CITY COUNCIL/ELECTRICAL ADVISORY COMMITTEE

June 28, 2012 – 6:00 p.m.
Special Meeting

CITY COUNCIL
Leo Evans, Mayor
Brady Nelson, Mayor Pro-tem
Patricia Baribeau, Council Member
Ronald Beauchamp, Council Member
Walter Baker, Council Member

ADMINISTRATION
James V. O'Toole, City Manager
Robert S. Richards, CMC, City Clerk
Ralph B.K. Peterson, City Attorney
Mike Furmanski, Electrical Superintendent
Michael Dewar, City Controller
Thomas Butz, Power System Engineering

ELECTRICAL ADVISORY COMMITTEE
Tim Wilson, Chairperson
Ann Bissell, Vice Chairperson
Larry Arkens, Committee Member
Glendon Brown, Committee Member
Donald Racicot, Committee Member
John Anthony, Committee Member
Vacant Seat
Vacant Seat

Escanaba City Council Chambers: 410 Ludington Street - Escanaba, MI 49829

Special Meeting Agenda
Thursday, June 28, 2012

CALL TO ORDER
ROLL CALL
APPROVAL/ADJUSTMENTS TO THE AGENDA
CONFLICT OF INTEREST DECLARATION

NEW BUSINESS

1. **Discussion – MISO Attachment Y submittal.**
   Explanation: Administration will review and discuss the negotiations with MISO of the System Security Resource (SSR) agreement and how this process relates to the plant sale negotiations.

2. **Discussion– Plant Sale Update.**
   Explanation: Administration will provide an update of the plant sale negotiations with Escanaba Green Energy and a summary of the plant sale agreement if completed.

GENERAL PUBLIC COMMENT
COMMISSION/STAFF COMMENT AND ANNOUNCEMENTS
ADJOURNMENT

The City of Escanaba will provide all necessary, reasonable aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting to individuals with disabilities at the meeting/hearing upon five days notice to the City of Escanaba. Individuals with disabilities requiring auxiliary aids or services should contact the City of Escanaba by writing or calling City Hall at (906) 786-9402.

Respectfully Submitted,

James V. O'Toole
City Manager

ATTACHMENT Y-1

Standard Form Support Supply Resource ("SSR") Agreement

Between

(Participant)

and

The Midwest Independent Transmission System Operator, Inc.

This SSR Agreement ("Agreement"), effective as of ___ of _____, ____ ("Effective Date"), is entered into by and between [insert Participant's name], a [insert business entity type and state] ("Participant") and the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO").

Recitals

WHEREAS:

A. Participant owns or operates a Generation Resource or a Synchronous Condenser Unit ("SCU") as defined in the Midwest ISO Tariff, and the Midwest ISO requires Participant to supply service in the Midwest ISO Region in order to maintain the Midwest ISO's system reliability;

B. Midwest ISO is the Regional Transmission Organization ("RTO") for the Midwest ISO Region; and

C. The Parties enter into this Agreement in order to establish the terms and conditions by which Midwest ISO and Participant will discharge their respective duties and responsibilities under the Midwest ISO Tariff.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein,

Midwest ISO and Participant (the "Parties") hereby agree as follows:

Section 1. Unit-Specific Terms.

A. Start Date: _____1, 20__.

B. Start Time: _____

C. Unit:_____.

The unit described above may also be referred to as the "Designated Unit" or "Unit" or "SSR Unit" in this Agreement.

D. Description of Unit [*including location, number of generators, etc.]:*

_____

_____, as may be described in more detail on Exhibit 1 attached hereto. If Unit is a combined cycle Generation Resource, indicate the Unit's operational capability consistent with the requirements of the Midwest ISO Tariff.

E. Name Plate Information [*Fill out for applicable type of unit checked in Subsection 1.B above*]

SSR Unit

(a) SSR Capacity in MW: _____

(b) Power Factor Lagging

(i) _____ P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

(c) Power Factor Leading

(i) _____ P.F. (at Generator Main Leads)

(ii) _____ P.F. (at high side of Main Power Transformer)

F. Delivery Point: _____

G. Revenue Meter Location (Use Resource IDs): _____

H. Operational and Environmental Limitations (check and describe all that apply):

SSR Unit:

(a) Operational

☐ Maximum annual hours of operation: _____

☐ Maximum annual MWh: _____

☐ Maximum annual starts: _____

☐ Other: _____

(b) Environmental

☐ Maximum annual NO_x emissions: _____

☐ Maximum annual SO_2 emissions: _____

☐ Other: _____

Section 2. Definitions.

