conditions of (i) its governing documents, (ii) any contract to which it is a party (or result in acceleration of any amounts owed or otherwise adversely affect its rights or obligations under such a contract) or (iii) any Applicable Law currently in effect having applicability to such Party or its assets (subject, in the case of Transmission Provider as the representing Party, to obtaining any permits that are not yet required) and (c) does not result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the properties of such Party now owned or hereafter acquired, in the case of clause (b)(iii), to the extent such violation could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement or on the business, operations or financial condition of such Party.

10.1.4 Binding Agreement. This Agreement has been validly executed and delivered on behalf of such Party and constitutes the legal, valid and binding obligation of such Party enforceable against such Party according to its terms, except as the enforceability of this Agreement may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity whether considered in a proceeding in equity or at law.

10.1.5 Licenses and Permits. All governmental and other third party consents that are required to have been obtained by it with respect to its execution, delivery or performance of this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with, except, in the case of Transmission Provider as the representing Party, any permits that are not yet required.

## **SECTION 11. ASSIGNMENT**

11.1 Permitted Assignment. Neither Party shall be entitled to assign or transfer all or any portion of its interest in this Agreement, except as provided herein, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned. Any such assignment without the prior written consent of the non-assigning Party is void. Notwithstanding the foregoing, a Party may make the assignments described in Section

9.1, 9.2 and 11.2 through 11.4 without the prior written consent of the other Party, but shall provide written notice of such permissible assignments under Sections 11.2 through 11.4.

11.2 Collateral Assignment. Notwithstanding Section 11.1, either Party may:

11.2.1 Collaterally assign this Agreement to a Financing Party relating to the construction or long term financing or refinancing for the Project. As applicable and in connection with any such permitted collateral assignment, the non-assigning Party shall promptly execute and deliver (a) a collateral assignment consent agreement to be entered into by the assigning Party, the non-assigning Party and the assigning Party's Financing Parties that is acceptable in form and substance to the non-assigning Party (such acceptance not to be unreasonably withheld) and recognizes and consents to (i) the assigning Party's collateral assignment of rights and obligations under this Agreement and (ii) the assigning Party's Financing Parties' rights to be notified of, and allowed to cure, any breach or default of this Agreement by the assigning Party, and to exercise any step-in rights consented to by the assigning Party, and other customary terms as reasonably may be requested by such Financing Parties or (b) other agreements with Financing Parties reasonably requested by such Financing Parties, containing customary terms and conditions that are in form and substance acceptable to the non-assigning Party (such acceptance not to be unreasonably withheld); and/or

11.2.2 For the avoidance of doubt, issue or sell equity interests in the assigning Party to a Financing Party pursuant to any tax equity investment, and, in connection with any such tax equity investment transaction, the non-assigning Party shall promptly execute and deliver an estoppel certificate or other agreements with Financing Parties reasonably requested by such Financing Parties, containing customary terms and conditions that are in form and substance acceptable to the non-assigning Party (such acceptance not to be unreasonably withheld).

In no case shall any such rights and terms of a collateral assignment consent agreement or other document described in this Section 11.2 materially adversely affect any of the non-assigning Party's commercial rights or obligations under this Agreement. The non-assigning Party agrees to otherwise cooperate in a timely manner with the due diligence efforts of any such Financing Parties and to deliver reasonable and customary legal opinions, if required, in connection with any collateral assignment and consent agreement, estoppel certificate or any other agreement or document referenced in this Section 11.2 that is entered into with or for a Financing Party; provided, that if requested by the non-assigning Party, the assigning Party shall reimburse the non-assigning Party for its reasonable third-party legal expenses incurred in connection with any such agreement or certificate, providing any such legal opinion and/or any such due diligence efforts.

11.3 Assignment to an Affiliate. Either Party may transfer or assign all of its rights and obligations under this Agreement to an Affiliate, which Affiliate's creditworthiness and ability to perform under this Agreement is equal to or higher than that of the transferring or assigning Party at the time of assignment as determined by the other Party in its reasonable discretion.

