

Gas Annex to the
EEI Master Power Purchase & Sale Agreement

Version 2.0
10/16/13

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**GAS ANNEX COVER SHEET**

This Gas Annex to the EEI Master Power Purchase & Sale Agreement (“Gas Annex”) is entered into as of the following date: **\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Effective Date”), and is pursuant to the EEI Master Power Purchase & Sale Agreement (including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”) previously entered into between the Parties. The Gas Annex, together with the EEI Master Agreement (including any Gas Transactions accepted in accordance with Paragraph 1.3 hereto) shall be referred to as the “Agreement.” Party A (as defined below) and Party B (as defined below) are referred to individually as the “Party” and collectively as the “Parties.” The Parties to this Gas Annex are the following:

|  |  |
| --- | --- |
| **Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_ (“Party A”) | **Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_ (“Party B”) |
| **Date of the EEI Master Agreement between Party A and Party B:** |   |
|  |  |
| **Effective Date of Gas Annex:** |  (the “Gas Annex Effective Date”) |
|  | *If the Parties do not specify a Gas Annex Effective Date, the Gas Annex Effective Date shall be the Date of the EEI Master Agreement.* |
|  |  |
| **All Notices:** | **All Notices:** |
| As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below: | As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below: |
|  |  |
| Street: |  | Street: |   |
| City, State, Zip: |  | City, State, Zip: |   |
| Attn: |  | Attn: |   |
| Phone: |   | Phone: |   |
| Facsimile: |   | Facsimile: |   |
| Email: | [NOTE: Parties should consider potential implications of email notice and confer with legal counsel before completing this field.]  | Email: | [NOTE: Parties should consider potential implications of email notice and confer with legal counsel before completing this field.]  |
| Duns: |   | Duns: |   |
| Federal Tax ID Number: |   | Federal Tax ID Number: |   |
|  |  |
| **Invoices:** | **Invoices:** |
| As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below: | As set forth on the Cover Sheet to the EEI Master Agreement unless otherwise set forth below: |
|  |  |
| Attn: |   | Attn: |   |
| Phone: |   | Phone: |   |
| Facsimile: |   | Facsimile: |   |
| Email: |  | Email: |  |
|  |  |
| **Nominations:** | **Nominations:** |
| As set forth on the Cover Sheet to the EEI Master Agreement with respect to “Scheduling” unless otherwise set forth below: | As set forth on the Cover Sheet to the EEI Master Agreement with respect to “Scheduling” unless otherwise set forth below: |
| Attn: |   | Attn: |   |
| Phone: |  | Phone: |   |
| Facsimile: |   | Facsimile: |   |
| Email: |  | Email: |  |
|  |  |
| **Confirmations:** | **Confirmations:** |
| As set forth on the Cover Sheet to the EEI Master Agreement with respect to “All Notices” unless otherwise set forth below: | As set forth on the Cover Sheet to the EEI Master Agreement with respect to “All Notices” unless otherwise set forth below: |
|  |  |
| Attn: |   | Attn: |   |
| Phone: |   | Phone: |   |
| Facsimile: |   | Facsimile: |   |
| Email: |  | Email: |  |
|  |  |
| **Option Exercise:** | **Option Exercise:** |
| As set forth on the Cover Sheet to the EEI Master Agreement with respect to “All Notices” unless otherwise set forth below: | As set forth on the Cover Sheet to the EEI Master Agreement with respect to “All Notices” unless otherwise set forth below: |
|  |  |
| Attn: |   | Attn: |   |
| Phone: |   | Phone: |   |
| Facsimile: |   | Facsimile: |   |
|  |
| **🞏**  **Wire Transfer - or - 🞏** **ACH (check one box):** | **🞏** **Wire Transfer - or - 🞏** **ACH (check one box):** |
| As set forth in the Cover Sheet to the EEI Master Agreement unless otherwise set forth below: | As set forth in the Cover Sheet to the EEI Master Agreement unless otherwise set forth below: |
| Bank:  | Bank:  |
| ABA:  | ABA:  |
| Account:  | Account:  |
| Other Details: | Other Details:  |

