

**AGENCY AGREEMENT FOR OPEN ACCESS TRANSMISSION SERVICE  
OVER NON-TRANSFERRED HVDC FACILITIES**

This Agency Agreement For Open Access Transmission Service Over Non-Transferred HVDC Facilities ("Agreement") is entered into this 17th day of September, 2009, between ALLETE, Inc., d/b/a Minnesota Power ("ALLETE"), and the Midwest Independent Transmission System Operator Inc., ("Midwest ISO"), each referred to herein as a "Party" and collectively as "Parties."

**WHEREAS**, the Midwest ISO is a non-stock Delaware corporation and a FERC-certified regional transmission organization that administers organized electricity markets in the Midwest and provides transmission service over certain designated transmission facilities that the Owners committed to the Midwest ISO's functional control pursuant to the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation ("Transmission Owners Agreement"); and

**WHEREAS**, ALLETE is a Minnesota corporation and a signatory to the Transmission Owners Agreement; and

**WHEREAS**, the Transmission Owners Agreement contemplates that an Owner may execute an agency agreement with the Midwest ISO to permit the Midwest ISO to provide transmission service on behalf of the Owner over the Owner's Non-Transferred Facilities; and

**WHEREAS**, ALLETE has acquired, or will have acquired, from third parties certain high-voltage direct current transmission facilities and other associated facilities ("HVDC Facilities"), which are described in Appendix A of this Agreement and which shall be Non-Transferred Facilities; and

**WHEREAS**, ALLETE desires to delegate to the Midwest ISO, as ALLETE's agent, the authority to provide certain transmission services with respect to the HVDC Facilities and perform certain specified functions, as set forth in this Agreement; and

**WHEREAS**, this Agreement pertains only to the HVDC Facilities and has no effect or bearing on service over any other transmission or other facilities.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

# **1. DEFINITIONS**

<b><i>Confidential Information</i></b>	Any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Midwest ISO transmission customer, market participant, Owner, or other user, which is designated as confidential by the entity supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by the Midwest ISO and is not disclosed except under the terms of a confidential information policy.
<b><i>Delegated Authority</i></b>	The functions and responsibilities delegated by ALLETE to the Midwest ISO pursuant to this Agreement, as described in Section 3 hereof.
<b><i>Effective Date</i></b>	The effective date of this Agreement, as set forth in Section 2.1 hereof.
<b><i>ERO</i></b>	Electric Reliability Organization, or the organization certified as ERO by the FERC pursuant to part 39 of its regulations, 18 C.F.R § 39.1, <i>et seq.</i>
<b><i>FERC</i></b>	Federal Energy Regulatory Commission.
<b><i>FPA</i></b>	Federal Power Act, 16 U.S.C. § 796, <i>et seq.</i>
<b><i>Good Utility Practice</i></b>	Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather, intended to include acceptable practices, methods, or acts generally accepted in the region, including those practices required by FPA Section 215(a)(4).

<b><i>HVDC Customer</i></b>	Any customer taking Point-to-Point Transmission Service over the HVDC Facilities on or subsequent to the Effective Date.
<b><i>HVDC Facilities</i></b>	The high voltage direct current transmission facilities and certain related alternating current facilities that are the subject of this Agreement, as described in Appendix A hereof.
<b><i>HVDC Interconnection Queue</i></b>	The generator interconnection requests for generator interconnection service to the HVDC Facilities submitted to Square Butte prior to ALLETE's acquisition of the HVDC Facilities, as specified in Appendix E.
<b><i>HVDC Transmission Queue</i></b>	The transmission service requests for transmission service over the HVDC Facilities, including those submitted to Square Butte for the HVDC Facilities prior to ALLETE's acquisition of the HVDC Facilities, as specified in Appendix D.
<b><i>Midwest ISO Transmission System</i></b>	The Midwest ISO's Transmission System, as defined in Section 1.679 of the Tariff.
<b><i>Non-Transferred Facilities</i></b>	The transmission facilities of an Owner that have not been transferred to the Midwest ISO's functional control pursuant to the Transmission Owners Agreement, including the HVDC Facilities.
<b><i>OASIS</i></b>	The Midwest ISO's Open Access Same-time Information System.
<b><i>Owner</i></b>	A signatory to the Transmission Owners Agreement.
<b><i>Point-to-Point Transmission Service</i></b>	Firm and non-firm point-to-point transmission service provided by the Midwest ISO pursuant to Section 27A of the Tariff.
<b><i>Pre-Existing HVDC Interconnection Agreement(s)</i></b>	Any agreement(s) with respect to the HVDC Facilities between Square Butte (or ALLETE as agent for Square Butte) and a third party for the provision of interconnection services prior to the Effective Date. All of the Pre-Existing HVDC Interconnection Agreements are listed in Appendix B to this Agreement.
<b><i>Pre-Existing HVDC Transmission Agreement(s)</i></b>	Any agreement(s) with respect to the HVDC Facilities between Square Butte (or ALLETE as agent for Square Butte) and a third party (including ALLETE's marketing function or unit) for the provision of transmission services over the HVDC Facilities executed prior to the Effective Date. The Pre-Existing HVDC Transmission Agreements are listed in Appendix C to this Agreement.

<b><i>Reliability Coordinator</i></b>	The entity certified as such by the ERO.
<b><i>Square Butte</i></b>	Square Butte Electric Cooperative.
<b><i>Square Butte Study Queue Transition Plan</i></b>	The transition plan executed by ALLETE and the Midwest ISO with respect to the integration of applications pending in the HVDC Interconnection Queue into the Midwest ISO's generator interconnection queue.
<b><i>Tariff</i></b>	Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midwest Independent Transmission System Operator, Inc., or its successor tariff, as amended.
<b><i>Transmission Owners Agreement</i></b>	Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-stock Corporation, as amended and modified by subsequent orders.

