



CITY COUNCIL/ELECTRICAL
ADVISORY COMMITTEE

June 11, 2014 – 6:00 p.m.
Regular Meeting

CITY COUNCIL

Marc Tall, Mayor
Ronald Beauchamp, Mayor Pro-Tem
Patricia Baribeau, Council Member
Michael Sattem, Council Member
Ralph Blasier, 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

ELECTRICAL ADVISORY COMMITTEE

Tim Wilson, Chairperson
Ann Bissell, Vice Chairperson
Larry Arkens, Committee Member
Glendon Brown, Committee Member
John Anthony, Committee Member
Vacant Seat
Vacant Seat

Catherine Bonifas Civic Center: 225 N 21st Street - Escanaba, MI 49829

Meeting Agenda

Wednesday, June 11, 2014

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

1. **Update - Electric Department –General Operations.**
Explanation: Electrical Superintendent Mike Furmanski will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the current departmental activities.
2. **Update– Operation and Maintenance of Power Plant – Pro Energy Services, Inc.**
Explanation: Pro Energy Services, Inc. will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the operation and maintenance of the power plant.
3. **Approval – Professional Services – Power System Engineering.**
Explanation: Administration is seeking Council approval to continue the professional services agreement with Power System Engineering of Minneapolis, MN for continued assistance in completing such things as load forecasting, power purchasing option analysis and other technical services as needed.
4. **Approval – SSR Agreement.**
Explanation: Administration is seeking Council approval to enter into an SSR agreement with MISO for the period of June 15, 2014 through June 14, 2015.
5. **Update – Power Plant Purchase Agreement/Sale.**
Explanation: An update on the sale of the power plant will be provided.

Agenda - June 11, 2014

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

OFFICIAL PROCEEDINGS
CITY COUNCIL
ELECTRICAL ADVISORY COMMITTEE
CITY OF ESCANABA, MICHIGAN
Special Joint Meeting
Wednesday, May 14, 2014

Pursuit to a meeting notice posted May 9, 2014, the meeting was called to order by the Mayor Marc D. Tall at 6:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Marc D. Tall, Council Members, Patricia A. Baribeau, Ronald J. Beauchamp, and Ralph B. Blasier.

Absent: Council Member Michael R. Sattem who was out of the community.

Present: Electrical Advisory Committee (EAC) Members: Chairperson Wilson (arrived at 6:18 p.m.), Jon Anthony, Larry Arkens, Ann Bissell, and Glendon Brown

Absent: Two vacancies, and Power Plant Liaison.

Also Present: City Manager James V. O'Toole, Electric Superintendent Mike Furmanski, Jack Scott of Pro Energy Services, Inc., Charles DeTiege of Escanaba Green Energy (EGE), members of the public and media.

Beauchamp moved, Blasier seconded, **CARRIED UNANIMOUSLY**, to approve the agenda as submitted.

UNFINISHED BUSINESS – None

CONFLICT OF INTEREST – None

PUBLIC HEARING – None

NEW BUSINESS

Update – Electric Department –General Operations.

Electrical Superintendent Mike Furmanski updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the current departmental activities. He advised his department was primarily preparing for new construction season sites.

Update – Operation and Maintenance of Power Plant – Pro Energy Services, Inc.

Jack Scott of Pro Energy Services, Inc. updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the operation and maintenance of the power plant.

- Reviewed dates and hours Power Plant Units ran in April;

- There was 6,343 tons of coal on the dock;
- No accidents or injuries were reported in April;
- Reviewed maintenance with Units 1 & 2, and reported no repairs with the Combustion Turbine;
- No Air Monitoring deviations in the month of April.

Approval – Transmission – Distribution Interconnection Agreement.

Administration sought Council approval of an updated Transmission – Distribution Interconnection Agreement between the City of Escanaba and American Transmission Company, LLC.

Electric Superintendent Furmanski briefly reviewed the agreement and advised the issue regarding insurance requirements was corrected and, at this time, requested Council approval of the Distribution Interconnection Agreement between the City of Escanaba and American Transmission Company, LLC.

NB-3 Beauchamp moved, Baribeau seconded, **CARRIED UNANIMOUSLY**, to approve of an updated Transmission – Distribution Interconnection Agreement between the City of Escanaba and American Transmission Company, LLC.

Approval – Coal Purchase- Escanaba Generation Station.

Administration sought Council approval to purchase coal needed at the Escanaba Generation Station.

Electric Superintendent Furmanski briefly reviewed the history of the approved last purchase agreement, the preparation needed for dock coal, and C. Reiss Coal delay. He advised, with the delays, and quality of dock coal, other vendors had submitted proposals to supplement the Power Plant coal needs. Mr. Furmanski recommended Council approve spot coal supplement agreement received from Upper Lakes Coal Company, Inc.