##### Paragraph One Elections:

|  |  |
| --- | --- |
| 1.2 **Alternative Spot Price Index:** | The Parties have agreed to the following Alternative Spot Price Index:[None.] |
|  | *If no index is specified, then no Alternative Spot Price Index will apply unless otherwise specified in a Confirmation with respect to a Gas Transaction.* |
|  |  |
| 1.3 **Applicability to Outstanding Gas transactions:** | **🞏** Option A: All Gas transactions outstanding between the Parties in respect of Gas Products as of the Gas Annex Effective Date. |
|  | **🞏** Option B: All Gas transactions outstanding between the Parties in respect of Gas Products that are specified in Schedule 1 to this Gas Annex. |
|  | **🞏** Option C: None of the Gas transactions outstanding between the Parties in respect of Gas Products as of the Gas Annex Effective Date. |
|  | *If none of the options specified above are selected, Option A shall apply.* |
|  |  |
| 1.4 **Outstanding Gas Credit Support:** | **🞏** Applicable. |
|  | **🞏** Not Applicable. |
|  | *If neither of the options specified above are selected, Paragraph 1.4 shall not apply.* |

##### Paragraph Two Elections:

|  |  |
| --- | --- |
| 2.2 **Timing of Payments:** | **🞏** Option A: Payment Netting, with Payment for Gas Transactions and Transactions other than Gas Transactions on the 25th. |
|  | **🞏** Option B: Payment Netting, with Payment for Gas Transactions and Transactions other than Gas Transactions on the 20th. |
|  | **🞏** Option C: No Payment Netting, with Payment for Gas Transactions on the 25th. |
|  | **🞏** Option D: No Payment Netting, with Payment for Gas Transactions on the following date of each month:  |
|  | *If none of the options specified above are selected, Option C shall apply.* |

##### Paragraph Three Elections

|  |  |
| --- | --- |
| 3.2 **Remedies For Failure to Deliver/Receive Gas Products:** | **🞏** Option A: Cover Standard |
|  | **🞏** Option B: Spot Price Standard |
|  | *If neither of the options specified above are selected, Option A shall apply.* |
|  |  |
| 3.6 **Governmental Charges (Taxes):** | **🞏** Option A: Buyer Pays At the Delivery Point |
|  | **🞏** Option B: Seller Pays Before the Delivery Point |
|  | *If neither of the options specified above are selected, Option A shall apply.* |
|  |  |
| 3.9 **U.S. Customs:** | **🞏** Option A: Importer of Record |
|  | **🞏** Option B: Importer of Record and Provision of North American Free Trade Agreement Certificate of Origin |
|  | *If neither of the options specified above are selected, Option A shall apply.* |

**Other changes:**

Specify, if any:

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Gas Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the date specified as the Gas Annex Effective Date. The Parties expressly acknowledge the validity of facsimile counterparts of the executed Gas Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

|  |  |
| --- | --- |
| **PARTY A** | **PARTY B** |
| By:  | By:  |
| Name:  | Name:  |
| Title:  | Title:  |

**GENERAL TERMS OF THE GAS ANNEX**

**TO THE**

**EEI MASTER POWER PURCHASE & SALE AGREEMENT**

WHEREAS, Party A and Party B have entered into that certain EEI Master Power Purchase & Sale Agreement, dated as of the date specified on the Gas Annex Cover Sheet (and including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into Transactions relating to the purchase and sale of electric capacity, energy and other products related thereto;

WHEREAS, the Parties desire to enter into this Gas Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of natural gas and products related thereto;

WHEREAS, the Gas Annex, together with the EEI Master Agreement, shall be referred to as the “Agreement”; and

NOW, THEREFORE, the Parties agree as follows:

# PARAGRAPH ONE: GENERAL TERMS

1.1 Scope of Agreement.

### The Parties agree that they are entering into this Gas Annex in order to provide for the terms and conditions pursuant to which the Parties may enter into Transactions (or which, pursuant to Section 1.3 of this Annex, may govern certain Outstanding Gas transactions) for the purchase and sale of natural gas, including any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane, or such similar product otherwise specified by the Parties in a Confirmation and identified as being governed by this Gas Annex. This Gas Annex supplements, forms a part of, and is subject to the Agreement, and each reference to the Agreement shall include this Gas Annex. Unless otherwise expressly amended pursuant to this Gas Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Gas Transactions entered into between the Parties. In the event of any inconsistency between a Confirmation with respect to a Gas Transaction and this Gas Annex, the terms of such Confirmation will govern with respect to such Gas Transaction. In the event of any inconsistency among or between the EEI Master Agreement and this Gas Annex, this Gas Annex will govern with respect to Gas Transactions only.

