

ADJACENT BALANCING AUTHORITY COORDINATION AGREEMENT

This Adjacent Balancing Authority Coordination Agreement is made this 24th day of August 2009 by and between Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), and Omaha Public Power District ("OPPD"), also referred to herein as the Midwest ISO Balancing Authority ("Midwest ISO BA") and the OPPD Balancing Authority ("OPPD BA") respectively, and hereinafter collectively referred to as the "Parties" and individually as a "Party."

W I T N E S S E T H:

WHEREAS, the North American Electric Reliability Corporation ("NERC") Board of Trustees approved adoption of "Reliability Standards for the Bulk Electric Systems of North America" and conversion of the NERC Operating Manual to a subset of such standards on February 8, 2005, including standards of the NERC Operating Manual which address coordination agreements and data sharing for Balancing Authorities; and

WHEREAS, the OPPD Balancing Authority is a NERC certified Balancing Authority; and

WHEREAS, the Midwest ISO is a NERC certified Balancing Authority.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, it is agreed as follows:

ARTICLE I **DEFINITIONS**

Unless the context otherwise specifies or requires, capitalized terms used herein shall have the respective meanings assigned herein for all purposes of this Agreement (such definitions to be equally applicable to both the singular and the plural forms of the terms defined). Any capitalized term not defined in this Article I shall have the definition assigned to it by the NERC "Glossary of Terms Used in Reliability Standards" as approved by the NERC Board of Trustees and the Federal Energy Regulatory Commission as amended from time to time and incorporated herein by this reference, or as otherwise understood by common usage in the electric utility industry. In the event of a conflict between a definition set forth in this Article I and a definition set forth in such NERC "Glossary of Terms Used in Reliability Standards" or a definition as understood by common usage in the electric industry, the definition set forth in this Article I shall control.

As used in this Agreement:

- 1.1 Agreement** shall mean this Agreement, together with all schedules, exhibits and appendices hereto, as amended from time to time.
- 1.2 Balancing Authority (“BA”)** shall mean the responsible entity that maintains load-interchange-generation balance within a Balancing Authority Area and supports Interconnection frequency in real time.
- 1.3 Balancing Authority Area** shall mean the portion of the generation and transmission system within the metered boundary of the Balancing Authority, in which the Balancing Authority functions are performed.
- 1.4 Delivery BA** shall mean the Party, or another Balancing Authority, that delivers Emergency Energy Assistance.
- 1.5 Emergency** shall mean: (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel; or (iii) a condition that requires implementation of emergency procedures as defined in either Party’s Business Practice Manual.
- 1.6 Emergency Energy** shall mean the energy provided as a result of the request for Emergency Energy assistance under this Agreement, when the Receiving BA is experiencing an Energy Emergency Alert Level 2 (EEA2).
- 1.7 External BA** shall mean a Balancing Authority that is not a Party to this Agreement.
- 1.8 FERC** shall mean the Federal Energy Regulatory Commission or any successor federal agency, commission or department.
- 1.9 Local Balancing Authority (“LBA”)** shall mean an operational entity which is: (i) responsible for compliance to NERC for the subset of NERC Balancing Authority Reliability Standards defined for its local area within the Midwest ISO Balancing Authority Area, and (ii) a party (other than the Midwest ISO) to the Balancing Authority Amended Agreement which, among other things, establishes the subset of NERC Balancing Authority Reliability Standards for which the LBA is responsible.
- 1.10 Market Participant** shall mean an entity that has successfully completed the registration process and other requirements of the Midwest ISO Tariff and has been qualified by the Midwest ISO as a Market Participant thereunder.

- 1.11 Midwest ISO Energy and Operating Reserve Market** shall mean the day-ahead and real-time markets for electric energy and operating reserves, and associated financial transmission rights, operated by the Midwest ISO pursuant to the Midwest ISO Tariff.
- 1.12 Midwest ISO Tariff** shall mean the tariff for transmission, and energy and operating reserve markets, in the Midwest ISO as in effect from time to time, including any schedules, appendices, attachments or exhibits attached thereto.
- 1.13 NERC** shall mean the North American Electric Reliability Corporation or any successor thereto; including a FERC approved Electric Reliability Organization (or “ERO”).
- 1.14 NERC ID** is the four character alphanumeric representation of entities registered at TSIN.com and used by those entities for the purposes of conducting business on OASIS Phase 1A and completing NERC interchange transaction tags.
- 1.15 Receiving BA** shall mean the BA that issues the request for Emergency Energy assistance and actually receives the Emergency Energy schedule.
- 1.16 Transmission System** shall mean the transmission facilities owned or controlled by a Transmission Service Provider that are used to provide Transmission Service under an applicable Open Access Transmission Tariff.