NB-4 Blasier moved, Baribeau seconded, to approve the purchase of 2000 tons of coal from Upper Lakes Coal Company delivered at \$91.50 per ton for coal needed at the Escanaba Generation Station.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Baribeau, Beauchamp, Tall

Nays: None

MOTION CARRIED.

Approval – Coal Storage and Transportation Agreement.

Administration sought Council approval of an updated Storage and Transportation Agreement between the City and Upper Lakes Coal Company for the coal currently being stored on the Upper Great Lakes Coal Company dock in Gladstone, MI.

Electric Superintendent Furmanski briefly reviewed updated changes to the agreement between the City and Upper Lakes Coal Company for the coal which was currently being stored on the Upper Great Lakes Coal Company dock in Gladstone, MI.

NB-5 Baribeau moved, Blasier seconded, **CARRIED UNANIMOUSLY**, to approve of an updated Storage and Transportation Agreement between the City and Upper Lakes Coal Company for the coal currently being stored on the Upper Great Lakes Coal Company dock in Gladstone, MI.

Approval – LED Street Lights Purchase - Citywide.

Administration sought Council approval to purchase LED streetlights from Prime Supply Co. of Iron Mountain, MI in the amount of \$95,843.40. This purchase was included in the current budget.

Electric Superintendent Furmanski briefly reviewed the scope of the agreement.

NB-6 After discussion, Blasier moved, Beauchamp seconded, to purchase LED streetlights from Prime Supply Co. of Iron Mountain, MI in the amount of \$95,843.40.

Upon a call of the roll, the vote was as follows:

Ayes: Blasier, Beauchamp, Baribeau, Tall

Nays: None

MOTION CARRIED.

Approval – Regulator Purchase – Westside Substation.

Administration reviewed and sought Council approval to purchase 3 voltage regulators for installation into the West Side Substation for an amount not to exceed \$150,000. This purchase was included in the current operating budget.

NB-7 Beauchamp moved, Baribeau seconded, to purchase three (3) voltage regulators for installation into the West Side Substation for an amount not to exceed \$150,000.

Upon a call of the roll, the vote was as follows:

Ayes: Beauchamp, Baribeau, Blasier, Tall
Nays: None

MOTION CARRIED.

Update – NextEra Energy Purchase Agreement and Capacity.

Administration provided an update on the current wholesale energy agreement between the City and NextEra Energy Power Marketing, LLC.

- Reviewed prices from December, February, and May. Prices had jumped for a variety of reasons;
- Currently, it was recommended not to renew the whole agreement;
- There were options to lock in half of our energy now and the other half later;
- Administration recommended to sit tight and continue to review.

Update – Power Plant Purchase Agreement/Sale.

Charles DeTiege of EGE updated Council and the Electrical Advisory Committee on the sale of the Power Plant. Mr. DeTiege advised there were changes in closing conditions which prohibited EGE to proceed with closing the sale last week. He stated EGE still had their financing, and those closing conditions have now been met. EGE expected a new closing date shortly.

GENERAL PUBLIC COMMENT – None

COUNCIL/COMMITTEE, STAFF REPORTS – None

ADJOURNMENT

Hearing no further public comment, or further reports from the Electrical Advisory Committee or Council, the meeting adjourned at 6:32 p.m.

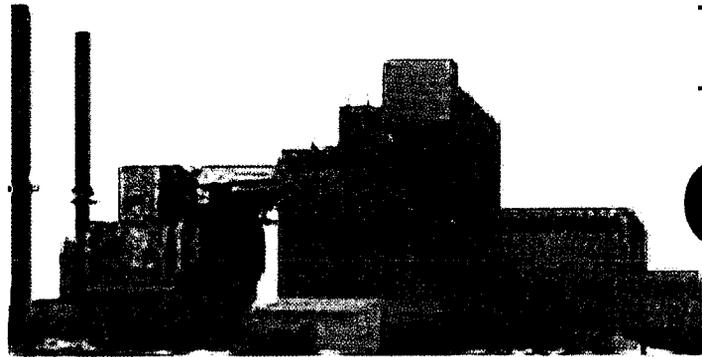
Respectfully submitted,

Robert S. Richards, CMC
City Clerk

Approved: _____
Marc D. Tall, Mayor

NB#2
CC/EP C
6/11/14

Escanaba Operating Services
Monthly Report
May 2014



Escanaba Generating Station

**Escanaba
Operating
Services**

Executive Summary

The power plant was operated during the month of May 2014, as described in the tables below.

There is 0 tons of coal on the dock. The OSHA incident, rate for May is zero.