## **2. EFFECTIVE DATE AND TERM**

### **2.1 Effective Date**

This Agreement shall become effective on the later of: (i) the effective date of the FERC's acceptance for filing of the Agreement; or (ii) the date of transfer of ownership of the HVDC Facilities to ALLETE. The Agreement shall not become effective and the Parties shall be released from their respective obligations thereunder in the event FERC, or any other government authority whose consent or approval is required to transfer ownership of the HVDC Facilities to ALLETE, declines to grant or issue such consent or approval.

### **2.2 Term**

The initial term of the Agreement shall be five (5) years after the Effective Date. The Agreement shall automatically renew thereafter for successive one (1) year terms unless terminated as set forth in Article 7.

## **3. DELEGATED AUTHORITY**

### **3.1 Appointment of Midwest ISO as Agent and Grant of Delegated Authority**

ALLETE appoints the Midwest ISO as its agent to provide transmission service on the HVDC Facilities, as set forth herein, and perform other functions specified in the Agreement and, to that effect, delegates to the Midwest ISO certain specified rights and responsibilities, as set forth in Section 3.2 ("Delegated Authority"). ALLETE retains all other rights and responsibilities with respect to the HVDC Facilities, as set forth in Section 3.3.

### **3.2 Rights and Responsibilities Delegated to Midwest ISO**

#### **3.2.1 Transmission Provider Authority**

Except as specifically reserved in Section 3.3 of the Agreement, the Midwest ISO shall provide Point-to-Point Transmission Service on the HVDC Facilities and perform other functions and responsibilities of the transmission provider with respect to the HVDC Facilities, as set forth in Section 27A of the Tariff and other related provisions of the Tariff, including administration of transmission service under the Pre-existing HVDC Transmission Agreements. Service Agreements for the provision of transmission service on the HVDC Facilities entered into in violation of the terms of this Agreement or the Tariff shall be null and void.

As set forth in the Tariff, and without limitation, the Midwest ISO's transmission provider responsibilities with respect to the HVDC Facilities shall include:

- (i) receiving, evaluating and processing transmission service requests, including rollover requests, and receiving and processing applications (and application deposits) for Point-to-Point Transmission Service and administering the HVDC Transmission Queue, including the accepted applications in the HVDC Transmission Queue as of the Effective Date, as listed in Appendix D hereto;
- (ii) scheduling and curtailing Point-to-Point Transmission Service;
- (iii) executing service agreements for Point-to-Point Transmission Service with eligible customers, provided that any service agreement in effect with respect to the HVDC Facilities will revert to ALLETE as the transmission provider upon the expiration or termination of this Agreement and provided further that the Midwest ISO shall be released from any obligations and responsibilities thereunder upon such reversion to ALLETE;
- (iv) invoicing and billing transmission customers for transmission and ancillary service provided on the HVDC Facilities (including service provided under the Pre-existing HVDC Transmission Agreements);
- (v) granting extensions for commencement of service;
- (vi) determining available transmission capability and total transmission capability over the HVDC Facilities in accordance with Attachment C of the Tariff;
- (vii) conducting transmission system impact studies and facilities studies;
- (viii) maintaining and administering the OASIS in accordance with applicable regulations; and
- (ix) approval of all planned outages or other maintenance of the HVDC Facilities and coordination of emergency transmission maintenance.

### **3.2.2 Ancillary Services**

The Midwest ISO shall provide Scheduling, System Control and Dispatch Service for service over the HVDC Facilities, as set forth in Schedule 1-HVDC of the Tariff. Reactive power and voltage support shall be provided by ALLETE or self-provided by the relevant HVDC Customer. Because no load is directly served over the HVDC Facilities, the Parties agree that Schedules 3-6 of the Tariff (Regulating Reserve, Energy Imbalance Service, Spinning Reserve Service, and Supplemental Reserve Service) are not applicable and these services shall not be provided by the Midwest ISO with respect to the HVDC Facilities.

### **3.2.3 Generator Interconnection**

The Midwest ISO shall process requests for interconnection of generating facilities to the HVDC Facilities in accordance with the generation interconnection procedures set forth in the Tariff. Any application in the HVDC Interconnection Queue, as listed in Appendix E to this Agreement, that remains pending as of the Effective Date shall be included in the Midwest ISO's generator interconnection queue in accordance with the generation interconnection procedures set forth in the Tariff and the Square Butte Study Queue Transition Plan.

### **3.2.4 Reliability Coordination**

The Midwest ISO shall act as the Reliability Coordinator with respect to the HVDC Facilities in accordance with applicable operating guides, ERO and Regional Entity standards and requirements, and laws and FERC regulations. The Midwest ISO's responsibilities under this Section 3.2.4 shall consist of the specific tasks and functions required of Reliability Coordinators by the ERO and applicable Regional Entities and shall include the reliability coordination tasks performed by the Midwest ISO for the Owners pursuant to the Transmission Owners Agreement.

### **3.2.5 Seams Coordination**

At the time that this Agreement is being executed, the HVDC Facilities are located within the Midwest ISO control area and there is presently no need for the HVDC Facilities to be subject to a seams agreement. In the future, however, the Parties may determine that preservation of reliability requires that the HVDC Facilities be subject to a seams agreement. Accordingly, subject to this Agreement and ALLETE's written consent, which shall not be unreasonably withheld, the Midwest ISO shall have the authority to enter into coordination arrangements with the control areas adjacent to the HVDC Facilities and coordinate system operation and emergency as may be necessary.

### **3.2.6 Transmission Expansion Planning**

The existing HVDC Facilities, as described in Appendix A hereto, shall be treated as any other Non-Transferred Facility under the Transmission Owners Agreement and the Tariff with respect to planning. The Midwest ISO and ALLETE shall conduct collaborative and coordinated transmission planning as applicable with respect to the HVDC Facilities in accordance with the Transmission Owners Agreement, the Midwest ISO's Transmission Expansion Planning Protocol (Attachment FF of the Tariff), and applicable regulations.