A. Unless herein defined, all definitions and acronyms found in the Midwest ISO Tariff shall be incorporated by reference into this Agreement.

B. "Midwest ISO Tariff" shall mean the document adopted by the Midwest ISO, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of the Midwest ISO. For the purposes of determining responsibilities and rights at a given time, the Midwest ISO Tariff, as amended in accordance with the change procedure(s) described in the Midwest ISO Tariff, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

A. Term.

(1) This Agreement is effective beginning on the Effective Date.

(2) The "Term" of this Agreement is a period of twelve (12) months; provided, however, that the Midwest ISO, in its sole discretion, may terminate this Agreement prior to the end of the Term by giving ninety (90) days advance written notice to Participant.

(3) The period beginning on the Start Date and ending when the Agreement terminates is called the "Full Term" of this Agreement.

(4) An Initial Term may be extended by the Midwest ISO beyond one (1) calendar year if the Midwest ISO provides at least ninety (90) days advance notice of such extension to the Participant.

B. Termination by Participant. Participant may, at its option, immediately terminate this Agreement upon the failure of the Midwest ISO to continue to be certified by the Federal Energy Regulatory Commission as an RTO.

C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

D. Notice. All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier

delivery or Federal Express delivery. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required hereunder shall be in accordance with the applicable Sections of the Midwest ISO Tariff.

If to Midwest ISO:

701 City Center Drive
Carmel, IN 46032
Tel. No. (317) 249-5400

If to Participant:
[insert information]

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

(1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized, and is authorized to do business in the Midwest ISO Region;

(2) Participant has full power and authority to enter into this Agreement and perform all of Participant's obligations, representations, warranties, and covenants under this Agreement;

(3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;

(4) The execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;

(5) Except as set out in an exhibit (if any) to this Agreement, Midwest ISO has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;

(6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4.A(5), either (a) the Midwest ISO has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) the Midwest ISO, in its reasonable judgment, has determined that this Agreement is necessary for system reliability, and Participant has made alternate arrangements satisfactory to the Midwest ISO for the resolution of the Default under the Prior Agreement; Participant is a successor in interest or any Affiliates of Participant;

(7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;

(10) Participant acknowledges that it has received and is familiar with the Midwest ISO Tariff; and

(11) Participant acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For

purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on Participant's performance of its obligations under this Agreement.

B. Midwest ISO represents, warrants, and covenants that:

(1) The Midwest ISO is the RTO certified under 18 C.F.R. §35.34 for the Midwest ISO Region and the subject Generation Resource/SCU is located within the Midwest ISO Region;

(2) The Midwest ISO is duly organized, validly existing and in good standing under the laws of Delaware, and is authorized to do business in the Midwest ISO Region;

(3) The Midwest ISO has full power and authority to enter into this Agreement and perform all of Midwest ISO's obligations, representations, warranties, and covenants under this Agreement;

(4) The Midwest ISO's past, present and future agreements or Midwest ISO's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which the Midwest ISO is a party or by which its assets or properties are bound do not materially affect performance of the Midwest ISO's obligations under this Agreement;

(5) The execution, delivery and performance of this Agreement by Midwest ISO have been duly authorized by all requisite action of its governing body;

(6) The Midwest ISO has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental

regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(7) The Midwest ISO is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(8) The Midwest ISO is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and

(9) The Midwest ISO acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance," means resulting in a materially adverse effect on Midwest ISO's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

Participant shall comply with, and be bound by, the Midwest ISO Tariff as it pertains to the provision of SSR Service.

Section 6. Midwest ISO Obligations.

The Midwest ISO shall comply with, and be bound by, all Midwest ISO Tariff provisions.

Section 7. Capacity Tests for SSR Units.

A. Capacity Tests.

(1) A "Capacity Test" is a one-hour performance test of the SSR Unit by Participant. The capacity as shown by a Capacity Test is called "Tested Capacity" and is determined by the applicable net meter readings during the Capacity Test.

(2) Midwest ISO may require that a Capacity Test be run at the Midwest ISO's discretion at any time when the SSR Unit is on-line, but the Midwest ISO may not require more than four (4) Capacity Tests in a contract year. The Midwest ISO must give Participant at least two (2) hours advance notice, after the SSR Unit is on line, of a Capacity Test required by the Midwest ISO, unless Market Participant agrees to less than two (2) hours. Participant may perform as many Capacity Tests as it desires, but Participant may not perform a Capacity Test without the prior approval of the Midwest ISO, which approval the Midwest ISO may not unreasonably withhold or delay. The Parties will reasonably cooperate to coordinate a Capacity Test. The Midwest ISO has the right to reasonable advance notice of, and to have personnel present during, a Capacity Test.