ARTICLE II

PURPOSE

SECTION 2.1 Purpose. The purpose of this Agreement is to establish an appropriate clear and comprehensive agreement between the Midwest ISO BA and the OPPD BA as it relates to:

- 2.1.1 Emergency Energy assistance.
- 2.1.2 Communication and coordination of normal and emergency operating procedures.
- 2.1.3 Voice and data communication requirements, as well as coordination of communications during normal and emergency operating conditions.
- 2.1.4 Providing data to support operational planning and security assessment studies.

2.1.5 Coordination of outages of equipment, including voltage regulating equipment, telemetering equipment, and control equipment.

2.1.6 Inadvertent Interchange accounting and payback.

SECTION 2.2 Compliance. The Parties state that the Balancing Authority procedures and policies of their respective organizations meet the requirements of standards established by NERC.

ARTICLE III **TERM OF AGREEMENT**

SECTION 3.1 Term. This Agreement shall become effective on the day of it is signed by both Parties, and shall continue in effect until terminated by either Party upon not less than thirty (30) days written notice to the other Party. The effective date of the rates terms and conditions for the sale of Emergency Energy set forth in Schedule EE-1 of this Agreement shall be the date established by FERC. The right to terminate shall be within the sole discretion of either Party, provided that if the failure to have in effect an agreement between the Parties would reasonably be expected to constitute a violation of any ERO or regional reliability standards, the Parties agree to negotiate in good faith a successor agreement that will satisfy the reliability standard in question.

SECTION 3.2 Obligations upon Termination. The following provisions of this Agreement shall survive its termination: (i) final settlement of the obligations of each Party under Article VII of this Agreement, including the accounting for the period ending with the last day of the month for which this Agreement is effective; (ii) the provisions of this Agreement necessary to conduct final billings, collections and accounting with respect to all matters arising hereunder; and (iii) the indemnification provisions as applicable to periods prior to such termination. The Parties shall cooperate with each other in the unwinding of their arrangements under this Agreement in order to minimize disruptions in the provision of reliability provided by each Party.

SECTION 3.3 NERC Standard Revisions. The Parties agree to perform their respective obligations under this Agreement in compliance with the then current and applicable NERC Reliability Standards. In the event that revisions to the NERC Reliability Standards applicable to this Agreement are approved by the NERC Board and FERC, the Parties shall meet (either in person or via conference call) or exchange correspondence, either in letter form or via e-mail, within ninety (90) days of the approval to discuss whether such revisions affect the terms and conditions of this Agreement, the necessity for any mutually agreeable revisions to this Agreement, and/or whether the revisions affect the need for this Agreement.

ARTICLE IV **ADMINISTRATION**

SECTION 4.1 Formation of an Operating Committee. To administer the arrangements under this Agreement, the Parties may, by mutual agreement, establish an Operating Committee ("OC"). If the Parties determine to establish such a committee, the OC shall have the following duties and responsibilities:

- (i) Initiate process reviews at the request of the other Party for activities undertaken in the performance of this Agreement; and
- (ii) In its discretion, take other actions, including the establishment of subcommittees and/or task forces, to address any issues that the OC deems necessary in the implementation of this Agreement.

4.1.1 Operating Committee Representatives. Upon a decision by the Parties to establish an Operating Committee, each Party shall designate a primary and alternate representative to the OC and shall inform the other Party of its designated representatives by Notice. A Party may change its designated OC representatives at any time, provided that timely Notice is given to the other Party. Each designated OC representative shall have the authority to make decisions on issues that arise during the performance of this Agreement. Decisions of the OC shall be by unanimous consent.

4.1.2 Dispute Resolution. In the event of a Dispute arising out of or relating to this Agreement that is not resolved by the representatives of the Parties who have been designated under Section 4.1.1 of this Agreement within seven (7) days of the reference to such representatives of such Dispute, each Party shall, within fourteen (14) days' written notice by either Party to the other, designate a senior officer with authority and responsibility to resolve the Dispute and refer the Dispute to them. The senior officer designated by each Party shall have authority to make decisions on its behalf with respect to that Party's rights and obligations under this Agreement. The senior officers, once designated, shall promptly begin discussions in a good faith effort to agree upon a resolution of the Dispute. If the senior officers do not agree upon a resolution of the Dispute within fourteen (14) days of its referral to them, or do not within the same fourteen (14) day period agree to refer the matter to some individual or organization for alternate dispute resolution, then either Party shall have the right to pursue any and all remedies available to it at law or in equity. Neither the giving of notice of a Dispute, nor the pendency of any Dispute resolution process as described in this Section, shall relieve a Party of its obligations under this Agreement, extend any notice period described in this Agreement or extend any period in which a Party must act as described in this Agreement. Notwithstanding the requirements

of this section, either Party may terminate this Agreement in accordance with its provisions, or pursuant to an action at equity. The issue of whether such a termination is proper shall not be considered a Dispute hereunder.