### 1.2 Defined Terms.

### Capitalized terms used in this Gas Annex but not defined herein shall have the meanings given such terms in the EEI Master Agreement.

### Upon execution of this Gas Annex the following definitions and terms in the EEI Master Agreement will be amended as follows:

### “Product” means electric capacity, energy, Gas Product(s) or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

### “Transaction” means a particular transaction or Gas Transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

(iii) The term “written supplements” in the EEI Master Agreement shall apply to annexes to the EEI Master Agreement, and shall include this Gas Annex.

(c) For purposes of this Gas Annex the following definitions shall apply:

“Alternative Damages” means such damages, expressed U.S. Dollars or in U.S. Dollars per MMBtu, as the Parties shall agree upon with respect to a Gas Transaction, in the event either Seller fails to perform a Firm obligation to deliver Gas or Buyer fails to perform a Firm obligation to receive Gas.

“Alternative Spot Price Index” if any, has the meaning specified in the Gas Annex Cover Sheet or, with respect to a particular Gas Transaction, means the Alternative Spot Price Index specified in the Confirmation in respect of such Gas Transaction.

“British thermal unit” or “Btu” means the International BTU, which is also called the Btu (IT).

“Contract Price” means the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the Parties in a Gas Transaction.

“Contract Quantity” means the quantity of Gas to be delivered and taken as agreed to by the Parties in a Gas Transaction.

“Cover Standard” means that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Gas Annex, then the performing Party shall use commercially reasonable efforts to (a) if Buyer is the performing Party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (b) if Seller is the performing Party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming Party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming Party.

“Day” means a period of 24 consecutive hours, coextensive with a “day” as defined by the Receiving Transporter with respect to a particular Gas Transaction.

“EFP” means the purchase, sale or exchange of natural gas as the “physical” side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of “Firm”, provided that a Party’s excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act (7 U.S.C. §1 et. seq., as amended).

“Firm” means that either Party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the Party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Paragraph 3.4(c) related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

“Floating Price” means a Contract Price or factor of a Contract Price specified in a Transaction based upon a Price Source.

“Force Majeure” shall have the meaning specified in Paragraph 3.3 of this Gas Annex.

“Gas” means any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

“Gas Product” or “Gas Products” means products involving the purchase and sale of Gas or such similar product as otherwise specified by the Parties in the Transaction.

“Gas Transaction” means a particular Transaction with respect to which the Product is a Gas Product.

“Imbalance Charges” means any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

“Interruptible” means that either Party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability except such interrupting Party may be responsible for any Imbalance Charges as set forth in Paragraph 3.4(c) related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

“MMBtu” means one million British thermal units, which is equivalent to one dekatherm.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Receiving Transporter” means the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

“Scheduled Gas Quantity” means the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

“Specified Spot Price Index” means, unless an Alternative Spot Price Index is specified in the Gas Annex Cover Sheet or in a Confirmation with respect to a Gas Transaction, the column captioned “Midpoint” in the “Daily price survey” table set forth in the *Gas Daily* publication published by Platts, or any successor publication thereto, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s). If an Alternate Spot Price Index is specified in the Gas Annex Cover Sheet, or in a Confirmation with respect to a Gas Transaction, the Specified Spot Price Index means the Alternative Spot Price Index so specified.

“Spot Price” means the price listed in the Specified Spot Price Index for the relevant Day; provided, if there is no single price published in the Specified Spot Price Index for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (a) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (a) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

“Termination Event” means the contractual right of a Party to terminate a Gas Transaction in the event that the other Party fails to perform a Firm obligation to deliver Gas in the case of Seller, or to receive Gas in the case of Buyer, for a designated number of Days during a period as specified in the applicable Confirmation.

“Transporter(s)” shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular Gas Transaction.