11.4 Transfer of Assets. Either Party shall transfer or assign all of its rights and obligations under this Agreement to any Person succeeding to all or substantially all of its assets (or substantially all of the assets of its ultimate parent, as applicable), which Person's creditworthiness is equal to or higher than that of such Party at the time of assignment; provided, however, that all rights and obligations of Transmission Provider under this Agreement shall remain with or be transferred to whichever Person owns the capacity on the Project to be made available to Transmission Customer pursuant to this Agreement in the event that not all assets are transferred. For the avoidance of doubt, this Section 11.4 shall not apply in the case of Transmission Provider's transfer of functional control of the Project to a regional transmission organization; in such case, the provisions of Section 5.5 shall govern.

11.5 Release from Liability. In no event shall the assigning Party be released from its liabilities and obligations under this Agreement without the consent of the other Party in its sole and absolute discretion, except that, if either Party assigns this Agreement as permitted by Sections 11.1, 11.2, 11.3 and 11.4, such Party shall, to the extent the assignee assumes the liabilities and obligations of such Party under this Agreement pursuant to an assignment and assumption agreement in form and substance acceptable to the non-assigning Party (such acceptance not to be unreasonably withheld), be released from such liabilities and obligations.

## **SECTION 12. CONFIDENTIALITY**

12.1 Non-Disclosure. Except as provided in this Section 12, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any Person at any time during or after the term of this Agreement or use such Confidential Information for any purpose other than (a) the receiving Party's performance of its obligations under this Agreement, (b) the receiving Party's responsibilities as a Transmission Provider and (c) to comply with Applicable Laws and Regulations, without the other Party's prior express written consent.

12.2 Required Disclosure. A receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or pursuant to Applicable Laws and Regulations, but only after notice to the providing Party and affording the providing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the receiving Party shall reasonably cooperate in connection with the providing Party's efforts to obtain such protective order or other relief. Further, each Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by Applicable Laws and Regulations, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise.

12.3 Permitted Disclosure. Notwithstanding anything to the contrary herein, each Party may provide any Confidential Information to: (a) any Governmental Authority to the extent Confidential Information is required to be disclosed by such Governmental Authority; (b) any Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required for scheduling, settlement and billing or otherwise to perform under or administer or enforce this Agreement; (c) Financing

Parties or potential Financing Parties, Affiliates and lessors, owners of and potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect interests in the Project, as applicable (including direct or indirect interests in the equity interests of Transmission Provider) and (d) any credit rating agency that has issued or is in the process of issuing a credit rating for Transmission Provider or Transmission Customer, as applicable, or any of its Affiliates. The Parties further acknowledge and agree that Transmission Provider shall be permitted to disclose the existence of this Agreement and the terms hereof in connection with any proceeding before any Governmental Authority. Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

### **SECTION 13. FORCE MAJEURE**

13.1 Effect of Force Majeure. To the extent a Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations under this Agreement, then the affected Party shall be excused from performing such obligations.

13.2 Notice of Force Majeure Event and Cure Plan. The Party claiming the occurrence of a Force Majeure event that prevents it from performing its obligations under this Agreement shall give the other Party written notice of the Force Majeure event, including the date of its initiation, as soon as practicable after the affected Party becomes aware of such Force Majeure event and shall provide available details no later than five (5) days after the Force Majeure event further describing the facts related to the occurrence and consequences of the Force Majeure event. Such Party shall proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying its performance and shall prepare a Force Majeure cure plan describing the actions reasonably expected to be necessary to overcome the Force Majeure event and the time reasonably anticipated to perform such actions. Thereafter, such Party shall provide progress reports to the other Party at least every thirty (30) days describing actions taken to remedy the consequences of the Force Majeure event, the schedule for future actions and the expected date by which performance shall no longer be affected by the Force Majeure event. When such Party has overcome such Force Majeure event and is ready to resume full performance under this Agreement, written notice shall be provided to the other Party and full performance shall resume.