With respect to any upgrade of the HVDC Facilities, to the extent such an upgrade is determined to be a baseline reliability project, as defined in the Tariff, the Midwest ISO's Transmission Expansion Planning Protocol (Attachment FF of the Tariff), including its cost allocation provisions, shall apply to any such upgrade of the HVDC Facilities. As a controllable facility, the HVDC Facilities shall not be assigned any line outage distribution factor ("LODF") associated with any Baseline Reliability Project under the cost sharing provisions of Attachment FF of the Tariff. ALLETE reserves the right to contest the appropriateness and applicability of the LODF methodology for cost allocation for any upgrade to the HVDC Facilities.

### **3.2.7 Development of Business Practices and Operating Procedures**

ALLETE and the Midwest ISO shall develop mutually agreeable business practices and operating procedures applicable to the HVDC Facilities. Such business practices and operating procedures shall govern, among other things: (1) scheduling transmission service; (2) losses compensation; (3) curtailments; (4) treatment of Pre-existing HVDC Transmission Agreements; (5) de-icing procedures; and (6) reliability.

### **3.2.8 Billing for Transmission Service**

The Midwest ISO shall include in the monthly transmission service invoices it issues pursuant to Section 7 of the Tariff the charges for transmission service pursuant to this Agreement.



### **3.2.9 Revenue Collection and Distribution**

The Midwest ISO shall collect and distribute fully to ALLETE all revenue received in connection with the provision of transmission and ancillary service over the HVDC Facilities, including the transmission and ancillary services provided under Pre-existing HVDC Transmission Agreements. The timing of revenue distribution to ALLETE for the revenue collected from HVDC Customers pursuant to this Agreement shall be identical to that specified in Section 7 of the Tariff for transmission service revenue distribution.

## **3.3 Rights and Responsibilities Retained by ALLETE**

### **3.3.1 Physical Operation of the HVDC Facilities**

ALLETE shall physically operate, repair and maintain the HVDC Facilities, subject to the Midwest ISO's direction as set forth in the Agreement and the applicable provisions of the Tariff incorporated into this Agreement.

### **3.3.2 Revenue Requirements and Rate Design**

- (i) ALLETE shall retain the full and exclusive right to determine its transmission revenue requirements for the HVDC Facilities and to submit filings under FPA section 205 with regard to such transmission revenue requirements. This full and exclusive right shall include the right to propose a new rate formula or any change to any component of any rate formula used to calculate its revenue requirements for the HVDC Facilities, if applicable.
- (ii) ALLETE shall retain the full and exclusive right to submit filings under FPA section 205 with regard to the transmission rate design for the HVDC Facilities, provided that any such filing made does not in any way affect the rates charged or revenues collected in any Midwest ISO zone, except the ALLETE zone.

### **3.3.3 Allocation of Costs for Transmission Upgrades**

Except as may be limited by Section 3.2.6 hereof, ALLETE shall retain the full and exclusive right under FPA section 205 to submit filings with regard to transmission upgrades of the HVDC Facilities, including with regard to the allocation of costs for such upgrades. In entering into transmission service agreements relating to upgrades to the HVDC Facilities, the Midwest ISO shall assess the costs of any upgrade to the customers requesting service that requires such upgrades.

### **3.3.4 Losses**

Loss compensation for the HVDC Facilities will be calculated in accordance with the HVDC Losses Table in Appendix F. ALLETE shall retain the full and exclusive right to submit filings under FPA Section 205 with regard to Appendix F, subject to reasonable prior consultation with the Midwest ISO. Nothing in the preceding sentence shall limit the ability of the Midwest ISO to intervene in or protest any such filing.

## **3.4 Compliance with Midwest ISO's Directives**

ALLETE shall comply, without delay, with all directives issued by the Midwest ISO pursuant to Delegated Authority. ALLETE shall provide the Midwest ISO with reasonable notice of any material change that impacts the ability of the Midwest ISO to exercise its responsibilities under this Agreement and shall coordinate with the Midwest ISO in an attempt to ensure that such a change will not adversely affect the reliable operation of the Midwest ISO Transmission System.

## **3.5 Performance by ALLETE and Access to Data**

ALLETE shall provide all services necessary or appropriate to support performance by the Midwest ISO under the Tariff and service agreements thereunder with regard to service involving the HVDC Facilities. ALLETE further agrees to provide the Midwest ISO (and/or grant the Midwest ISO access) from the Effective Date and throughout the term of the Agreement, to all data relating to the HVDC Facilities that the Midwest ISO deems reasonably necessary to perform its functions under this Agreement, the Tariff and the service agreements pertaining to the HVDC Facilities. The Parties shall agree upon the initial format and manner in which such data shall be provided, and shall cooperate with each other to revise the format and the manner in which such data shall be provided as may be necessary. The Midwest ISO shall provide to ALLETE all data necessary for ALLETE to perform its responsibilities in accordance with Good Utility Practice and business practices agreed-to by the Parties.

## **3.6 Compliance with Applicable Requirements**

The Parties shall perform their respective obligations under the Agreement in accordance with Good Utility Practice and the Tariff, and shall conform to: (i) all applicable operating guides; (ii) all applicable reliability criteria policies, standards, rules, regulations and other requirements

Issued by: Stephen G. Kozey, Issuing Officer, Midwest ISO  
Bradley Oachs, Issuing Officer, ALLETE, Inc.

Effective: December 31, 2009

Issued on: December 4, 2009

Filed to comply with *Midwest Independent Transmission System Operator, Inc.*, 129 FERC ¶ 61,172 (2009) issued on November 24, 2009 in Docket Nos. ER09-1727, *et al.*

of the ERO and any applicable Regional Entity, and their successors; and (iii) all applicable requirements of federal and state regulatory authorities. Without limiting the applicability of the foregoing, pursuant to applicable ERO reliability standards, ALLETE will review with the Midwest ISO interchange schedules, as communicated to ALLETE, and will acknowledge that communication for proof of the Midwest ISO's compliance as the balancing authority.