ARTICLE V **COORDINATION**

SECTION 5.1 Process for Requesting Assistance. The Midwest ISO BA and the OPPD BA will coordinate and assist each other when requested, to the extent possible. The following procedure will be utilized:

5.1.1 Upon the recognition of a situation requiring coordination between the Midwest ISO BA and the OPPD BA, initial contact will be made via telephone, if possible.

5.1.2 The on-shift operators will discuss the situation and agree on the appropriate actions required.

5.1.3 The Midwest ISO BA and the OPPD BA will communicate, advise or direct the appropriate actions within their respective systems.

5.1.4 The available multi-directional communication options among the Midwest ISO BA, LBA, and the OPPD BA are the Reliability Coordinator Information System (RCIS), telephones, faxes, and e-mail.

5.1.5 The contact information for reliability actions taken pursuant to this Agreement is set forth in Exhibit A of this Agreement.

5.1.6 Concurrently with the execution of this Agreement, each Party shall notify the other Party of its applicable NERC ID, and (if different) the NERC ID that will schedule the Emergency Energy transactions through the Physical Scheduling System. Prior to the transfer of Emergency Energy as agreed by the Parties under this Agreement, each Party shall satisfy any applicable credit requirements as set forth in Section 7.4. A Party shall promptly notify the other Party of any changes to the NERC IDs in writing by fax, email or overnight delivery of a signed notification.

SECTION 5.2 Process for Coordinating Emergency Energy Assistance. The Midwest ISO BA and OPPD BA will, pursuant to this Agreement, arrange for Emergency Energy, and assist each other to obtain emergency assistance from remote Balancing Authorities. In the event that one Party needs to request Emergency Energy assistance from the other Party, or from another Balancing Authority, pursuant to this Agreement, the Receiving BA shall initiate the following procedure.

5.2.1 Receiving BA shall request its own Reliability Coordinator to issue an Energy Emergency Alert Level 2 (EEA2).

5.2.2 Receiving BA shall request Emergency Energy from the Delivery BA.

5.2.3 Delivery BA shall verify that it can support the Emergency Energy requested.

5.2.4 Delivery BA shall also verify with its associated Transmission Operator and Transmission Provider that the transmission interface can support the transaction.

5.2.5 If a Party to this Agreement is unable for any reason to supply Emergency Energy as the Delivery BA, it will make reasonable efforts to facilitate the transfer of Emergency Energy from an interconnected Balancing Authority that can act as the Delivery BA.

5.2.6 Receiving BA shall create an Electronic Tag (E-Tag) with the Delivery BA as source.

5.2.7 Both Receiving and Delivery BA shall approve the E-Tag.

5.2.8 During energy or capacity emergencies, the Midwest ISO BA shall communicate and coordinate necessary operations with the Midwest ISO Local Balancing Authorities and the other affected external Balancing Authorities when the Midwest ISO is the Receiving BA or when OPPD is the Receiving BA but is not adjacent to the Delivery BA.

SECTION 5.3 Process for Coordinating Normal and Emergency Operating Procedures. The Midwest ISO BA and the OPPD BA will use the same communication protocols during normal and emergency conditions.

5.3.1 The Midwest ISO BA and the OPPD BA are individually responsible for overall Emergency Operations planning and coordination of such plans. The Midwest ISO BA and the OPPD BA will include the affected LBAs, Load Serving Entities and Transmission Operators within their respective areas into the development process of the overall Normal and Emergency Operating Procedures.

5.3.2 The Midwest ISO LBAs shall provide the Midwest ISO RC with local restoration (as developed under Midwest ISO EOP-005) and load shed plans (as developed under Midwest ISO EOP-003). The local restoration and load shed plans will include coordination with Transmission Operators in the applicable LBA. These plans will be coordinated by the Midwest ISO RC to develop an overall Midwest ISO plan for regional emergency operations. The Midwest ISO emergency plans will include the overall coordination.