### **SECTION 14. DISPUTES**

14.1 Submission. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) days of the other Party's receipt of the Notice of Dispute, then, except as otherwise provided in Section 5.4, (a) such claim or

dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below, and (b) if the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

14.2 External Arbitration Procedures. Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with either Party (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules"); provided, however, that in the event of a conflict between the Arbitration Rules and the terms of this Section 14, the terms of this Section 14 shall prevail.

14.3 Arbitration Decisions. Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service.

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

14.5 Continued Performance. Each Party shall continue performance of its obligations under this Agreement, in conformance with the terms and conditions of this Agreement, notwithstanding the existence of any dispute, mediation, arbitration and/or other proceeding between the Parties pursuant to this Section 14.

14.6 Compelled Participation. If a Party refuses or fails to comply with this Section 14, in whole or in part, the other Party may petition any Governmental Authority having proper jurisdiction for an order directing the non-compliant Party to so comply. All costs and expenses, including attorneys' fees, incurred by the petitioning Party in enforcing such participation will be paid by the refusing or non-compliant Party.

**SECTION 15.  
INDEMNIFICATION**

15.1 Indemnity. Each Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold the other Party and its Related Persons (each, an “Indemnified Person”) harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Indemnifying Party’s performance or non-performance of its obligations under this Agreement, except in cases of gross negligence or intentional wrongdoing by the Indemnified Person.

15.1.1 Indemnified Person. If an Indemnified Person is entitled to indemnification under this Section 15 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Section 15.1.3, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

15.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Section 15, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person’s actual Damages, net of any insurance or other recovery.

15.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 15.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

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

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (a) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in

the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (b) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be unreasonably withheld, conditioned or delayed.

15.2 Consequential Damages. In no event shall either Party be liable under any provision of this Agreement for any Damages for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that Damages for which a Party may be liable to the other Party under another agreement or which an Indemnified Party owes to a third party will not be considered to be special, indirect, incidental, or consequential damages hereunder.

## **SECTION 16. TRANSMISSION CUSTOMER DEPOSIT**

16.1 Transmission Customer Deposit. Transmission Customer shall, within thirty (30) days following the Notice of Decision, submit to Transmission Provider a deposit equal to the Transmission Service Charge for one month of Firm Transmission Service unless, prior to such date, Transmission Provider determines that Transmission Customer is creditworthy, in which case the requirement to make such deposit shall be waived. For the avoidance of doubt, Transmission Customer is considered creditworthy as of the Effective Date for the purposes of this Section 16.1.

## **SECTION 17. NO CHALLENGE**

17.1 No Challenge. Neither Party shall directly or indirectly challenge the equity, fairness, reasonableness or lawfulness of any rates, terms or conditions set forth in or established according to this Agreement before any Governmental Authority or other forum. To the extent that either Party may be called upon by any Governmental Authority to do so, each Party shall support and defend this Agreement before such Governmental Authority when the substance, validity or enforceability of all or any part of this Agreement is challenged or called into question before such Governmental Authority. Without limiting the foregoing, Transmission Provider shall not seek (directly or indirectly) to revise the prices, fees, rates, terms or conditions set forth in or established according to this Agreement through application to FERC pursuant to Section 205 of the Federal Power Act, except where such revisions are mutually agreed to and reflected in an amendment hereto executed by the Parties. Further, the standard of review for changes to the prices, fees, rates, terms or conditions set forth in or established according to this Agreement proposed by a Party unilaterally, or by a non-Party or the FERC acting *sua sponte*, under Sections 206, 309, or any other provisions of the Federal Power Act (if applicable) shall solely be the most restrictive legally permissible “public interest” application of the “just and reasonable” standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service*

*Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

## SECTION 18. NOTICES

18.1 Notices. Any notices, requests, statements, or demands shall, unless otherwise agreed to by the Parties, be in writing and may be delivered by hand delivery, registered or certified United States mail (postage prepaid) or overnight courier service, addressed as follows:

To Transmission Provider:

Grain Belt Express Clean Line LLC  
1001 McKinney, Suite 700  
Houston, Texas 77002  
Attention: Cary Kottler  
Telephone: 832-319-6320  
Facsimile: 832-319-6311  
Email: [CKottler@cleanlineenergy.com](mailto:CKottler@cleanlineenergy.com)

To Transmission Customer:

Chief Operating Officer  
Missouri Joint Municipal Electric Utility  
Commission  
1808 I-70 Dr. SW  
Columbia, MO 65203  
P: 573-445-3279  
Email: [contractnotices@mpua.org](mailto:contractnotices@mpua.org)

## SECTION 19. MISCELLANEOUS

19.1 Entire Agreement. This Agreement, including all attachments hereto, contains the entire understanding of the Parties with respect to the subject matter hereof and shall completely and fully supersede all prior understandings or agreements, both written and oral, including any term sheet, between the Parties relating to the subject matter hereof and thereof. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. The section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

19.2 Amendment/Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

19.3 Waiver. No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach or default by the other Party shall be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind on the part of a Party of any breach or default, or any waiver on the part of a Party of any provision or condition of this Agreement,



shall be effective only if in writing and then only to the extent specifically set forth in such writing.

19.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of New York without regard to principles of conflicts of law that would require the application of the laws of any other jurisdiction.

19.5 Further Assurances. Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested to the extent required for the requesting Party to carry out the purposes of this Agreement or fulfill any legal obligation or regulatory reporting requirements.

19.6 No Rights of Third Parties. This Agreement is intended only for the Parties' benefit, and nothing in this Agreement may be construed to create any duty to, any standard of care concerning, or any liability to, any person not a Party to this Agreement.

19.7 Joint Preparation. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and shall not be construed against one Party or the other as a result of the manner in which this Agreement was prepared, negotiated or executed.

19.8 Expenses.

19.8.1 Transmission Provider agrees to reimburse Transmission Customer for all reasonable third party expenses (including legal, consulting and engineering) incurred by Transmission Customer in connection with the preparation of this Agreement for work performed prior to the Effective Date. Within thirty (30) days of the Effective Date, Transmission Customer shall submit to Transmission Provider an invoice of such expenses incurred by Transmission Customer, and Transmission Provider shall remit payment to Transmission Customer within thirty (30) days of receiving such invoice. Transmission Customer shall not incur any reimbursable expenses greater than twenty thousand dollars (\$20,000) without the prior written consent of Transmission Provider. Any dispute regarding such invoice or the reasonableness of expenses incurred by Transmission Customer shall be resolved in accordance with Section 14.

19.8.2 Transmission Provider agrees to reimburse Transmission Customer for its reasonable out-of-pocket costs incurred in connection with Transmission Customer's obligations under Section 5.3. Transmission Customer shall not incur any reimbursable expenses greater than thirty-five thousand dollars (\$35,000) without the prior written consent of Transmission Provider. Any dispute regarding such invoice or the reasonableness of expenses incurred by Transmission Customer shall be resolved in accordance with Section 14.

19.9 Relationship of the Parties. This Agreement shall not be interpreted or construed to (a) create an association, joint venture or partnership between the Parties or impose any partnership obligation or liability on either Party, (b) create any agency relationship between the

Parties or impose any fiduciary duty of any kind on either Party, (c) create a trust or impose any trust obligations of any kind on either Party, or (d) constitute a lease of any properties of any kind. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of, or otherwise bind, the other Party. Each Party waives any and all rights that it may otherwise have under Applicable Laws or legal precedents to make any claim or take any action against the other Party or any of its Related Persons in respect of this Agreement based on any theory of agency, fiduciary duty or other special standard of care.