Key Performance Indicators

Measure	Unit of Measure	Month	Year to Date
Steam Plant Gross Electrical Generation	MWH	6671	17236
Unit 1 Net Electrical Generation	MWH	2854	7804
Unit 2 Net Electrical Generation	MWH	3501	7763
Unit 1 Hours of Operation	Hours	469.9	953.9
Unit 2 Hours of Operation	Hours	506.2	870.6
Coal Consumption	Tons	3569	9543
Coal on Dock	Tons	0	0
Steam Plant Net Heat Rate	BTU/KWH	n/a	n/a
Plant Availability	%	95%	93%
Combustion Turbine Gross Electrical Generation	MWH	0	215
Combustion Turbine Station Service	MWH	20.3	215
Combustion Turbine Hours of Operation	Hours	0	43
Fuel Oil Consumption	Gallons	0	40195
Combustion Turbine Availability	%	100%	100%

Operations Summary

Unit Starts

Unit 1 was started once during the month. Unit 2 was not started during the month.

Unit	Date	On-Line Time	Off-Line Time	Reason
1	5-7		16:00	Tube Leak
1	5-9	03:00		MISO Dispatch
1	5-22		00:57	MISO Request
2	5-22		02:14	MISO Request
2				
2				
CTG				

Unit Trips and Unplanned Outages

Unit	Date	Breaker Open Time	Unit Released	Duration (Hours)	Cause
1	5-7	16:00	5-9	35	Tube leak back wall.
2	Note				
CTG	None				

Planned Outages

There were no Planned Outages during the month of May.

Unit	Start Date	Start Time	End Date	End Time	Cause
1	None				
2	None				
CTG	None				

There were no Forced Outages during the month

Unit	Start Date	End Date	End Time	Load Limit	Cause
1	5-7	5-9			
2	None				
CTG	None				

Maintenance Activities

Plant Major Maintenance Activities for May 2014

Unit 1

Routine maintenance and equipment replacements occurred throughout the month.

Unit 2

Routine maintenance and equipment replacements occurred throughout the month.

Combustion Turbine

There were no repairs required on the Combustion Turbine/Generator.

Balance of Plant Outstanding Issues:

None

Emissions Compliance Overview-Air/Water

- There were no Air Monitoring deviations in the month of May.

Air Monitoring Deviations

Start Date	Start Time	End Date	End Time	Opacity Parameter	Cause
None					

Water – NPDES Permit Deviations

- There were no NPDES violations during the month of May.

Water – Groundwater

- There were no Groundwater deviations during the month of May.

Water Monitoring Deviations

Start Date	End Date	Parameter	Cause

Occupational Safety and Health Overview

OSHA Summary of Work Related Injuries and Illnesses

- 1) There were no OSHA work related injuries or illnesses during the month of May.

EH&S Incidents – (Near Misses and/or Property Damage)

- 1) There were no lost time accidents, near misses or property damage during the month.

Labor Statistics

Labor Statistics (Note: These statistics are for the 2014 calendar year from Jan 1 through December 31.)

Item	Month	Year to Date
Total Man-Hours Worked	3138.25	15170.5
Total Number of Standard Time (ST) Hours	2429	12437.5
Total Number of Overtime (OT) Hours	390.75	1302
Total Number of Double Time (DT) Hours	318.5	1351.25

MEMORANDUM

NB # 3
CC/EAC
6/11/14

To: Jim O'Toole

From: Mike Furmanski

Date: 06JUN14

Re: Power System Engineering

We have been using Power System Engineering for many years now and have been very satisfied with their work. Now that we have a Power Purchase Agreement in place we have not been using their services much at all. I would like to get Council approval to continue using PSE as needed in their reduced role. One specific area where I will need some assistance is in MISO's load forecasting requirements. MISO made changes to what is required for the forecast and PSE's help would be very beneficial in meeting MISO's requirements. PSE could help analyze various power purchase proposals. They are also a good source for trends in the industry.

NB# 4
CC/EAC.
6/11/14

MISO
FERC Electric Tariff
ATTACHMENTS

ATTACHMENT Y-1
Standard Form System Support Resource (SSR) Agreement
31.0.0

DRAFT

CITY 6/5 EDITS TO MISO 6/4 VERSION

ATTACHMENT Y-1

Second Amended and Restated
System Support Resource ("SSR") Agreement

Between

The City of Escanaba

and

Midcontinent Independent System Operator, Inc.

This SSR Agreement ("Agreement"), effective as of the 15th of June, 2014 ("Effective Date"), is entered into by and between The City of Escanaba, Michigan, a municipality ("Participant") and Midcontinent Independent System Operator, Inc. ("MISO").

Recitals

WHEREAS:

- A. Participant owns or operates a Generation Resource or a Synchronous Condenser Unit ("SCU") as defined in the MISO Tariff, and MISO requires Participant to supply service in the MISO Region in order to maintain the reliability of the Transmission System;
- B. MISO is the Regional Transmission Organization ("RTO") for the MISO Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which MISO and Participant will discharge their respective duties and responsibilities under the MISO Tariff.