1.3 Applicability to Outstanding Gas transactions. Those Gas transactions that were entered into between the Parties prior to the Gas Annex Effective Date and designated on the Gas Annex Cover Sheet (“Outstanding Gas transactions”) shall, unless the Parties otherwise agree in writing with respect to one or more specific Outstanding Gas transactions, be Gas Transactions for purposes of the Agreement and shall, from and after the Gas Annex Effective Date, be subject to the terms and conditions of the Agreement. Each confirmation evidencing such Outstanding Gas transactions shall be deemed to be a “Confirmation” under and as defined in the Agreement. In the event that a confirmation is issued or entered into with respect to any Outstanding Gas transaction pursuant to the terms of any other master agreement or contains terms and conditions that are not directly related to the commercial terms of such Outstanding Gas transaction and are inconsistent with or duplicative of the terms and conditions contained in the Agreement (such other master agreement or the portion of such confirmation containing such terms and conditions, the “Outstanding Master Agreement”) then, notwithstanding any provision of the Outstanding Master Agreement to the contrary, the terms of the Agreement shall automatically supersede such Outstanding Master Agreement as of the Gas Annex Effective Date.

1.4 Outstanding Gas Credit Support. If this Paragraph 1.4 is specified as applicable in the Gas Annex Cover Sheet:

### To the extent that any collateral, margin, security, cash or other similar credit support (collectively, but excluding any guaranty, the “Outstanding Gas Credit Support”) is held by a Party in connection with the obligations of the other Party under any Outstanding Gas transactions, such Outstanding Gas Credit Support shall be deemed to have been delivered in connection with this Agreement.

### The Parties further agree that, with respect to any Outstanding Gas Credit Support, if the Parties have entered into a Collateral Annex or other agreement similar in connection with the Agreement or have specified that the relevant provisions of Sections 8.1 and/or 8.2 of the EEI Master Agreement are applicable (such Collateral Annex, other agreement or the relevant provisions of the EEI Master Agreement, the “Existing EEI Credit Support”), such Existing EEI Credit Support shall constitute credit support or Performance Assurance, as applicable, provided under this Outstanding Gas Credit Support Paragraph in respect of Outstanding Gas transactions, effective as of the date agreed by the Parties.

### In the event that a Party delivered a guaranty in support of its obligations under any Outstanding Gas transactions or an Outstanding Master Agreement, such Party represents and warrants that any amendments necessary to ensure that such guaranty continues to extend to the Gas Transactions under the Gas Annex have been made prior to the Gas Annex Effective Date.

### The Parties agree that they will enter into any necessary amendments to any other Outstanding Gas Credit Support as may be necessary to give full effect to the terms of this Paragraph 1.4.

PARAGRAPH TWO: AMENDMENTS TO THE EEI MASTER AGREEMENT

2.1 Payment and Netting. In accordance with Section 6.1 of the EEI Master Agreement, Seller shall invoice Buyer for Gas delivered and received in the preceding calendar month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, the invoice will be prepared based on the Scheduled Gas Quantity. The invoiced quantity will then be adjusted to the actual quantity on the following calendar month’s invoice or as soon thereafter as actual delivery information is available. Any dispute or adjustment of invoices shall be addressed in accordance with Section 6.3 of the EEI Master Agreement.

### 2.2 Timeliness of Payment. With respect to all Transactions:

### The first sentence of Section 6.2 of the EEI Master Agreement is hereby amended and restated as follows in accordance with the option selected on the Gas Annex Cover Sheet:

Option A: Payment Netting, with Payment for Gas Transactions and all other Transactions on the 25th.

“Unless otherwise agreed by the Parties in a Transaction, all payments with respect to both Gas Transactions and all other Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twenty-fifth (25th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.”

Option B: Payment Netting, with Payment for Gas Transactions and all other Transactions on the 20th.

“Unless otherwise agreed by the Parties in a Transaction, all payments with respect to both Gas Transactions and all other Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.”

Option C: No Payment Netting, with Payment for Transactions other than Gas Transactions on the 20th and for Gas Transactions on the 25th.

“Unless otherwise agreed by the Parties in a Transaction, (i) all payments with respect to Transactions other than Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day and (ii) all payments with respect to Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twenty-fifth (25th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.”

Option D: No Payment Netting, with Payment for Transactions other than Gas Transactions on the 20th and for Gas Transactions on a Specified Date.

“Unless otherwise agreed by the Parties in a Transaction, (i) all payments with respect to Transactions other than Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day and (ii) all payments with respect to Gas Transactions under this EEI Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of date specified in Gas Annex Cover Sheet or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.”

### Section 6.2 of the EEI Master Agreement is hereby further amended by, as applicable, either (x) adding at the end thereof the following sentence or (y) to the extent that the Parties have previously agreed to an analogous amendment to Section 6.2 of the EEI Master Agreement, amending and restating the last sentence of Section 6.2 as follows:

“Notwithstanding the foregoing, all payments with respect to Transactions that relate to Products other than Gas Products and Power Products shall be due and payable on such dates as are specified in the annexes applicable to such Products.”