5.3.3 The Midwest ISO BA shall provide neighboring External BA's with the overall Midwest ISO emergency plans, although LBAs may need to be involved for situations of cross-boundary islanding and restoration. The Midwest ISO BA and the OPPD BA will update and share with one another all of the applicable Emergency Operations plans annually.

SECTION 5.4 Data Exchange The Parties agree that data currently exchanged through each of their respective Reliability Coordinators meets each Party's needs to support their respective balancing authority tasks and duties. Both Parties agree

that they currently meet the data submittal requirements from their Reliability Coordinator and will continue to meet these requirements.

Should either Party identify any future data requirements, both Parties agree to work to exchange the data through their respective Reliability Coordinators. If exchange of the data through the Reliability Coordinators is not possible, both Parties agree to work together to exchange the new data in an agreed upon reliable data exchange medium. The Party requesting additional data or information shall provide a written, reliability-based justification to the other Party supporting the request for such additional data or information. The Party receiving the request to provide data has the right to accept or reject the other Party's justification. In the event a dispute arises regarding the need for such data to be exchanged, it shall be resolved pursuant to the Dispute Resolution process in Section 4.1.2 of this Agreement.

Any data or other confidential information exchanged by the Parties pursuant to this Agreement shall be subject to the confidentiality provisions of the NERC Operating Reliability Data Confidentiality Agreement.

SECTION 5.5 Outage Coordination. The Midwest ISO BA and the OPPD BA shall coordinate transmission and generation maintenance schedules to maximize capacity or conserve fuel, including water, if such capacity or fuel are in short supply. If existing procedures already exist between other NERC registered functions of the Midwest ISO and the OPPD BA, then those procedures may be used to meet this requirement of this Agreement and Requirement R7.3 of regulatory approved NERC standard EOP-001-0.

SECTION 5.6 Points of Interconnection. The Midwest ISO BA and the OPPD BA shall exchange, and update, a list of the tie lines that are points of interconnection between the Parties. The lists of tie lines shall be maintained by each Party in a separate master document.

SECTION 5.7 Operations Planning and Security Assessment Information. Subject to the requirements of Section 5.4, the Midwest ISO BA and the OPPD BA shall be responsible for providing operating data requested by the other Party, and receiving operating data from the other Party as needed for the Midwest ISO BA and the OPPD BA to perform their reliability responsibilities. The Midwest ISO LBAs may also request operating data directly from the OPPD BA if needed to perform the LBA reliability responsibilities, and the OPPD BA agrees to provide such data directly to such LBAs.

The Midwest ISO BA shall provide operating data requested by the OPPD BA or its Reliability Coordinator for performing operational reliability assessments and to coordinate reliable operations within the Midwest ISO and the OPPD BA Reliability Coordinator Areas.

SECTION 5.8 Inadvertent Interchange. The Midwest ISO BA is responsible to accurately report Inadvertent Interchange in coordination with the LBAs who are responsible

for providing the Midwest ISO BA with after-the-fact Actual Interchange data as coordinated with the OPPD BA.

On a monthly basis, the Midwest ISO BA and SPP (on behalf of the OPPD BA) shall report to each other their Inadvertent Interchange for the prior month along with each Party's accumulated Inadvertent Interchange pursuant to Section 10 of the Midwest ISO-SPP JOA.

SECTION 5.9 Communication. During normal and emergency operations, the Midwest ISO BA and the OPPD BA shall use any, some or all of the listed communication mediums: Reliability Coordinator Information System (RCIS), telephones, faxes, and e-mail. Contact information for these mediums will be periodically reviewed and communicated by each Party. The Midwest ISO BA and the OPPD BA agree to use uniform line identifiers when referring to transmission facilities of an interconnected network.

ARTICLE VI **FACILITY EVACUATION**

If either Party is required to evacuate its operational work area, it shall notify the other Party of such evacuation as soon as feasible by any practical means of communications.

If and when the Party becomes functional utilizing its plan for loss of its control center functionality, it shall notify the other Party by any practical means in its plan.

The Midwest ISO BA and the OPPD BA are each individually responsible for having a plan to continue reliability operations in the event that one of their control centers becomes inoperable. Each Party shall be responsible for annual review, testing and training of its plan. The Midwest ISO BA shall coordinate its plan and the review of such plan with the OPPD BA and adjacent LBAs. Each Party shall include in its plan needed communication with the Midwest ISO BA, adjacent LBAs and neighboring External BAs.