B. Test Report. The Midwest ISO shall give the Capacity Test results in writing (the "Capacity Test Report") to Participant within twenty-four (24) hours after the test is run.

C. Effect of Test.

(1) A determination of Tested Capacity is effective as of the beginning of the hour in which the Capacity Test is started.

(2) For all hours in which Tested Capacity is less than SSR Capacity, then Billing Capacity is reduced as set out in Section 9.E below and remains so reduced until a

subsequent Capacity Test establishes that Tested Capacity equals or exceeds SSR Capacity.

(3) After the Effective Date, the Midwest ISO shall purchase, as part of SSR energy, the electrical energy and/or reactive power produced by the SSR Unit, including ramping energy and/or reactive power, during a Capacity Test requested by the Midwest ISO, net of auxiliary equipment and other electrical requirements of the SSR Unit that are supplied by the SSR Unit. The Midwest ISO shall also purchase, as part of SSR energy, any electrical energy and/or reactive power produced by the SSR Unit during a Capacity Test requested by Participant to attempt to show that Tested Capacity equals or exceeds SSR Capacity, net of auxiliary equipment and other electrical requirements of the SSR Unit that are supplied by the SSR Unit.

Section 8. Operation.

A. Designated Unit Maintenance. Before the start of each contract year, Participant shall furnish the Midwest ISO with its proposed schedule for Planned Outages for inspection, repair, maintenance, and overhaul of the Designated Unit for the contract year. Participant will promptly advise the Midwest ISO of any later changes to the schedule. The specific times for Planned Outages of the Designated Unit must be approved or rejected by the Midwest ISO within thirty (30) days after submission by a Participant. Requested outages shall only be rejected if necessary to assure reliability of the Midwest ISO System. The Midwest ISO shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the Midwest ISO System is not materially affected by those changes. In all cases, Midwest ISO must find

a time for Participant to perform maintenance in a reasonable timeframe as defined by Good Utility Practice.

B. Planning Data. Participant shall timely report to the Midwest ISO those items and conditions necessary for the Midwest ISO's internal planning and compliance with the Midwest ISO's guidelines in effect from time to time. The information supplied must include, without limitation, the following:

(1) Availability Plan for the next day (transmitted to the Midwest ISO dispatcher by 6:00 a.m. of the preceding day). The information submitted in the Availability Plan will be consistent with the information submitted in the Resource Plan;

(2) Revised Availability Plan reflecting changes in the Plan as soon as reasonably practical, but in no event later than sixty (60) minutes after the event that caused the change; and

(3) Status of Designated Unit with respect to Environmental Limitations, if any.

The Midwest ISO shall timely report to Participant the status of the Designated Unit with respect to Operational Limitations.

C. Delivery.

(1) The Midwest ISO shall notify Participant of the hours and levels, if any, that the Designated Unit is to operate. This information is called the "Delivery Plan." The Midwest ISO shall notify Participant according to the Section 4, Scheduling of the Midwest ISO Tariff. The Midwest ISO shall not notify Participant to operate at levels above those stated in the Availability Plan, and the Midwest ISO shall not notify Participant to operate the SSR Unit in a way that would violate the limitations on operation set out in Section 1 above.

(2) Participant shall produce and deliver electrical energy and/or reactive power from the SSR Unit to the Delivery Point at the levels specified in the Delivery Plan.

(3) The Midwest ISO may dispatch the Designated Unit only when necessary to ensure transmission system security, including any emergency situation. The Midwest ISO may not dispatch the Designated Unit if compliance with the dispatch would cause the Designated Unit to exceed the Operational and Environmental Limitations, if any, set forth in Section 1 above or at levels greater than are shown in the Availability Plan. Notwithstanding the foregoing, Participant retains the responsibility for operating the Designated Unit in accordance with limits provided by applicable law.

(4) During the hours of operation of the SSR Unit specified in the Delivery Plan, Participant may only participate in the Midwest ISO Energy Markets from the SSR Unit in accordance with the relevant conditions in the Midwest ISO Tariff.

Section 9. Payment Provisions.

A. For the transfer of any funds under this Agreement directly between the Midwest ISO and Participant and pursuant to the Settlement procedures for Ancillary Services described in the Midwest ISO Tariff, the following shall apply:

(1) Participant appoints the Midwest ISO to act as its agent with respect to such funds transferred and authorizes the Midwest ISO to exercise such powers and perform such duties as described in this Agreement or the Midwest ISO Tariff, together with such powers or duties as are reasonably incidental thereto.