PARAGRAPH THREE: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR GAS TRANSACTIONS

Notwithstanding any analogous provision of the EEI Master Agreement (including, but not limited to, Section 9.2, Sections 3.2 and 3.3, and Article Four thereof), unless otherwise specified in the Gas Annex Cover Sheet, the following provisions shall apply with respect to all Gas Transactions.

* 1. Specific EEI Master Agreement Changes Relating Only to Gas Transactions: With respect to Gas Transactions only:
1. *Confirmations*. Section 2.3 of the EEI Master Agreement is hereby amended to add the phrase “with respect to Power Transactions and substantially in the form of Exhibit A to the Gas Annex with respect to Gas Transactions” after the reference “Exhibit A” in each instance set forth therein.
2. *Remedies for Failure to Deliver/Receive*. Sections 3.6 (if applicable), 5.1(c), 6.4, and 6.5 of the EEI Master Agreement are hereby amended by adding the phrase “with respect to Power Products and Paragraph 3.2 of the Gas Annex with respect to Gas Products” after the first reference to “Article Four” in each instance set forth therein.
3. *Mobile-Sierra Standard applicable to Gas Transactions.* The following new Section is hereby added to Article Ten of the EEI Master Agreement at the end thereof:

To the extent that a Gas Transaction does not qualify as a “first sale” as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each Party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Gas Annex, any Gas Transaction hereunder or any other agreements entered into in connection with this Agreement (collectively, the “Covered Agreements”). By this provision, each Party expressly waives its right to seek or support: (i) an order from the U.S. Federal Energy Regulatory Commission (“FERC”) finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties under the Covered Agreements are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees not to make or support such a filing or request, and that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter. Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of the Covered Agreements proposed by a Party (to the extent that any waiver as set forth in this Section is unenforceable or ineffective as to such Party), a non-Party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, 128 S. Ct. 2733 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).

[NOTE: Parties who have an existing EEI Master Agreement for electric capacity, energy or other related Products should consider separately adopting the Mobile-Sierra provision for such Products, as the Mobile-Sierra provision above is applicable *only* to Gas Transactions entered into pursuant to the EEI Gas Annex. A Mobile-Sierra provision appropriate for application to such electric Products can be found on the EEI website, on the “Miscellaneous” page, under the heading “Miscellaneous Provisions for Use with the EEI Master Contract” at:

[http://www.eei.org/resourcesandmedia/mastercontract/Pages/Miscellaneous.aspx](https://www.eei.org/resourcesandmedia/mastercontract/Pages/Miscellaneous.aspx) ].

* 1. Remedy for Failure to Deliver/Receive Gas Products. Article Four of the EEI Master Agreement shall not apply to any Gas Transaction. In the event of a breach of a Firm obligation to deliver or receive Gas, unless Alternative Damages are specified as applying in a Confirmation signed by both Parties, the Parties agree that:

Option A: Cover Standard. The sole and exclusive remedy of the Parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (a) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (b) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (c) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third Party, and no such replacement or sale is available for all or any portion of the Contract quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing Party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of Gas not replaced or sold. Imbalance Charges shall not be recovered under this Paragraph 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Paragraph 3.4(c) of this Gas Annex. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing Party’s invoice, which shall set forth the basis upon which such amount was calculated.

Option B: Spot Price Standard. The sole and exclusive remedy of the Parties shall be recovery of the following: (a) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (b) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Paragraph 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Paragraph 3.4(c) of this Gas Annex. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing Party’s invoice, which shall set forth the basis upon which such amount was calculated

If the Parties do not specify either Option A or Option B as applicable in the Gas Annex Cover Sheet, Option B shall apply.

In addition to Option A and Option B above, the Parties may provide for a Termination Event in a Confirmation executed in writing by both Parties. The Confirmation containing the Termination Event will designate the length of nonperformance triggering the Termination Event and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

* 1. Force Majeure. Section 3.3 of the EEI Master Agreement shall not apply to any Gas Transaction, and the Force Majeure provisions below shall govern with respect to Gas Transactions.