ARTICLE VII **BILLING AND PAYMENT**

SECTION 7.1 Billing and Settlement

Both the Midwest ISO and OPPD shall perform the billing and settlement of the Emergency Energy and associated delivery costs, if any, pursuant to this Article VII.

7.1.1 The Delivery BA shall bill the Receiving BA for Emergency Energy, and the Receiving BA agrees to pay for Emergency Energy as set forth in Schedule EE-1 of this Agreement and this Article VII.

SECTION 7.2 Periodic Billing

Each Party shall receive a statement from the other Party as set forth in Section 7.3, setting forth any amounts due from that Party as a result of any charges imposed pursuant to this Agreement.

SECTION 7.3 Payment

- 7.3.1 Unless otherwise specifically agreed upon in writing by the Parties, the seven-day period following receipt of an invoice shall be the standard period for all payments under this Agreement. Promptly after each Emergency Energy schedule between the Parties, the Delivery BA shall prepare, or cause to be prepared, and, within fifteen (15) days of the end of the calendar month in which such transaction occurs, render to the Receiving BA an invoice for the payment obligations incurred hereunder.
- 7.3.2 All invoices to a Party under this Agreement shall be due and payable in immediately available same-day funds, in accordance with the invoice instructions, within seven (7) days following the Party's receipt of the invoice. If such a day is not a banking day, then payment is due and payable on the first banking day common to the Parties following the due date. Receiving BA will make payments by electronic funds transfer in the currency of the United States of America, or by other mutually agreeable method(s), to the account designated by the Delivery BA.
- 7.3.3 If the rendering of an invoice hereunder is unavoidably delayed, the Delivery BA may issue an interim invoice based on estimated charges. Each final invoice shall be subject to adjustment for any errors in calculation, meter readings, estimating or otherwise. Any such adjustments shall be made as promptly as practical, but in no event later than six months after issuing the invoice.
- 7.3.4 Any amount not paid by the due date shall be deemed delinquent and subject to interest. Interest shall be computed from the date of collection until the date refunds are made as follows:
 - 7.3.4.1 Interest on any unpaid amounts (not including amounts placed in a cash collateral account as financial security) shall be calculated in accordance with the methodology for interest on refunds in the FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment.

- 7.3.4.2 If a Party objects to all or a portion of any invoice, that Party shall, on or before the date payment of the invoice is due, pay the full amount of the invoice and give notice to the invoicing Party, within thirty (30) days from the date the invoice is rendered, setting forth in specific details the basis for its objection and the amount thereof in dispute. The authorized officers of the Parties involved, or their designees, shall use their best efforts to develop a solution to the billing dispute. The authorized officers may choose to submit the billing dispute to the dispute resolution procedures set forth in Section 4.1.2 of this Agreement. If the objection is upheld resulting in a refund, the disputing Party shall receive interest upon such amount as specified in Section 7.3.4.1 herein from the date payment was received until the date upon which refund is made. Any refunds agreed to will be paid, with interest, on or before the thirtieth (30th) day following the date such agreement is reached. If such a day is not a banking day, then payment is due and payable on the first banking day common to the Parties following the due date.
- 7.3.5 Notwithstanding any other provision of this Section 7, if OPPD (or its financially responsible party designated pursuant to Section 7.4) is a Market Participant, then for all amounts owing to or from the Midwest ISO transacting for and on behalf of its Market Participants under this Agreement, the billing and payment terms for transmission service provided by Midwest ISO as the Transmission Provider, and for Energy and Operating Reserve Markets transactions shall be the terms set forth in the Midwest ISO Energy and Operating Reserve Markets Tariff, as such terms may be modified from time to time by an order of the FERC.
- 7.3.6 The applicable billing and payment provisions of this Agreement shall continue in effect after termination of this Agreement to the extent necessary to provide for final billing, billing adjustments, payments and disposition of any claims outstanding.

SECTION 7.4 Creditworthiness

- 7.4.1 If OPPD intends to purchase or sell transmission service or Emergency Energy under this Agreement through an agent, whether or not such agent is an affiliate of OPPD, then prior to implementing this Agreement OPPD shall designate in writing such agent to be the financially responsible party for payments due from OPPD under this Agreement. OPPD may upon written notice to the Midwest ISO change its designated agent. An agent designated for this purpose shall be the financially responsible party and shall meet the requirements of this Section 7.4. If OPPD designates an agent as the financially responsible party, OPPD need not separately

meet the requirements of Sections 7.4.2 or 7.4.3 so long as its designated agent meets the requirements of Sections 7.4.2 or 7.4.3, however OPPD shall remain financially, and in all other respects, liable for transactions pursuant this Agreement.