### **3.7 Subcontractors**

The Parties shall have the right to retain one or more subcontractors to perform any or all of their respective obligations under the Agreement. Retention of subcontractors shall not relieve either Party from its primary liability for the performance of its obligations under the Agreement.

## **4. INCORPORATION OF THE TARIFF**

To the extent not inconsistent with this Agreement, the Tariff is incorporated in and made part of this Agreement.

## **5. PRE-EXISTING HVDC TRANSMISSION AND INTERCONNECTION AGREEMENTS**

Nothing in the Agreement should require modification or abrogation of any non-rate term or condition of any Pre-Existing HVDC Transmission or Interconnection Agreement, and they will continue to be effective through their terms. This Agreement shall not alter any rule or provision applicable to the modification of such Pre-Existing HVDC Transmission or Interconnection Agreements. Notwithstanding the foregoing, the rates for transmission services provided under the Pre-existing HVDC Transmission Agreements shall be as set forth in Section 6.1 of the Agreement.

## **6. COMPENSATION AND PAYMENT**

### **6.1 Charges and Payment for HVDC Customers**

HVDC Customers taking Point-to-Point Transmission Service over the HVDC Facilities shall pay the following charges:

- (i) ALLETE's applicable firm or non-firm HVDC transmission charges, as set forth in Schedules 7 or 8 of the Tariff,
- (ii) any applicable ancillary services charges, as provided in Section 3.2.2 of the Agreement; and
- (iii) the Midwest ISO's HVDC agreement cost recovery charges, as set forth in Schedule 35 of the Tariff.

## **6.2 ALLETE's Payment Guarantee**

- (i) In the event that Midwest ISO issues an invoice for Schedule 35 fees associated with its services provided under this Agency Agreement and payment from the HVDC Customer is not received on the payment due date, the Midwest ISO shall, after exhausting the collection remedies available to the Midwest ISO under the Tariff and Midwest ISO manuals and business practices, promptly notify ALLETE in writing of the non-payment status of the Schedule 35 invoice. Upon notification of non-payment of the Schedule 35 fees, ALLETE shall promptly make payment in full to Midwest ISO for the unpaid amount of the Schedule 35 fees that are past due.
- (ii) In the event the past due amount of Schedule 35 fees is received from the HVDC Customer by Midwest ISO, whether from collection actions, use of financial security provided by the HVDC Customer or other actions that result in payment of the past due amount owed for Schedule 35 fees, the Midwest ISO shall promptly reimburse ALLETE the amount of funds received from the HVDC Customer associated with the past due amount including interest payable at the rate earned by the Midwest ISO on funds held in its investment account during the period of time between when ALLETE paid the past due Schedule 35 fee and when Midwest ISO returns to ALLETE any past due portion of the Schedule 35 fee received by Midwest ISO from the delinquent HVDC Customer.

## **7. TERMINATION**

### **7.1 Termination by Mutual Consent**

The Parties may terminate the Agreement by mutual consent, in writing.

### **7.2 Unilateral Termination by a Party**

Either Party may terminate this Agreement at any time upon written notice provided not less than one (1) year prior to the end of the initial or any subsequent term.

### **7.3 Termination Due to Governmental Action**

- 7.3.1** The Agreement shall terminate if so directed by the FERC or a court of competent jurisdiction.
- 7.3.2** A Party may terminate the Agreement upon 30-day written notice if any governmental body takes an action (or fails to take a necessary action) that materially and adversely affects that Party's ability to perform under the Agreement. In such event, the Parties shall negotiate in good faith to determine whether changes should be made to this Agreement to address the reasons for such Party's termination.

### **7.4 Termination for Cause**

The Agreement may be terminated immediately upon written notice by either Party:

- 7.4.1** If the other Party makes a general assignment of the Agreement for the benefit of its creditors, institutes a proceeding in bankruptcy, has appointed a receiver, trustee, custodian or assignee on account of its insolvency, which is not dismissed in sixty (60) days, or if a proceeding in bankruptcy is instituted against the other Party and not dismissed within (60) days;
- 7.4.2** if the other Party dissolves or is dissolved or its legal existence is otherwise terminated;
- 7.4.3** if the other Party fails to make any payment required by this Agreement or any applicable Tariff provision, and such non-payment is not cured within thirty (30) days after a written notice of non-payment is given by the non-breaching party;
- 7.4.4** upon a material breach by the other Party of any of its obligations, representations or warranties under this Agreement that is not adequately cured within sixty (60) days after a written notice of breach is given by the non-breaching Party; or
- 7.4.5** in the event of gross negligence, willful misconduct or fraud by the other Party in the performance of its obligations under the Agreement.

## **7.5 Termination Due To Force Majeure**

If an event of Force Majeure, as defined in Section 12.1 hereof, continues for more than one hundred eighty (180) days, a Party affected by such event of Force Majeure may terminate this Agreement immediately upon written notice to the other Party.

## **8. DISPUTE RESOLUTION**

### **8.1 Dispute Resolution**

Any dispute, claim or controversy between ALLETE and the Midwest ISO arising out of, or relating to, this Agreement shall be considered in accordance with the dispute resolution procedures set forth in Attachment HH of the Tariff or the successor provision.

## **9. FERC APPROVAL AND FPA RIGHTS**

### **9.1 FERC Approval and Modification**

**9.1.1** This Agreement and the participation of the signatories to this Agreement are subject to acceptance or approval by the FERC.

**9.1.2** In the event the FERC disapproves or refuses, in whole or in part, to accept this Agreement, then this Agreement shall not be effective except that the Parties shall be obligated to attempt, expeditiously and in good faith, to negotiate a substitute agreement which addresses the reasons for such FERC action. If despite such good faith negotiation, the Parties are unable to produce such a substitute agreement, then the Parties shall have no further obligations under this Agreement, or any filing associated herewith.