Agreements

MISO
FERC Electric Tariff
ATTACHMENTS

ATTACHMENT Y-1
Standard Form System Support Resource (SSR) Agreement
31.0.0

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein,
MISO and Participant (the "Parties") hereby agree as follows:

RRFF

Section 1. Unit-Specific Terms.

- A. Start Date: June 15, 2014 (renewal term).
- B. Start Time: 12:00 a.m.
- C. Unit: Escanaba Steam Units 1 & 2.

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

- D. Description of Units: The Units are located at the Escanaba Generating Station, 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 MISO Tariff.

- E. Name Plate Information for SSR Units:

- (a) SSR Capacity in MW: 12.5 MW for each of the Units
- (b) Power Factor Lagging
 - (i) 0.9 P.F. (at Generator Main Leads)
 - (ii) _____ P.F. (at high side of Main Power Transformer)
- (c) Power Factor Leading
 - (i) 0.9 P.F. (at Generator Main Leads)
 - (ii) _____ P.F. (at high side of Main Power Transformer)

- F. Delivery Point: UPPC.ESCST1 and UPPC.ESCST2

- G. Revenue Meter Location (Use Resource IDs): [Not applicable]

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

SSR Unit:

(a) Operational

Maximum annual hours of operation: 8,500

Maximum annual MWh: 145,000

Maximum annual starts: the number of starts as required by MISO for system reliability.

Other: _____

(b) Environmental

Maximum annual NO_x emissions: _____

Maximum annual SO₂ emissions: Coal Spec 1.5% Sulfur by weight for 12,000 Btud/lb.

Other: particulate 0.3 lbs / 1,000 lbs. exhaust gas corrected to 50% excess-air Opacity <20% Opacity for 6 minute average

Section 2. Definitions.

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

B. "MISO Tariff" shall mean the document adopted by MISO, 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 MISO. For

the purposes of determining responsibilities and rights at a given time, the MISO Tariff, as amended in accordance with the change procedure(s) described in the MISO 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 12 months; provided, however, that MISO, 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) The Term of this Agreement may be extended by MISO if MISO 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 MISO to continue to be certified by the Federal Energy Regulatory Commission ("FERC" or the "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 (except for the two-hour advance notice specified in Section 7.A.(2) and operating notices exchanged in the ordinary course of business) 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 MISO Tariff.

If to MISO:

General Counsel
Midcontinent Independent System Operator
720 City Center Drive
Carmel, IN 46032
Tel. No. (317) 249-5400

If to Participant:

Mr. Michael Furmanski
Electrical Superintendent
City of Escanaba
1711 Sheridan Road
Escanaba, MI 49829
Phone: (906) 768-0061

- E. Transfer of Ownership of SSR Units. Both Parties recognize that Participant has been negotiating to transfer ownership of the SSR Units to a new owner. In connection with completion of the transfer of ownership, Participant, MISO, and the new owner shall

enter into a written agreement pursuant to which Participant shall assign and the new owner shall assume and agree to be bound by Participant's obligations under this Agreement, including, but not limited to, Section 8.A.

- F. Termination Upon Conversion of SSR Unit. MISO and Participant agree that MISO shall have the right to immediately terminate this SSR Agreement upon commencement of a planned outage for the purpose of conversion of one of the SSR Units to an alternative fuel source. Participant agrees to provide MISO with written notification of such planned outage, which will include a schedule for all outages to accommodate the complete conversion, in addition to submittal of the outage request via the MISO's outage scheduling system in accordance with the MISO Business Practices Manual applicable to Generator Planned Outage scheduling. MISO shall exercise discretion to continue the SSR Agreement based upon the availability of the SSR Units to support system reliability during the proposed conversion schedule, and the continued need for the SSR Units. If only one of the two SSR Units is converted, then MISO and Participant will re-negotiate the compensation provided for in Exhibit 2. Conversion of the SSR Units shall not prevent a new owner from using the SSR provisions found in Section 38.2.7 of the Tariff to request SSR status for the converted facility.

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 MISO 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, MISO has not, within the twelve (12) 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) MISO has been paid, before execution of this Agreement, all sums due to it in relation to such prior agreement, or (b) MISO, in its reasonable judgment, has determined that this Agreement is necessary for the reliability of the Transmission System, and Participant has made alternate arrangements satisfactory to MISO for the resolution of the Default under the prior agreement with Participant, any company of which Participant is a successor in interest or any Affiliate 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 board⁹ 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 MISO 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. MISO represents, warrants, and covenants that:

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

- (2) MISO is duly organized, validly existing and in good standing under the laws of Delaware, and is authorized to do business in the MISO Region;
- (3) MISO has full power and authority to enter into this Agreement and perform all of MISO's obligations, representations, warranties, and covenants under this Agreement;
- (4) MISO's past, present and future agreements or MISO's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which MISO is a party or by which its assets or properties are bound do not materially affect performance of MISO's obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by MISO have been duly authorized by all requisite action of its governing body;
- (6) MISO 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) MISO 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) MISO is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) MISO 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 MISO’s performance of its obligations under this Agreement.