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

19.11 Severability. Except as otherwise provided in Section 5.2.1, (a) in the event any part of this Agreement is held to be illegal, invalid or unenforceable to any extent, the legality, validity and enforceability of the remainder of this Agreement shall not be affected thereby, and shall remain in full force and effect and shall be enforced to the greatest extent permitted by Applicable Laws and Regulations, and (b) with respect to any provision found to be illegal, invalid or unenforceable by FERC or an arbitrator having jurisdiction, the Parties shall endeavor to replace such invalid, illegal or unenforceable provision with the valid, legal and enforceable provision that achieves, as nearly as practicable, the commercial intent of this Agreement (as it may be amended from time to time).

**IN WITNESS WHEREOF**, each of the Parties has caused its duly authorized representative to execute this Agreement on its behalf as of the date first written above.

**GRAIN BELT EXPRESS CLEAN LINE LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MISSOURI JOINT MUNICIPAL ELECTRIC  
UTILITY COMMISSION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT 1  
TO THE  
LONG-TERM TRANSMISSION SERVICE AGREEMENT  
BY AND BETWEEN  
GRAIN BELT EXPRESS CLEAN LINE LLC  
AND  
THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

Dated as of June 2, 2016

**Transmission Customer:** Missouri Joint Municipal Electric Utility Commission

**KS-MO Transmission Service – Tranche 1**

**Reserved Contract Capacity:** 100 MW, measured at the Point of Delivery

**Beginning Date of Service:** Commencement Date (to be determined)

**Ending Date of Service:** 15 to 25 years after the Commencement Date, as elected by Transmission Customer in the Notice of Decision

**Point of Receipt:** The AC switchyard of the Kansas Converter Station

**Point of Delivery:** MISO Interconnection Point

**Contract Rate:** \$1,167 per MW/month, escalating at 2 percent (2%) annually beginning as of the Commencement Date

**KS-MO Transmission Service – Tranche 2**

**Reserved Contract Capacity:** 100 MW, measured at the Point of Delivery

**Beginning Date of Service:** Commencement Date (to be determined)

**Ending Date of Service:** 15 to 25 years after the Commencement Date, as elected by Transmission Customer in the Notice of Decision

**Point of Receipt:** The AC switchyard of the Kansas Converter Station

**Point of Delivery:** MISO Interconnection Point

**Contract Rate:** \$1,667 per MW/month, escalating at 2 percent (2%) annually beginning as of the Commencement Date

**MO-PJM Transmission Service**

**Reserved Contract Capacity:** 25 MW, measured at the Point of Receipt

**Beginning Date of Service:** Commencement Date (to be determined)

**Ending Date of Service:** The second anniversary of the Commencement Date (i.e., 2 years), with continuing rights for additional periods up to a total term of 26 years (i.e., subject to Transmission Customer's Extension Rights)

**Point of Receipt:** MISO Interconnection Point

**Point of Delivery:** PJM Interconnection Point

**Contract Rate:** \$2,500 per MW/month

**ATTACHMENT 2  
TO THE  
LONG-TERM TRANSMISSION SERVICE AGREEMENT  
BY AND BETWEEN  
GRAIN BELT EXPRESS CLEAN LINE LLC  
AND  
THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

**CREDITS AGAINST CAPACITY CHARGES FOR PRIOR CONTRACT YEAR**

**KS-MO Transmission Service**

If  $NEO-KSMO \leq KMAllowance$ , there shall be no credit

If  $NEO-KSMO > KMAllowance$ , the credit shall be:

$$(NEO-KSMO - KMAllowance) * KMRate$$

Where:

$$KMAllowance = \text{Total KS-MO Contract Capacity} * 8760 * 0.03$$

$KMRate$  = the weighted average of the applicable Contract Rates (converted to \$/MWh) for each MWh of Total KS-MO Contract Capacity, calculated as follows:

$$((\text{Tranche 1 Rate} * \text{Tranche 1 Contract Capacity}) + (\text{Tranche 2 Rate} * \text{Tranche 2 Contract Capacity})) / \text{Total KS-MO Contract Capacity}^1$$