**9.1.3** In the event the FERC by order imposes conditions on approval of this Agreement which adversely affect any Party in the sole judgment of that Party, each such Party may, no later than thirty (30) days after the date of such order and upon notice to the other Party, withdraw from this Agreement. In such event, the Parties shall in good faith, negotiate to determine whether changes should be made to this Agreement to address the reasons for such Party's withdrawal.

## **9.2 FPA Rights**

Except as set forth in Section 16.1 hereof, nothing in the Agreement shall be construed to affect any right or responsibility that either Party may have under the FPA, including its rights under FPA Sections 205 and 206.

## **10. WARRANTIES AND REPRESENTATIONS**

Each Party represents and warrants to the other Party that, as of the date it executes this Agreement and for the duration thereof:

- 10.1** It is duly organized, validly existing, and in good standing under the laws of the jurisdiction where organized.
- 10.2** Subject to any necessary approvals by federal or state regulatory authorities, the execution and delivery by it, and the performance of its obligations hereunder, have been duly and validly authorized by all requisite action on the part of such Party. This Agreement has been duly executed and delivered by it, and, subject to the conditions set forth in this Agreement, constitutes the legal, valid, and binding obligation on the part of it, enforceable against it in accordance with its terms.
- 10.3** There are no actions at law, suits in equity, proceedings, or claims pending or, to the knowledge of such Party, threatened against such Party before or by any federal, state, foreign, or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.
- 10.4** ALLETE represents that the HVDC Facilities are as described in Appendix A.

## **11. INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **11.1 Indemnification by ALLETE**

Subject to the terms and limitations in this Agreement, ALLETE shall indemnify, release, defend, reimburse and hold harmless the Midwest ISO and its affiliates and their respective directors, officers, employees, principals, representatives and agents (collectively, the “Midwest ISO Parties”) from and against any and all claims, demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees (each an “Indemnifiable Loss”) asserted against or incurred by any of the Midwest ISO Parties arising out of, resulting from, or based upon: (a) any breach of ALLETE’s obligations under this Agreement; or (b) related to ALLETE’s acts or omissions that give rise to an Indemnifiable Loss.

### **11.2 Indemnification by the Midwest ISO**

Subject to the terms and limitations in this Agreement, the Midwest ISO shall indemnify, release, defend, reimburse and hold harmless ALLETE and its affiliates and their respective directors, officers, employees, principals, representatives and agents (collectively, the “ALLETE Parties”) from and against any and all claims, demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, costs and expenses, and attorney fees (each an “Indemnifiable Loss”) asserted against or incurred by any of ALLETE Parties arising out of, resulting from, or based upon: (a) any breach of the Midwest ISO’s obligations under this Agreement; or (b) related to the Midwest ISO’s acts or omissions that give rise to an Indemnifiable Loss.

### **11.3 Indemnification by the Midwest ISO and ALLETE**

ALLETE shall indemnify, defend, reimburse and hold harmless the Midwest ISO Parties, and the Midwest ISO shall indemnify, defend, reimburse and hold harmless ALLETE Parties, from and against any losses arising from or relating to claims of bodily injury or death of any person or damage to real and/or tangible personal property caused by the gross negligence or willful misconduct of the indemnifying Party, its directors, officers, personnel, employees, agents, representatives or contractors (collectively, the “Indemnifying Party”) during the term of this Agreement.



#### **11.4 Treatment of Indemnification Claims**

A Party making a claim for indemnification pursuant to this Agreement shall be referred to herein as the “Indemnified Party” and the Party against whom such indemnification claims are asserted pursuant to this Agreement shall be referred to herein as the “Indemnifying Party.” In the event of a claim for indemnification, the Indemnified Party shall promptly furnish written notice to the Indemnifying Party (a “Claim Notice”) specifying the nature of the direct claim or third party claim giving rise to indemnification. The failure of the Indemnified Party to deliver promptly a Claim Notice shall not affect the indemnity obligations of the Indemnifying Party hereunder except to the extent the Indemnifying Party was actually prejudiced by such delay in delivery of such Claim.

#### **11.5 Limitation of Liability**

Neither Party shall be liable to the other Party for, nor will the measure of damages include, any indirect, incidental, exemplary, punitive, special or consequential damages arising out of or related to the performance of such Party’s obligations under this Agreement. The Parties further agree that their liability to each other and to third parties shall be limited as set forth in Section 10.3 of the Tariff.

### **12. FORCE MAJEURE**

#### **12.1 Force Majeure**

An event of force majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

#### **12.2 Performance under Force Majeure**

Except for the obligation to pay any amount when due, neither Party shall be considered in default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure, provided that the affected Party: (i) gives notice to the other Party of the event or circumstance giving rise to the event of Force Majeure; (ii) affords the other Party reasonable access for obtaining information about the event or circumstances alleged to constitute a Force Majeure; (iii) takes all commercially reasonable steps required to restore its ability to perform its obligations hereunder as soon as reasonably practicable provided that the affected Party shall not be obligated to take any steps that are not otherwise in accordance with Good Utility Practice, and (iv) makes commercially reasonable efforts to perform its obligations hereunder.

### **13. CONFIDENTIAL INFORMATION**

The treatment of Confidential Information shall be in accordance with the applicable policies set forth in Section 38.9 of the Tariff and Appendix A (Standards of Conduct) of the Transmission Owners Agreement.