- 7.4.2 A Party, or an agent designated as the financially responsible party, that has been deemed by the Midwest ISO to have adequate credit support pursuant to the requirements of the Midwest ISO Tariff, and Attachment L thereto, shall be deemed creditworthy under this Agreement unless and until such credit standing under the Midwest ISO Tariff is altered or revoked. An agent designated by a Party to be the financially responsible party shall sign this Agreement to indicate its acceptance of the obligation to make payment as set forth herein.
- 7.4.3 If either Party reasonably deems the other Party (or such Party's designated financially responsible party) not to be creditworthy for purposes of this Agreement, subject to good faith efforts to reach agreement on reasonable and appropriate security, such Party shall have no obligation to deliver Emergency Energy, provide transmission service or incur any further financial liability to other Party under this Agreement after it reasonably deems such other Party not to be creditworthy unless and until such reasonable and appropriate security is provided.

SECTION 7.5 Failure to Pay

- 7.5.1 If any Party or its designated financially responsible party, fails to pay the amounts due as set forth in Section 7.3 of this Agreement for a period exceeding 30 days following the due date, the collecting Party may file a complaint for the purpose of collecting said amounts in an appropriate court of competent jurisdiction.
- 7.5.2 In the event of failure to pay or other default exceeding 30 days following the due date or other date for performance, in addition to the remedy stated in Section 7.5.1, the non-defaulting Party may terminate this Agreement in its entirety or may upon written notice to the defaulting Party immediately suspend its obligation to provide Emergency Energy or transmission service used to deliver Emergency Energy under this Agreement, until the act of default is cured.
- 7.5.3 Notwithstanding any other provision of this Section 7.5, if OPPD or the designated financially responsible party is a Market Participant, then the remedies for default available to the Midwest ISO shall be the terms set forth in the Midwest ISO Energy and Operating Reserve Markets Tariff,

as such terms may be modified from time to time by an order of the FERC.

ARTICLE VIII

LIMITATION ON OBLIGATION

SECTION 8.1 This Agreement is not intended to affect the control that the transmission owning members ("Member Systems") of the Midwest ISO or OPPD have over their own facilities and the use thereof. Notwithstanding anything in this Agreement to the contrary, no Party shall be required by the terms of this Agreement to provide any services to any other person that is not a Party to this Agreement.

SECTION 8.2 Nothing in this Agreement shall require a Party or any Member Systems to construct facilities primarily for the benefit of the other Party or a Member System of the other Party.

SECTION 8.3 Nothing in this Agreement shall entitle a Party or a Member System to interfere with the right of the other Party or a Member System of the other Party to proceed with system additions or alterations, which, in its sole opinion, are required to provide adequate and reliable service to its customers.

SECTION 8.4 Nothing in this Agreement shall require a Party or a Member System to take any action requested by the other Party, including without limitation the supply of Emergency Energy, load shedding, the expenditure of funds, or acquisition of equipment if such actions would, in its sole judgment, cause it to violate safety, equipment, or regulatory or statutory requirements. In the event a Party or Member System of a Party declines to take such requested actions, it must immediately inform its own Reliability Coordinator so that such information can be immediately relayed to the other Party requesting such action.

SECTION 8.5 Nothing in this Agreement shall bind any other Balancing Authority to the terms of this Agreement. The adjacent interconnections of the Midwest ISO BA and the OPPD BA are separate and unique, and are therefore beyond the scope of the terms and conditions in this Agreement.

ARTICLE IX **LIABILITY**

SECTION 9.1 No Liability. In no event shall either Party (including its officers, directors, employees, and agents) be liable to the other Party, or the other Party's Member Systems, or any other person or entity, for losses or damages (whether direct, indirect, incidental, or consequential) arising out of or related to any performance, non-performance or delay in performance of an obligation or action under this Agreement, whether based on contract, tort, strict liability, warranty, or otherwise, including without limitation, any action or failure to act by either Party related to any request, recommendation, or requirement of either, or another, Reliability Coordinator.

SECTION 9.2 Indemnification. Neither Party shall indemnify, defend, or save harmless the other Party from any damages, losses, claims or obligations by or to third parties arising out of or resulting from a Party's performance of its various obligations under this Agreement, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs or expenses, court costs, attorneys' fees, or otherwise.