(2) The Midwest ISO shall not have any duties, responsibilities to, or fiduciary relationship with Participant and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement except as expressly set forth herein or in the Midwest ISO Tariff.

B. Availability Payments for the SSR Unit. The Midwest ISO shall make availability payments to SSR Units to ensure the SSR Unit is available to produce reactive power and, when required, real energy.

C. Schedule 2 Payments for SSR Unit. SSR Units shall recover costs associated with Reactive Supply and Voltage Control Services through Schedule 2. Schedule 2 compensation shall be provided along with other compensation to encourage parties not to decommission, place into extended reserve shutdown or disconnect potential SSR Units.

D. True-Up Provisions for the SSR Unit. At the conclusion of each calendar year, the Midwest ISO shall conduct an annual true-up to match market and other revenues with SSR Unit annual revenue requirements.

E. Performance-Related Payment Adjustments.

(1) For a SSR Unit, a "Misconduct Event" means any hour or hours during which Participant is requested to, but does not, deliver to Midwest ISO electrical energy and/or reactive power at a level of at least 98% on each hour (on a kilowatt-hour/hour or MVAR/hour basis) of the level shown in the Availability Plan.

(2) Each day that a Misconduct Event continues after Participant receives written notice from Midwest ISO of the Misconduct Event is a separate Misconduct Event. A Misconduct Event is measured on a daily basis.

(3) Participant is excused from the Misconduct Event payment reduction arising from any Misconduct Event that is (a) not due to intentionally incomplete, inaccurate, or dishonest reporting to Midwest ISO by Participant of the availability of the Designated Unit, or (b) caused by a failure of the Midwest ISO Transmission Grid.

(4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, Midwest ISO's payments to Participant are reduced by the Unexcused Misconduct Amount of $10,000 per day.

(5) Midwest ISO shall inform Participant in writing of its determination if a Misconduct Event is unexcused.

(6) Midwest ISO may offset any amounts due by Participant to Midwest ISO under this Section 9.E against any amounts due by Midwest ISO to Participant under this Agreement.

Section 10. Default.

A. Event of Default.

(1) Failure to make payment or transfer funds as provided in the Midwest ISO Tariff shall constitute a material breach and shall constitute an event of default ("Default") unless cured within three (3) Business Days after delivery by the non-breaching Party of written notice of the failure to the breaching Party. Provided

further that if such a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default by the breaching Party.

(2) For any material breach other than a failure to make payment or transfer funds, the occurrence and continuation of any of the following events shall constitute an event of Default by Participant:

(a) Except as excused under subsection (4) or (5) below, a material breach, other than a failure to make payment or transfer funds, of this Agreement by Participant, including any material failure by Participant to comply with the Midwest ISO Tariff, unless cured within fourteen (14) Business Days after delivery by Midwest ISO of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by the Midwest ISO of written notice of such material breach by Participant and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth (4th) such breach shall constitute a Default.

(b) Participant becomes Bankrupt, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings that is dismissed within ninety (90) days thereafter.

(c) The Designated Unit's operation is abandoned without intent to return it to operation during the Full Term; or

(d) Three or more unexcused Misconduct Events occur during a contract year.

(3) Except as excused under subsection (4) or (5) below, a material breach of this Agreement by Midwest ISO, including any material failure by Midwest ISO to comply with the Midwest ISO Tariff, other than a failure to make payment or transfer funds, shall constitute a Default by the Midwest ISO unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to Midwest ISO. The Midwest ISO must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by the Midwest ISO and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a rolling twelve (12)-month period, the fourth such breach shall constitute a Default.

(4) For any material breach other than a failure to make payment or transfer funds, the breach shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) calendar days, prompt written notice is provided by the

breaching Party to the other Party, and the breaching Party began work or other efforts to cure the breach within three (3) Business Days after delivery of the notice to the breaching Party and prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.

(5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

(1) Midwest ISO's Remedies for Default. In the event of a Default by Participant, Midwest ISO may pursue any remedies Midwest ISO has under this Agreement, at law, or in equity, subject to the provisions of Section 12: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the Midwest ISO Tariff does not specify a remedy for a particular Default, Midwest ISO may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice.

(2) Participant's Remedies for Default.