### **14. TAXES**

Each Party shall be responsible for the payment of its own taxes, including taxes based on its net income, employment taxes of its employees, taxes on any property it owns or leases, and sales, use, gross receipts, excise, value-added, or other transaction taxes. Any tax incurred by the Midwest ISO in connection with the exercise of the Delegated Authority shall be recovered from ALLETE, provided that the Midwest ISO shall exert reasonable efforts to minimize the amount of taxes incurred in support of the exercise of the Delegated Authority. The Midwest ISO shall promptly notify ALLETE of any tax assessments relating to its performance hereunder, and ALLETE shall be entitled to request the Midwest ISO to protest, defend or appeal any such tax assessments. The Midwest ISO shall reasonably cooperate and assist as necessary with such protest or appeal. Such protest or appeal shall be controlled by ALLETE, including choice of counsel, with ALLETE bearing all costs, fees and expenses in furtherance of the protest or appeal. Any recoveries or refunds of such taxes plus interest resulting from such protest or appeal which were previously reimbursed by ALLETE to the Midwest ISO shall be for the account of ALLETE. ALLETE agrees to provide full indemnification to the Midwest ISO for any additional liabilities resulting from such protest or appeal.

## **15. NOTICES**

### **15.1 Notices**

Except as otherwise provided expressly herein, all notices, requests, consents and other communications required under this Agreement shall be in writing and shall be dispatched to a Party by U.S. mail, overnight courier, hand delivery, telefacsimile, or other reliable electronic means. Any notice required under this Agreement shall be deemed to have been given either upon delivery, if by U.S. mail, overnight courier, or hand delivery, or upon confirmation, if given by telefacsimile or other reliable electronic means.

All notices shall be addressed to the parties as follows:

If to ALLETE:

Vice President, Power Delivery and Transmission  
30 West Superior Street  
Duluth, Minnesota 55802  
and  
Vice President and General Counsel  
30 West Superior Street  
Duluth, Minnesota 55802  
Facsimile: 218-723-3960

If to the Midwest ISO:

Vice President, General Counsel & Secretary  
P.O. Box 4202  
Carmel, Indiana 46082-4202  
Overnight Delivery to:  
701 City Center Drive  
Carmel, Indiana 46032  
Facsimile: 317-249-5912

## **15.2 Date**

Notices under this Agreement shall be deemed given upon the earlier of the date of delivery or the date upon which delivery is refused.

## **15.3 Changes**

Any changes in the names or addresses set out in Section 15.1 shall be through notice in conformity with the requirements of Section 15.1.

## **16. MISCELLANEOUS**

### **16.1 Amendments**

This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorized representative of ALLETE on behalf of ALLETE and by a duly authorized representative of the Midwest ISO on behalf of the Midwest ISO. The Parties expressly agree that neither Party shall unilaterally petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act to amend this Agreement or request that FERC initiate its own proceeding to amend this Agreement.

### **16.2 Entire Agreement**

This Agreement, including the Appendices hereto, sets forth the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements, whether oral or written, related to the subject matter of this Agreement.

### **16.3 Waivers**

No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against which it is sought to be enforced. The delay or failure by either Party to exercise or enforce any of its rights under this Agreement or to insist upon or enforce strict performance of any of the specific provisions of this Agreement shall not constitute or be deemed a waiver of that Party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

#### **16.4 Successors and Assigns**

This Agreement shall inure to the benefit of, and be binding upon the Parties, their respective successors and assigns permitted hereunder. Any assignment of this Agreement or any interest herein, or delegation of all or any portion of a Party's obligations, by operation of law or otherwise, by either Party without the other Party's written consent having first been obtained shall be void and of no effect, provided that the Midwest ISO's consent will not be required for ALLETE to assign this Agreement to a successor entity that acquires all or substantially all of ALLETE's transmission system whether by merger, consolidation, reorganization, sale, spin-off, or foreclosure and provided further that such successor entity agrees to assume all of ALLETE's obligations hereunder from and after the date of such assignment. As a condition to the effectiveness of such assignment, (a) ALLETE shall promptly notify the Midwest ISO of such assignment, (b) the successor entity shall provide a written confirmation to the Midwest ISO of its assumption of ALLETE's obligations hereunder, and (c) ALLETE shall promptly reimburse the Midwest ISO, upon receipt of an invoice from the Midwest ISO, for any one-time incremental costs reasonably incurred by the Midwest ISO as a result of such assignment. Nothing herein shall preclude ALLETE from transferring any or all of its transmission facilities to another entity or disposing of or acquiring any other transmission assets.

#### **16.5 Survival**

All provisions of this Agreement which are by their nature or terms intended to survive the termination of this Agreement, including any indemnification and confidentiality obligations, shall survive termination of this Agreement.

#### **16.6 No Third-Party Beneficiaries**

This Agreement is made solely for the benefit of the Parties hereto and their successors and permitted assigns and no other person shall have any rights, interest or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as third party beneficiary or otherwise.

#### **16.7 No Joint Venture**

The Parties do not intend that this Agreement constitute a partnership or joint venture.

#### **16.8 Governing Law**

This Agreement and the rights and obligations of the Parties under this Agreement shall be interpreted, construed, and governed by the laws of Delaware, except to the extent preempted by the laws of the United States of America, and without giving effect to its conflicts of law rules.

## **16.9 Consent to Jurisdiction**

All disputes by any Party in connection with or relating to this Agreement or any matters described or contemplated in this Agreement, to the extent not subject to the jurisdiction of the FERC, shall be instituted in: (1) the courts of the State of Minnesota or of the United States in the State of Minnesota if such dispute is brought by the Midwest ISO, or (2) the courts of the State of Indiana or of the United States in the State of Indiana if such dispute is brought by Minnesota Power. Each Party irrevocably submits, for itself and its properties, to the exclusive jurisdiction of the courts of the State of Minnesota or Indiana, as applicable, and of the United States sitting in the State of Minnesota or Indiana, as applicable, in connection with any such dispute arising out of or relating to this Agreement. Each Party hereby irrevocably and unconditionally waives any objection or defense that it may have based on improper venue or *forum non conveniens* to the conduct of any proceeding in any such courts.

## **16.10 Further Assurances**

Each Party agrees that it shall hereafter execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.