ARTICLE X **MISCELLANEOUS PROVISIONS**

SECTION 10.1 Termination Notice. Any termination notices required by this Agreement shall be in writing and may be given by hand or sent by first class U.S. Mail, or express mail delivery to the applicable address as provided below:

If to Midwest ISO:

Stephen G. Kozey
General Counsel and Secretary
U.S. Mail:
P.O. Box 4202
Carmel, IN 46082-4202

Parcels:

720 City Center Dr.
Carmel, IN 46033

Tel: 317-249-5431
Fax: 317-249-5912

If to OPPD:

David G. Ried
Div Mgr, Energy Mktg & Trading
U.S. Mail:
444 S. 16th Street, Mall 10E/EP1
Omaha, NE 68102-2247

Tel: 402-514-1025
Fax: 402-514-1000

SECTION 10.2 Waiver. Any waiver at any time by either Party of its rights under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be considered a waiver with respect to any subsequent instance or matter.

SECTION 10.3 Assignment. Neither Party shall sell, assign, or otherwise transfer any or all of this Agreement or any or all of its respective rights, or delegate any or all of its respective obligations under this Agreement without the prior written consent of the other Party.

SECTION 10.4 Merger Clause. This Agreement and the Exhibits comprise the full and complete statement of the agreement between the Parties and supersedes and cancels all prior communications, understandings and agreements between the Parties, whether written or oral, expressed or implied relating to the subject matter of this Agreement. No amendments, changes or modifications to this Agreement are valid, unless made in writing and signed by a duly authorized representative of each of the Parties.

SECTION 10.5 Responsibility for Costs. No fees, or other amounts are payable as a result of application of this Agreement. Each Party shall be solely and independently responsible for its conduct and any expenses or costs incurred under this Agreement, except for the obligation to pay for Emergency Energy, as set forth herein.

SECTION 10.6 Nature of Relationship. The Parties hereto agree that no employment, agency, joint venture, teaming, partnership, business arrangement or fiduciary relationship shall be deemed to exist or arise between them with respect to this Agreement.

SECTION 10.7 Governing Law. This Agreement, and the rights and obligations of the Parties arising out of this Agreement, shall be governed by and shall be construed, enforced, and performed in accordance with the Federal laws of the United States of America. To the extent that there is no applicable Federal law, this Agreement, and the rights and obligations of the Parties arising out of this Agreement, shall be governed by and shall be construed, enforced, and performed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of laws.

SECTION 10.8 Headings. The descriptive headings in the various Articles and Sections of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict any of the terms and provisions hereof.

SECTION 10.9 Exhibits. The Exhibits to this Agreement are attached hereto and incorporated by reference. The Exhibits may be amended from time to time as specifically set forth in the respective Exhibits.

SECTION 10.10 Confidentiality. The Parties agree that their confidentiality obligations under this Agreement shall be consistent with and subject to the requirements of the NERC confidentiality restrictions governing non-disclosure of operating information.

SECTION 10.11 Other Entities. Nothing in this Agreement is intended to confer benefits upon any person or entities not a Party, including without limitation the Member Systems of the Midwest ISO or entities taking service of any kind from the OPD BA, respectively. Nothing in this Agreement shall be construed as a stipulation for the benefit of others, and no third party, including without limitation the Member Systems of the Midwest ISO or entities taking service of any kind from the OPD BA, respectively, shall be entitled to enforce this Agreement against either Party.

SECTION 10.12 No Representation or Warranty. Neither Party shall be deemed to make any representation or warranty, express or implied, as to the truth, accuracy or completeness of any information or data exchanged or provided (or not exchanged or provided) to the other Party pursuant to this Agreement. The receiving Party, and all persons receiving such data and information, shall be solely responsible for any reliance thereon, and all investigation thereof, and expressly waive any and all rights of recourse against the Party providing the information.

SECTION 10.13 Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. It shall not be necessary that any counterpart hereof be executed by both Parties so long as at least one counterpart is executed by each Party. A facsimile or photocopy of any signature shall have the same force and effect as an original.

SECTION 10.14 No Waiver of Jurisdictional Immunity. If a Party is not subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") as a "public utility" under the Federal Power Act, that Party shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over the Party. Nothing in this Agreement waives any objection to, or otherwise constitutes consent to, the jurisdiction by FERC over the Party or its transmission service, facilities and rates.

[Signatures appear on following page]

IN WITNESS WHEREOF, the signatories hereto have caused this Agreement to be executed by their duly authorized officers.

FOR Midwest Independent Transmission System Operator, Inc.