(a) Unless otherwise specified in this Agreement or in the Midwest ISO Tariff, and subject to the provisions of Section 12: Dispute Resolution of this Agreement, in the event of a Default by the Midwest ISO, Participant's remedies shall be limited to:

(i) Immediate termination of this Agreement upon written notice to Midwest ISO,

(ii) Monetary recovery in accordance with the Settlement procedures set forth in the Midwest ISO Tariff, and

(iii) Specific performance.

(b) However, in the event of a material breach by Midwest ISO of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to Midwest ISO.

(c) If as a final result of any dispute resolution Midwest ISO, as the settlement agent, is determined to have over-collected from a Market Participant(s), with the result that refunds are owed by Participant to Midwest ISO, as the settlement agent such Market Participant(s) may request Midwest ISO to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from Midwest ISO. In the event of such request, Midwest ISO, in its sole discretion, may agree to assign to such Market Participant Midwest ISO's rights to seek refunds from Participant, and Participant shall be deemed to have consented to such assignment. This subsection (c) shall survive termination of this Agreement.

(3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the Midwest ISO Tariff.

C. Force Majeure.

(1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If

either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the Midwest ISO Tariff or under this Agreement, except that the excuse from Default provided by subsection 10.A(5) above is still effective.

D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 11. Limitation of Damages and Liability and Indemnification.

A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE MIDWEST ISO BUSINESS PRACTICES, MIDWEST ISO OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE MIDWEST ISO PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE

UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

B. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection 13.A of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the Midwest ISO Tariff (outside of this Agreement).

Section 12. Dispute Resolution.

A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the Midwest ISO Tariff.

B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 13. Miscellaneous.

A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in Delaware and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware that apply to contracts executed in and performed entirely within the State of Delaware, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Delaware, and the Parties hereby waive any defense of *forum non-conveniens*.

B. Assignment.

(1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with the Midwest ISO):

(a) Where any such assignment or transfer is to an Affiliate of the Party; or

(b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or

(c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notices of Default, and an opportunity for the Financing Person to cure Defaults.

(2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.

C. No Third Party Beneficiary. Except with respect to the rights of other Market Participants in Section 10.B and the Financing Persons in Section 13.B, (1) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (2) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (3) this Agreement is intended solely for the benefit of the Parties, and the Parties

expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (1) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (2) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.

Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.

Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this

Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

E. Entire Agreement. Any Exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. 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. An agreement, statement, or promise not contained in this Agreement is not valid or binding.

F. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying Midwest ISO Tariff described in the Midwest ISO Tariff. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.

G. Midwest ISO's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to Midwest ISO under the Midwest ISO Tariff. Such records shall be retained and shall be available for audit or examination by the Midwest ISO as hereinafter provided. The Midwest ISO has the right during Business Hours and upon reasonable written notice and reasonable cause to examine the

records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

H. Participant's Right to Audit Midwest ISO. Participant's right to data and audit of Midwest ISO shall be as described in the Midwest ISO Tariff and shall not exceed the rights described in the Midwest ISO Tariff.

I. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.

J. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to Midwest ISO of any such conflict affecting Participant. In the event of a conflict between the Midwest ISO Tariff and this Agreement, the provisions expressly set forth in this Agreement shall control.

K. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party except as provided in Section 9.A.

L. No State Public Utility Created. This Agreement may not be interpreted or construed as modifying the jurisdictional status of the Midwest ISO, including, but not limited to establishment of the Midwest ISO as a state public utility under the laws of any jurisdiction, as a result of the Midwest ISO's performance under this Agreement.

M. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:

(1) The singular includes the plural, and the plural includes the singular.

(2) The present tense includes the future tense, and the future tense includes the present tense.

(3) Words importing any gender include the other gender.

(4) The word "shall" denotes a duty.

(5) The word "must" denotes a condition precedent or subsequent.

(6) The word "may" denotes a privilege or discretionary power.

(7) The phrase "may not" denotes a prohibition.

(8) References to statutes, tariffs, regulations or the Midwest ISO Tariff include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or the Midwest ISO Tariff referred to.

(9) References to "writing" include printing, typing, lithography, and other means of reproducing words in a tangible visible form.

(10) The words "including," "includes," and "include" are deemed to be followed by the words "without limitation."

(11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.

(12) References to Articles, Sections (or subdivisions of Sections), Exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, the Midwest ISO Tariff and other contractual instruments include all subsequent amendments

and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.

(15) References to time are to Eastern Standard Time.

(16) References to any capitalized work or phrase not defined herein shall have the meanings from the Midwest ISO Tariff.

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

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Midwest Independent Transmission System Operator, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

Participant:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1

Detailed Description of SSR Unit

[Describe Generation Unit/SCU more specifically]