## **16.11 Good Faith Efforts**

Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and other Parties to fulfill their obligations under this Agreement. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement, or approval shall not be unreasonably withheld, conditioned, or delayed. Where any Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement or the transactions or actions covered by this Agreement, each Party shall cooperate with all other Parties to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement or such transactions or actions.

## **16.12 Severability**

The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision herein. If any provision of this Agreement is found to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other provisions hereof or the whole of this Agreement and shall not render invalid, illegal or unenforceable this Agreement or any of the remaining provisions of this Agreement.

### **16.13 Interpretation**

Unless the context of this Agreement otherwise clearly requires, (a) the terms “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the phrase “without limitation,” and (b) the term “or” has the inclusive meaning represented by the phrase “and/or.” All Section and Appendix references herein are to Sections and Appendix of this Agreement, unless otherwise specified. This Agreement shall not be construed as if prepared by one Party, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

### **16.14 Counterparts; Headings**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon ALLETE and the Midwest ISO, notwithstanding that ALLETE and the Midwest ISO may not have executed the same counterpart. The descriptive headings of Articles, Sections, paragraphs, subparagraphs, and other provisions of this Agreement are inserted for convenience of reference only and shall not define, modify, restrict, construe, or otherwise affect the construction or interpretation of any of the provisions of this Agreement.

The Parties have caused this Agreement to be executed by their duly authorized representatives of the Parties as of the dates shown below.

MIDWEST INDEPENDENT TRANSMISSION  
SYSTEM OPERATOR, INC.

By: Michael P. Holstein

Name: Michael P. Holstein

Title: Vice President & Chief  
Financial Officer

Date: 9-17-09

Phone: 317-249-5525

Fax: 317-249-5899

ALLETE, INC. D/B/A  
MINNESOTA POWER

By: Bradley W. Oachs

Name: Bradley W. Oachs

Title: Vice President Power  
Delivery and Transmission

Date: September 16, 2009

Phone: 218-720-2662

Fax: 218-720-2685



**APPENDIX A**  
**HVDC FACILITIES**

The HVDC Facilities are described in Article II (and corresponding schedules) of the August 11, 2008 "Asset Purchase Agreement Between Square Butte Electric Cooperative and ALLETE, Inc. doing business as Minnesota Power" included as Exhibit I.1 to ALLETE's September 4, 2009 Federal Power Act Section 203 application to acquire the HVDC Facilities, submitted in Docket No. EC09-108.

**APPENDIX B**  
**PRE-EXISTING HVDC INTERCONNECTION AGREEMENTS**

<u>Customer</u>	<u>Queue ID</u>	<u>Date of LGIA</u>	<u>In-Service Date</u>	<u>Capacity (megawatts)</u>
NextEra Energy Resources, LLC	OC-1	November 2, 2006	December 22, 2006	50.0
NextEra Energy Resources, LLC	OC-2	November 12, 2007	December 31, 2007	50.0

**APPENDIX C**  
**PRE-EXISTING HVDC TRANSMISSION AGREEMENTS**

<b>Customer</b>	<b>Date of Service Agreement</b>	<b>Capacity (megawatts)</b>	<b>Transmission Service Reservation Number</b>
ALLETE, Inc. d/b/a Minnesota Power	May 29, 1998	227.5	n/a
Minnkota Power Cooperative, Inc.	May 29, 1998	227.5	n/a
ALLETE, Inc. d/b/a Minnesota Power	July 29, 2005	10.0	986459 / 76416916 76664868 (2008-13)
ALLETE, Inc. d/b/a Minnesota Power	July 29, 2005	10.0	986460 / 76416920 76664864 (2008-13)
ALLETE, Inc. d/b/a Minnesota Power	July 29, 2005	10.0	986461 / 76416922 76664871 (2008-13)
ALLETE, Inc. d/b/a Minnesota Power	February 6, 2007 February 28, 2008	65.0 <sup>1</sup>	76465814 76664872 (2008-13)

<sup>1</sup> 65 MW represents 15 MW granted pursuant to the February 6, 2007 Transmission Service Agreement, plus 50 MW granted pursuant to the February 28, 2008 Transmission Service Agreement and contingent on upgrades associated with November 25, 2008 Facilities Construction Agreement.

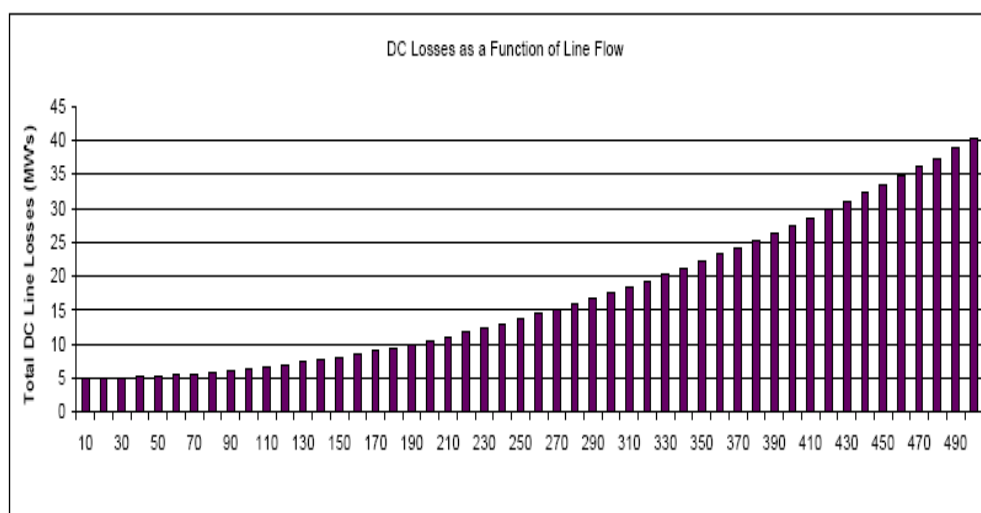
**APPENDIX D**  
**APPLICATIONS INCLUDED IN HVDC TRANSMISSION QUEUE AS OF**  
**EFFECTIVE DATE**