Section 5. Participant Obligations.

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

Section 6. MISO Obligations.

MISO shall comply with, and be bound by, all MISO Tariff provisions.

Section 7. Capacity Tests for SSR Units.

- A. If the SSR Units are designated as Capacity Resources pursuant to Module E-1 of the MISO Tariff, then the capacity test provisions of Module E-1 shall apply. If the SSR Units are not so designated, the provisions of Section 7(B) of this Agreement shall apply.
- B. Capacity Tests.
 - (1) A “Capacity Test” is a one-hour performance test of the SSR Units 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) MISO may require that a Capacity Test be run at MISO's discretion at any time when the SSR Units are on-line, but MISO may not require more than four (4) Capacity Tests in a contract year. MISO must give Participant at least two (2) hours advance notice, after the SSR Units are on line, of a Capacity Test required by MISO, unless 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 MISO, which approval MISO may not unreasonably withhold or delay. The Parties will reasonably cooperate to coordinate a Capacity Test. MISO has the right to reasonable advance notice of, and to have personnel present during, a Capacity Test.

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

D. 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.F below and remains so reduced until a subsequent Capacity Test establishes that Tested Capacity equals or exceeds SSR Capacity.

(3) After the Effective Date, MISO shall dispatch, as part of SSR energy, the electrical energy and/or reactive power produced by the SSR Units, including ramping energy and/or reactive power, during a Capacity Test requested by

MISO, net of auxiliary equipment and other electrical requirements of the SSR Units that are supplied by the SSR Units. MISO shall also dispatch, as part of SSR energy, any electrical energy and/or reactive power produced by the SSR Units 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 Units that are supplied by the SSR Units.

Section 8. Operation.

- A. Designated Unit Maintenance. Before the start of each contract year, Participant shall furnish MISO with its proposed schedule for Generator Planned Outages for inspection, repair, maintenance, and overhaul of the Designated Units for the contract year, in accordance with MISO's outage scheduling system. MISO shall approve or reject Generation Planned Outages in accordance with MISO's Business Practices Manual. MISO shall, if requested by Participant, endeavor to accommodate changes to the schedule to the extent that reliability of the MISO System is not materially affected by those changes. In all cases, MISO 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 MISO those items and conditions necessary for MISO's internal planning and compliance with MISO's guidelines in effect from time to time. The information supplied must include, without limitation, the following:
- (1) Availability Plan (*i.e.* Day-Ahead Offer) for the next day in accordance with Tariff deadlines;

- (2) Revised Availability Plan reflecting changes in the Availability Plan in accordance with Tariff deadlines; and
- (3) Status of Designated Units with respect to Environmental Limitations, if any. MISO shall timely report to Participant the status of the Designated Units with respect to Operational Limitations.

C. Delivery.

- (1) MISO shall notify Participant of the hours and levels, if any, that the SSR Units are to operate through day-ahead commitment and real-time dispatch for system reliability. The set point in the real-time dispatch shall be considered the "Delivery Plan" for the purposes of this Agreement. MISO 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. Notwithstanding the foregoing, Participant shall be able to offer its capacity into the MISO Energy & Ancillary Services Markets outside of the Delivery Plan when the SSR Units are not needed to address the reliability issues pertaining to this Agreement, consistent with Section 38.2.7(g) of the Tariff. Such offers into MISO Markets shall be cost-based, including but not limited to Start-Up, No Load and Energy Offers.
- (2) Participant shall produce and deliver electrical energy and/or reactive power from the SSR Units to the Delivery Point at the levels specified in the Delivery Plan.
- (3) MISO may dispatch the SSR Units when necessary to ensure transmission system security, including any emergency situation. MISO may not dispatch the

Designated Unit if compliance with the dispatch would cause the Designated Unit to exceed the Operational or 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 SSR Units in accordance with limits provided by applicable law.

- (4) During the hours of operation of the SSR Units specified in the Delivery Plan, Participant may only participate in the MISO Energy and Ancillary Services Markets from the SSR Units in accordance with the relevant conditions in the MISO Tariff. Participant shall ~~may~~ offer its SSR capability into the MISO Energy and Ancillary Services Markets to the extent permitted by the Operational and Environmental Limitations when the SSR Units are available and not needed to address the reliability issues pertaining to this Agreement, consistent with Section 38.2.7 of the Tariff. Participant shall designate the Commitment Status of the SSR Unit as either Must Run or Economic, and the Dispatch Status as Economic. Such offers into MISO markets shall be cost-based, including Start-Up, No Load, and Energy Offers. Participant may also offer, from the SSR Units, Zonal Resource Credits into the Planning Resource Auction or include the SSR Units in a Fixed Resource Adequacy Plan pursuant to the terms of the Tariff.