### Except with regard to a Party's obligation to make payment(s) due under Articles Six and Eight of the EEI Master Agreement, Section 5.3 of the EEI Master Agreement and payment of Imbalance Charges under Paragraph 3.4(c) of this Gas Annex, neither Party shall be liable to the other for failure to perform a Firm obligation in respect of a Gas Transaction to the extent such failure was caused by Force Majeure. The term “Force Majeure” for purposes of this Gas Annex means any cause not reasonably within the control of the Party claiming suspension, as further defined in Paragraph 3.3(b) of this Gas Annex.

### Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

### Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller’s ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer’s ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer’s market(s) or Buyer’s inability to use or resell Gas purchased hereunder, except, in either case, as provided in Paragraph 3.3(b) of this Gas Annex; or (v) the loss or failure of Seller’s gas supply or depletion of reserves, except, in either case, as provided in Paragraph 3.3(b) of this Gas Annex. The Party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

### Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.

### The Party whose performance is prevented by Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

### Notwithstanding Paragraphs 3.3(b) and 3.3(c) of this Gas Annex, the Parties may agree to alternative Force Majeure provisions with respect to a Gas Transaction in a Confirmation executed in writing by both Parties.

* 1. Transportation, Nominations and Imbalances. Section 3.2 of the EEI Master Agreement shall not apply to any Gas Transaction, and the provisions below shall govern with respect to Gas Products:

### Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

### The Parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each Party shall give the other Party timely prior notice, sufficient to meet the requirements of all Transporter(s) involved in the Gas Transaction, of the quantities of Gas to be delivered and purchased each Day. Should either Party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such Party shall promptly notify the other Party.

### The Parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the Parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer’s receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller’s delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

* 1. Quality and Measurement. All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of Gas Transactions shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.
	2. Governmental Charges (Taxes). Notwithstanding the first two sentences of Section 9.2 of the EEI Master Agreement, the following elections are applicable to the Gas Annex:

Option A: Buyer Pays At and After the Delivery Point. Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority (“Taxes”) on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof

Option B: Seller Pays Before and At the Delivery Point. Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority (“Taxes”) on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof.

If the Parties do not specify either Option A or Option B as applicable in the Gas Annex Cover Sheet, Option A shall apply.

* 1. Market Disruption Events.

If a Market Disruption Event has occurred then the Parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the Parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each Party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either Party fails to provide two quotes then the average of the other Party’s two quotes shall determine the replacement price for the Floating Price. If both Parties fail to provide two quotes, then the Parties shall use the average of all of quotes actually obtained to determine the replacement price for the Floating Price. “Market Disruption Event” means, with respect to an index specified for a Gas Transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both Parties agree that a material change in the formula for or the method of determining the Relevant Price has occurred. For the purposes of the calculation of a replacement price for the Relevant Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

* 1. Title, Warranty and Indemnity relating to Gas Transactions.
1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).
2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS PARAGRAPH 3.8, ALL OTHER WARRANTIES WITH RESPECT TO GAS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.
3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys’ fees and costs of court (“Claims”), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.
4. Notwithstanding the other provisions of this Paragraph 3.8 of this Gas Annex, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Paragraph 3.5 of this Gas Annex.
	1. U.S. Customs.

The Parties may elect to apply one of the following options:

Option A: Importer of Record. In the event Seller took title to Gas under a Gas Transaction outside the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3) for delivery to the Buyer within the Unites States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

Option B: Importer of Record and Provision of North American Free Trade Agreement Certificate of Origin. If checked, both (i) and (ii) shall apply.

(i) In the event Seller took title to Gas under a Gas Transaction outside the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3) for delivery to the Buyer within the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements; and

(ii) In the event that Seller sells Gas under a Gas Transaction outside the Customs Territory of the United States for delivery to the Buyer within the United States, Seller agrees to provide to Buyer within two Business Days of the sale a fully executed North American Free Trade Agreement Certificate of Origin.

 If neither option is checked, then Option A shall apply.

* 1. UCC. Each Party agrees that notwithstanding any provisions of law relating to adequate assurance of future performance, including without limitation Article 2-609 of the UCC, the Parties shall only be entitled to request adequate assurance as specifically provided in the Agreement, including the Collateral Annex thereto. For purposes of the foregoing, UCC means the Uniform Commercial Code as adopted by the jurisdiction governing the Parties and the Gas Transactions. Any section references are to the Model Uniform Commercial Code and are intended to correspond to the same substantive provisions contained in the specific codes adopted in the controlling jurisdictions, to the extent that section references differ.