By: _____
Stephen G. Kozey
Vice President, General Counsel and Secretary

_____ Date

FOR OPPD


NERC ID: OPPD and OPPI

By: _____
Dale F. Widoe
Vice President of Operations

_____ Date


IN WITNESS WHEREOF, the signatories hereto have caused this Agreement to be executed by their duly authorized officers.

FOR Midwest Independent Transmission System Operator, Inc.

By:  8/24/09
Stephen G. Kozey
Date
Vice President, General Counsel and Secretary

FOR OPPD

NERC ID: OPPD and OPPI

By:  8/25/09
Dale F. Widoe
Date
Vice President of Operations

SCHEDULE EE-1 EMERGENCY ENERGY SETTLEMENTS AND CHARGES

The rate to be charged by each Party when supplying Emergency Energy pursuant to this Agreement shall be the FERC approved tariff rate as stated in this Schedule EE-1, as such rate may be changed from time to time. The terms and conditions applicable to the settlement of such charges are as follows:

- 1.0 Payment will be financial, and accounting for Emergency Energy will be in whole megawatt-hours.
- 2.0 For energy received by OPPD, the charges shall be calculated as follows:
 - 2.1 Midwest ISO supplying OPPD from the Midwest ISO Energy and Operating Reserves Market for and on behalf of its Market Participants shall be paid 150% of the hourly LMP per megawatt-hour at the Commercial Node used to provide such service.
 - 2.2 Midwest ISO supplying OPPD from the Midwest ISO Energy and Operating Reserves Market for and on behalf of its Market Participants while simultaneously receiving energy from the Delivery BA shall be paid the higher of: (i) 150% of the hourly LMP per megawatt-hour at the Commercial Node at which Emergency Energy is injected by the Delivery BA, or (ii) 150% of the hourly LMP per megawatt-hour at the Commercial Node at which the Emergency Energy is removed by the Receiving BA.
- 3.0 For energy received by the Midwest ISO, into the Midwest ISO Energy and Operating Reserve Markets for and on behalf of its Market Participants, the charges shall be calculated as follows:
 - 3.1 OPPD shall be paid: the greater of (i) 150% of the hourly LMP at the interface at which the energy enters the Midwest ISO Energy and Operating Reserve Market; or (ii) 110% of the verifiable cost of the resource(s) used to provide such service.
 - 3.2 When OPPD has facilitated the transfer of Emergency Energy from another BA to the Midwest ISO, OPPD shall be paid its Transmission Service charges and losses, as set forth in Section 5 of this Schedule EE-1, associated with the transfer of Emergency Energy from the Delivery BA to the Midwest ISO.
- 4.0 As used in this Schedule EE-1, the term “verifiable costs” shall mean the cost of fuel, operations and maintenance, energy provided for electric losses, purchased power, and other costs that would not have been otherwise incurred if the Emergency Energy had not been supplied. The term “verifiable costs” does not include the cost of Transmission Service.

- 5.0 In addition to the charges outlined above, the Receiving BA shall pay any applicable transmission charges, including such charges for losses incurred for the delivery of Emergency Energy.
- 6.0 The Point of Delivery for Emergency Energy shall be as follows:
- 6.1 When the Midwest ISO is the Delivery BA, the Point of Delivery shall be the interface node of the Midwest ISO BA to OPPD. OPPD (or the Receiving BA if OPPD is not also the Receiving BA) is responsible to acquire and pay for any applicable Transmission Service and Losses from applicable Transmission Service Providers.
- 6.2 When OPPD is the Delivery BA, the Point of Delivery shall be the point of interconnection between the Parties, provided the Delivery BA is directly connected with the Receiving BA.
- 6.2.1 If the Delivery BA is not directly interconnected with the Receiving BA, then Point of Delivery shall be the interface between the Delivery BA and the physically interconnected Transmission System that is in the pathway to the Receiving BA, and:
- 6.2.1.1 the Receiving BA is responsible to pay for any applicable Transmission Service and Losses from applicable Transmission Service Providers, and
- 6.2.1.2 if the Receiving BA requires the use of the Midwest ISO Transmission System, in addition the Receiving BA shall be subject to congestion costs of the Midwest ISO Transmission System, as set forth in the Midwest ISO Tariff.
- 6.3 Notwithstanding Sections 6.1 and 6.2 of this Schedule EE-1, the Point of Delivery for Canadian Balancing Authorities, as Delivery BA and as Receiving BA, shall be the Canada-United States international border.

EXHIBIT A

**[PLEASE NOTE THAT THE CONFIDENTIAL CONTACT
INFORMATION ON THIS SHEET HAS BEEN REDACTED FOR
SECURITY PURPOSES.]**