Comment [A1]: To conform with tariff language in 38.2.7.

Section 9. Payment Provisions.

- A. For the transfer of any funds under this Agreement directly between MISO and Participant and pursuant to the Settlement procedures described in the MISO Tariff, the

following shall apply:

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

- B. Availability Payments for the SSR Units. MISO shall make to Participant monthly availability payments to ensure the SSR Units are available to produce reactive power and, when required, real energy, pursuant to the terms of Exhibit 2 to this Agreement. The amount of the monthly availability payment shall be the Monthly SSR Payment as defined in Exhibit 2.
- C. Schedule 2 Payments for SSR Units. SSR Units shall recover costs associated with Reactive Supply and Voltage Control Services through Schedule 2, which recovery shall be treated as determined in Exhibit 2.
- D. Dispatch Payments. In addition to the availability payments described in Section 9(B), MISO shall also compensate Participant for each dispatch of the SSR Units pursuant to the terms of Exhibit 2 to this Agreement.

- E. Settlement Provisions for the SSR Units. At the conclusion of each calendar month, MISO shall conduct a settlement process for the SSR Unit(s), consistent with the MISO Tariff requirements.
- F. Performance-Related Payment Adjustments.
- (1) For the SSR Units, a "Misconduct Event" means any hour or hours during which Participant is requested to, but does not, deliver to MISO electrical energy and/or reactive power which is one (1) megawatt or more less than the level shown in the Delivery Plan.
 - (2) Each day that a Misconduct Event continues after Participant receives written notice from MISO 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 MISO by Participant of the availability of the Designated Units, or (b) caused by a failure of the MISO Transmission System.
 - (4) If a Misconduct Event is not excused, then to reflect this lower-than-expected quality of firmness, MISO's payments to Participant are reduced by the Unexcused Misconduct Amount of no more than \$10,000 per day for both units.
 - (5) MISO shall inform Participant in writing of its determination if a Misconduct Event is unexcused.
 - (6) MISO may offset any amounts due by Participant to MISO under this Section 9.F

against any amounts due by MISO to Participant under this Agreement.

(7) Subject to the maximum amount set forth in this Section 9(F)(4), the Unexcused Misconduct Amount reduces payments to Participant (see Exhibit 2), and is composed of two parts:

- (a) A fixed component equal to a proportionate reduction in the Monthly SSR Payment to Participant (see Exhibit 2) according to the reduction in Billing Capacity below the SSR Capacity, calculated for that portion of the month during which such reduction occurs. Billing Capacity is the lower of (i) the SSR Capacity and (ii) the Tested Capacity if lower than SSR Capacity for reasons not reported through the Outage Scheduler or if such reporting to MISO is intentionally incomplete, inaccurate, or dishonest.
- (b) A variable component equal to the product of: (i) the difference between:
 - a) the level shown in the Delivery Plan and b) the amount of electrical energy and/or reactive power delivered to MISO; and (ii) an SSR Unit's Hourly Ex Post LMP in any hour or hours in which a Misconduct Event occurs.

G. Compensation for Unanticipated Repairs. During the Term of this Agreement, any necessary repair or repairs to the SSR Unit(s) shall not entitle Participant to any additional compensation under this Agreement, except as provided herein. For the purposes of this Section, "unanticipated" repairs are those for which compensation is not provided for in the Annual SSR Amount contained in Exhibit 2 to this SSR Agreement.

If the need arises to make an unanticipated repair to one or both of the SSR Units, the Participant shall notify MISO before incurring said repair costs, together with reasonable information in support thereof. Upon such notification, MISO shall fund such repairs, subject to the terms of parts 1 and 2 of this Section 9.G. In no circumstances shall the costs of repairs authorized by MISO pursuant to this Agreement be the responsibility of Participant. Participant shall not be deemed to have a Misconduct Event, nor shall Participant be subject to any other performance penalties under this Agreement or the MISO Tariff for the period of time after Participant notifies MISO of the need for repairs as provided in this Section 9.G and MISO provides to Participant written notification that directs Participant to make such repairs pursuant to the terms of parts 1 and 2 of this Section 9.G. MISO and Participant agree that “unanticipated repairs” in this Section 9.G shall not include the costs of converting the SSR Units from coal to an alternative fuel.

- (1) **Non-Emergency Repairs.** Except as provided for in part 2 of this Section 9(G), before MISO may issue a notice to fund unanticipated repairs, MISO shall make and receive approval of a Federal Power Act (“FPA”) Section 205 filing at the Commission to modify this Agreement to provide for the recovery of such repair costs and shall serve such filing on all parties to whom such repair costs would be allocated. Participant shall not make such unanticipated repairs unless and until MISO informs Participant in writing that it agrees to fund such repairs and has received FERC approval to modify this Agreement to provide for the recovery of such costs.