$NEO-KSMO$  = the total MWh of KS-MO Transmission Service that was unavailable as the result of any Non-Excused Outages (including both curtailments affecting only a portion of the Contract Capacity and interruptions affecting the entire Contract Capacity) during hours of the Contract Year in which Transmission Customer scheduled KS-MO Transmission Service or in which Transmission Customer could have scheduled KS-MO Transmission Service but for the existence of a Non-Excused Outage

Total KS-MO Contract Capacity = Tranche 1 Contract Capacity + Tranche 2 Contract Capacity

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<sup>1</sup> For example, if Transmission Customer reserves 100 MW of Tranche 1 Contract Capacity and 100 MW of Tranche 2 Contract Capacity for the first Contract Year, then  $KMRate$  for the first Contract Year would be calculated as follows:  $((\$1.5986/\text{MWh} * 100 \text{ MW}) + (\$2.2836/\text{MWh} * 100 \text{ MW})) / 200 \text{ MW} = \$1.9411/\text{MWh}$ .

Tranche 1  
 Contract  
 Capacity = the Contract Capacity for Tranche 1 of KS-MO Transmission Service reserved by Transmission Customer for the Contract Year in which the Non-Excused Outages occurred

Tranche 1 Rate = the applicable Contract Rate (converted to \$/MWh) for Tranche 1 Contract Capacity

Tranche 2  
 Contract  
 Capacity = the Contract Capacity for Tranche 2 of KS-MO Transmission Service reserved by Transmission Customer for the Contract Year in which the Non-Excused Outages occurred

Tranche 2 Rate = the applicable Contract Rate (converted to \$/MWh) for Tranche 2 Contract Capacity

**MO-PJM Transmission Service**

If  $NEO-MOPJM \leq MPAllowance$ , there shall be no credit

If  $NEO-MOPJM > MPAllowance$ , the credit shall be:

$$(NEO-MOPJM - MPAllowance) * MPRate$$

Where:

FTC = the additional Firm Transmission Capacity to deliver electricity from the MISO Interconnection Point to the PJM Interconnection Point reserved by Transmission Customer pursuant to Section 3.3, if applicable, for the Contract Year in which the Non-Excused Outages occurred

FTC Rate = the applicable rate set forth in Transmission Provider's OATT (converted to \$/MWh) for FTC

MO-PJM  
 Contract  
 Capacity = the Contract Capacity for MO-PJM Transmission Service reserved by Transmission Customer for the Contract Year in which the Non-Excused Outages occurred

MO-PJM Rate = the applicable Contract Rate (converted to \$/MWh) for MO-PJM Contract Capacity

MPAllowance = Total MO-PJM Contract Capacity \* 8760 \* 0.03

MPRate = the weighted average of the applicable rates (converted to \$/MWh) for each MWh of Total MO-PJM Contract Capacity, calculated as follows:  

$$\frac{((\text{MO-PJM Rate} * \text{MO-PJM Contract Capacity}) + (\text{FTC Rate} * \text{FTC}))}{\text{Total MO-PJM Contract Capacity}^2}$$

NEO-MOPJM = the total MWh of MO-PJM Transmission Service and FTC that was unavailable as the result of any Non-Excused Outages (including both curtailments affecting only a portion of the Contract Capacity and interruptions affecting the entire Contract Capacity) during hours of the Contract Year in which Transmission Customer scheduled MO-PJM Transmission Service and FTC or in which Transmission Customer could have scheduled MO-PJM Transmission Service and FTC but for the existence of a Non-Excused Outage

Total MO-PJM Contract Capacity = MO-PJM Contract Capacity + FTC

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<sup>2</sup> For example, if Transmission Customer elects not to reserve FTC, then the MPRate for the first Contract Year would be calculated as follows:  $((\$3.4247/\text{MWh} * 25 \text{ MW}) + (\text{FTC Rate} * 0 \text{ MW})) / (25 \text{ MW} + 0 \text{ MW}) = \$3.4247/\text{MWh}$ .