- (2) Emergency Repairs. If MISO reasonably believes that system security and reliability require any unanticipated repairs to be made before FERC can act on a Section 205 filing ("Emergency Repairs"), MISO shall so notify Participant in writing and direct Participant to make such Emergency Repairs and MISO shall agree to fund such Emergency Repairs, and make a Section 205 filing at FERC as soon as reasonably practicable thereafter to modify this Agreement to provide for recovery of such repair costs. In the case of Emergency Repairs, if FERC later determines MISO's decision to fund such Emergency Repairs was imprudent, or otherwise does not accept such modifications to the Agreement, the costs of the Emergency Repairs shall be allocated pursuant to the terms of the MISO Tariff.

- H. Allocation of SSR Compensation. MISO will charge the LSEs that benefit from operation of the subject SSR Unit in accordance with Schedule 43.

Section 10. Default.

A. Event of Default.

- (1) Failure to make payment or transfer funds as provided in the MISO 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 MISO Tariff, unless cured within fourteen (14) Business Days after delivery by MISO 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 MISO 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 MISO, including any material failure by MISO to comply with the MISO Tariff, other than a failure to make payment or transfer funds, shall constitute a Default by MISO unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to MISO. MISO 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 MISO 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) MISO's Remedies for Default. In the event of a Default by Participant, MISO may pursue any remedies MISO 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 MISO Tariff does not specify a remedy for a particular Default, MISO 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 MISO Tariff, and subject to the provisions of Section 12: Dispute Resolution of this Agreement, in the event of a Default by MISO, Participant's remedies shall be limited to:

- (i) Immediate termination of this Agreement upon written notice to MISO,
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the MISO Tariff, and
 - (iii) Specific performance.
- (b) However, in the event of a material breach by MISO of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to MISO.
- (c) If as a final result of any dispute resolution MISO, 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 MISO, as the settlement agent such Market Participant(s) may request MISO to allow such Market Participant to proceed directly against Participant, in lieu of receiving full payment from MISO. In the event of such request, MISO, in its sole discretion, may agree to assign to such Market Participant MISO'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 MISO 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 MISO 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 MISO BUSINESS PRACTICES, MISO OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN MISO PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER INDIANA 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 MISO 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 MISO 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 Indiana 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 Indiana that apply to contracts executed in and performed entirely within the State of Indiana, 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 Indiana, 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 MISO):

- (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, provided that the Party, successor or transferee and MISO enter into a written agreement pursuant to which the Party assigns and the successor or transferee assumes and agrees to be bound by all of the Party's obligations under this Agreement; 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 (*i.e.* any secured party, trustee, or mortgagee of an assigning Party, where the assignment is made for collateral security purposes), 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, provided that in the case of an assignment or transfer pursuant to Section 13(B)(1)(b), the assigning Party shall be released from all obligations under the Agreement if: (i) the successor or transferee is a Market Participant pursuant to the MISO Tariff, and (ii) the successor or transferee, Participant and MISO enter into a written agreement pursuant to which Participant is released from and the successor or transferee assumes and agrees to be bound by all of Participant's obligations under this Agreement, including, but not limited to, Section 8(A).

- 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.

E. 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.

F. 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.

- G. 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.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying the MISO Tariff as described in the MISO 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.
- I. MISO's Right to Audit Participant. Participant shall keep detailed records of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to MISO under the MISO Tariff. Such records shall be retained and shall be available for audit or examination by MISO as hereinafter provided. MISO 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.

- J. Participant's Right to Audit MISO. Participant's right to data and audit of MISO shall be as described in the MISO Tariff and shall not exceed the rights described in the MISO Tariff.
- K. 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.
- L. 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 MISO of any such conflict affecting Participant. In the event of a

conflict between the MISO Tariff and this Agreement, the provisions expressly set forth in this Agreement shall control.

M. 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.

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

O. 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 MISO Tariff include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or the MISO 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 MISO 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 word or phrase not defined herein shall have the meanings from the MISO Tariff.

P. 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.

DRAFT

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.

Midcontinent Independent System Operator, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

Participant:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 1

Detailed Description of SSR Units

The Escanaba Generating Station consists of two coal-fired generating units (the subject of the SSR Agreement) and an oil-fired combustion turbine (CT) generator. (The CT is located adjacent to the coal-fired generating units, and is not the subject of the SSR Agreement.) The City owns a parcel of land on the north side of the City of Escanaba, Michigan on the shores of Lake Michigan that is approximately 37 acres in area. This description relates solely to the coal-fired units. The station has access to Lake Michigan, railroad facilities and roads, allowing a range of fuel delivery alternatives. The coal-fired units were designed by Black and Veatch and began commercial operation in 1958. The units are basically identical. Each includes a top supported two-drum boiler supplied by Babcock and Wilcox. The coal is fed to the boiler by Alstom stokers and burned on a Detroit Stoker Rotograte traveling grate. Each grate is 15'-4-1/2" wide by 18' net length for a surface area of 276.7 square feet. Each boiler has an economizer for preheating feedwater to the boiler, but does not have a combustion air preheater.

The boilers are balanced draft units, each with a single forced draft fan providing combustion air from the ground floor elevation and a single induced draft fan located after the mechanical collectors and the electrostatic precipitators. Flue gas cleaning consists of centrifugal mechanical collectors followed by a three-field electrostatic precipitator installed in 1979. Steam from the boiler in each unit is piped to a turbine generator that was supplied by Allis Chalmers. Steam is extracted to four feedwater heaters, and the turbine exhausts to a surface condenser utilizing circulating water from Lake Michigan. The steam turbine drives an Allis Chalmers generator.

EXHIBIT 2

Description of Compensation for SSR Units

A. Fixed Component of Compensation

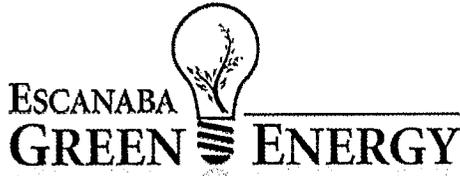
Pursuant to Section 9 of the Agreement, MISO shall pay Participant a Monthly SSR Payment of \$309,190, representing monthly allocations of the Annual SSR Amount each month during the term of the Agreement and payment prorated for any partial monthly availability for service as an SSR unit. Each Monthly SSR Payment shall be made regardless of dispatch of the SSR Units during that month. If the Agreement is terminated effective during the course of a month of extended service, then the Monthly SSR Payment shall be prorated for that portion of the month in which extended service was provided. The compensation provided for under this Agreement may be further modified pursuant to Section 7 (adjustment to Monthly SSR Payment based on Capacity Tests provided for pursuant to Section 7) and/or Section 9 ("Performance-Related Payment Adjustments") and/or Section 9 ("Compensation for Unanticipated Repairs") of the Agreement. Compensation shall be settled on a monthly basis.

B. Variable Component of Compensation

Pursuant to Section 9 of the Agreement, MISO shall pay Participant its Production Cost during times of Actual Energy Injections (as defined in Module A of the MISO Tariff and used in the MISO settlement process) and Operating Reserve Cost in each instance that MISO dispatches an SSR Unit. For the purposes of this Agreement, "Production Cost" shall mean the Energy output cost of the SSR Unit based upon Start Up, No Load, and Energy Offer cost components that reflect the actual costs of physically operating the SSR Unit, and "Operating Reserve Cost" shall mean the actual cost to provide Operating Reserves. All Production Costs

and Operating Reserve Costs will be subject to audit by MISO, and will be subject to audit and enforcement by the Independent Market Monitor.

For purposes of the settlement process, "SSR Unit Compensation" is equal to the sum of Production Cost during times of Actual Energy Injections (as defined in Module A of the MISO Tariff and used in the MISO settlement process) and Operating Reserve Cost. MISO will compare the SSR Unit Compensation to the "SSR Unit Energy and Operating Reserve Credit." The SSR Unit Energy and Operating Reserve Credit are those charges and credits calculated pursuant to Sections 39.3 Day-Ahead Energy and Operating Reserve Market and 40.3 Real Time Energy and Operating Reserve Market Settlement of the MISO Tariff, plus any revenues from Schedule 2 associated with the SSR Unit or from Planning Resource designation and any charges assessed through Schedule 17 and Schedule 24. The Schedule 2 revenues recognized under this Agreement are *[describe Schedule 2 revenues, such as the amount set for the SSR Unit per FERC filing, as a percentage of Schedule 2 payments to participant where generating unit designations are not made, or otherwise]* _____. In those hours where the SSR Unit Compensation is greater than the SSR Unit Energy and Operating Reserve Credit during Delivery Plan instructed hours of operation in the Day for that SSR Unit, MISO will make the applicable make-whole payment to Participant (such make-whole payment to be equal to the difference between the SSR Unit Compensation and the SSR Unit Energy and Operating Reserve Credit). In all hours where the SSR Unit Compensation is less than the SSR Unit Energy and Operating Reserve Credit, MISO will debit from Participant (such debit to be equal to the difference between the SSR Unit Energy and Operating Reserve Credit and the SSR Unit Compensation).



NB # 5

CC/EAC

6/11/14

received
6/5/14

June 5th, 2014

Dear Jim O'Toole:

Here is EGE's latest update.

Corban was able to make final arrangements at the bank for closing our loan for the Escanaba Project. Proof of funds will be forwarded to us from an Escrow agency stating the funds are available to complete the loan. EGE will forward to the documentation to the City when received. I am looking forward to giving an update in person next Wednesday at the EAC meeting.

As always, if you have questions or concerns, please call me.

Regards.

(original signed)

Charles Detiege