## **Environmental Report**

Floyd Gilzow gave an overview of the Electric System Review Program.

Dan Stokes gave a report on how the review process went in Odessa. Paul Jensen gave a report on how the review process went in Unionville.

Floyd Gilzow reported that things are still moving on the Clean Power Plan. It will be argued before the entire appellate system. EPA has pulled the energy efficiency program out from the Federal Implementation Plan and sent it to the Office of Management and Budget for review. Gilzow reported that 25 coal plants are scheduled for retirement now. Gilzow gave an update on CI-RICE units which are limited to 50 hours total in a year. Congress is also weighing in on Clean Air Act.

Floyd Gilzow reported on eGRID database emissions and generation resource integrated database. The eGRID numbers, which are not a full or accurate picture, might be something large industrial customers (LIC's) are using to calculate their emission footprint. Members need to be aware of the eGRID methodology to answer questions from LICs.

## **Committee Reports**

### **Engineering Committee**

Rodney Bourne reported that the Engineering committee will continue reviewing community solar possibilities as the issue progresses.

### **SPP Committee & MISO Committee**

Steve Stodden Reported that the SPP and MISO committees would be meeting following the Board meetings. He encouraged members to let MPUA know if they want to get included on the calls.

### **Lineworker Committee**

Mark Mustain reminded members that the committee would next be meeting on Friday July 8<sup>th</sup>.

## **Old Business**

### **Transmission Issues**

John Grotzinger reported that the first SPP project was awarded and a local Transmission Owner won the bid. The MISO transmission bid process continues, they have not awarded any bids yet.

## **New Business**

### **Grain Belt Transmission Agreement**

Duncan Kincheloe reviewed the history of the Clean Line proposal to MJMEUC for a high-voltage DC transmission line contract.

Duncan Kincheloe reported the MoPEP committee and MJMEUC Executive Committee both recommended MJMEUC approval of the transmission agreement.

Michael Skelly, President of Clean Line Energy Partners, introduced the project which would begin near Dodge City, KS to pick up wind power, connect to MISO in Ralls County, then end near Terre Haute, IN. In the proposed contract, MJMEUC would have an option for up to 200 MW of transmission into Missouri.

John Grotzinger reviewed the project and typical wind power that would be available to transmit from western Kansas.

Chad Davis moved to approve the contract. Harold Selby seconded and the motion was approved.

#### **MoPEP Plum Point Dispute**

Doug Healy reviewed the dispute with PPEA over their failure to comply with the availability clause in the PPA by making a *force majeure* claim.

Duncan Kincheloe reported that the Executive Committee recommended MJMEUC authorize staff to negotiate a favorable settlement on behalf of MoPEP.

Rodney Bourne moved to authorize staff to negotiate a settlement with final review and approval by MoPEP. Kyle Gibbs seconded the motion and it was approved.

#### **Resolution 01-2016 on Non-Qualified Use of Bond-Financed Property**

Duncan Kincheloe reviewed regulations surrounding the use of bond-financed property. The understood policy has been that the percentage limits on non-qualified use are retained by the commission as a whole. The Policy on Non-Qualified Use of Bond-Financed Property will formalize that practice.

Duncan Kincheloe reported that the MJMEUC Executive Committee recommended approval.

Lee Barker moved to approve Resolution 01-2016. Scott Lucas seconded the motion and the resolution was approved.

#### **MMMPEP Business and Reports**

##### **Status Update**

JT Hardy reported MMMPEP met on May 17 and approved a 10-year contract with MJMEUC. The cities are taking the agreement back to their cities for final approval.

##### **New Contract Discussion**

John Grotzinger reported he is working to secure a Base Load Supply Agreement for the MMMPEP supply needs.