<b>Customer</b>	<b>Anticipated Commencement of Service</b>	<b>Capacity (megawatts)</b>	<b>Transmission Service Reservation Number</b>
ALLETE, Inc. d/b/a Minnesota Power	January 1, 2015	100.0	76693473
ALLETE, Inc. d/b/a Minnesota Power	January 1, 2016	100.0	76693476
ALLETE, Inc. d/b/a Minnesota Power	January 1, 2015	300.0	76693463

**APPENDIX E**  
**APPLICATIONS INCLUDED IN HVDC INTERCONNECTION QUEUE AS OF**  
**EFFECTIVE DATE**

<b>Date</b>	<b>Requesting Entity</b>	<b>Requested In-Service Date</b>	<b>Size (MW)</b>	<b>Designation Reference</b>
October 8, 2007	ALLETE, Inc. d/b/a Minnesota Power (Bison 1)	December 31, 2010	75.9 MW	GS-660
December 4, 2007	NextEra Energy Resources, LLC (Oliver County 3)	December 31, 2009	48 MW	GS-661
February 28, 2008	ALLETE, Inc. d/b/a Minnesota Power (Bison 2)	January 1, 2012	101.2 MW	GS-662
February 28, 2008	ALLETE, Inc. d/b/a Minnesota Power (Bison 3)	January 1, 2013	101.2 MW	GS-663
February 28, 2008	ALLETE, Inc. d/b/a Minnesota Power (Bison 4)	January 1, 2014	101.2 MW	GS-664
February 28, 2008	ALLETE, Inc. d/b/a Minnesota Power (Bison 5)	January 1, 2015	101.2 MW	GS-665
February 28, 2008	ALLETE, Inc. d/b/a Minnesota Power (Bison 6)	January 1, 2016	101.2 MW	GS-666
May 13, 2008	ALLETE, Inc. d/b/a Minnesota Power (Minnesota Power Wind 1)	January 1, 2013	200.1 MW	GS-667
June 6, 2008	ALLETE, Inc. d/b/a Minnesota Power (Minnesota Power Wind 2)	January 1, 2015	301.3 MW	GS-668
June 30, 2008	NextEra Energy Resources, LLC (Oliver County 4)	December 31, 2010	500 MW	GS-669
June 2, 2009	NextEra Energy Resources, LLC (Oliver County 7)	December 31, 2011	1000 MW	GS-670

## APPENDIX F HVDC LOSSES TABLE



HVDC Loss Calculation Table

Line Flow (MW)	DC Losses (MW)	Incremental Losses	Percentage of Losses	Line Flow (MW)	DC Losses (MW)	Incremental Losses	Percentage of Losses	Line Flow (MW)	DC Losses (MW)	Incremental Losses	Percentage of Losses	Line Flow (MW)	DC Losses (MW)	Incremental Losses	Percentage of Losses	Line Flow (MW)	DC Losses (MW)	Incremental Losses	Percentage of Losses
10	5.0	5.000	50.00%	110	6.7	0.293	2.93%	210	11.2	0.577	5.77%	310	18.5	0.860	8.60%	410	28.6	1.144	11.44%
20	5.0	0.037	0.37%	120	7.0	0.321	3.21%	220	11.8	0.605	6.05%	320	19.4	0.889	8.89%	420	29.8	1.172	11.72%
30	5.1	0.066	0.66%	130	7.3	0.350	3.50%	230	12.4	0.633	6.33%	330	20.3	0.917	9.17%	430	31.0	1.201	12.01%
40	5.2	0.094	0.94%	140	7.7	0.378	3.78%	240	13.1	0.662	6.62%	340	21.2	0.945	9.45%	440	32.2	1.229	12.29%
50	5.3	0.123	1.23%	150	8.1	0.406	4.06%	250	13.7	0.690	6.90%	350	22.2	0.974	9.74%	450	33.5	1.258	12.58%
	5.1		10.64%		7.4		3.50%		12.4		6.33%		20.3		9.17%		31.0		12.01%
60	5.5	0.151	1.51%	160	8.8	0.435	4.35%	260	14.5	0.718	7.18%	360	23.2	1.002	10.02%	460	34.8	1.286	12.86%
70	5.7	0.179	1.79%	170	9.0	0.463	4.63%	270	15.2	0.747	7.47%	370	24.2	1.031	10.31%	470	36.1	1.314	13.14%
80	5.9	0.208	2.08%	180	9.5	0.491	4.91%	280	16.0	0.775	7.75%	380	25.3	1.059	10.59%	480	37.4	1.343	13.43%
90	6.1	0.236	2.36%	190	10.0	0.520	5.20%	290	16.8	0.804	8.04%	390	26.4	1.087	10.87%	490	38.8	1.371	13.71%
100	6.4	0.264	2.64%	200	10.6	0.548	5.48%	300	17.6	0.832	8.32%	400	27.5	1.116	11.16%	500	40.2	1.399	13.99%
	5.9		2.08%		9.5		4.91%		16.0		7.75%		25.3		10.59%		37.5		13.43%

## ALLETE HVDC Losses

A. Average losses shall be charged for firm transmission service taken over ALLETE's HVDC Facilities. Incremental losses shall be charged for non-firm transmission service taken over ALLETE's HVDC Facilities. When calculating incremental losses for non-firm transmission service, the incremental order of transactions will be determined by the date of the reservation and schedules will be "stacked" in accordance with such incremental order and applied to the matrix below. 0% losses will be allocated for deliveries to the Square Butte Substation.

<b>Line Flow (MW)</b>	<b>Scheduled Power</b>	<b>DC Losses Percentage</b>
0-50	0-45	10.64%
51-100	46-94	2.08%
101-150	95-142	3.50%
151-200	143-189	4.91%
201-250	190-236	6.33%
251-300	237-282	7.75%
301-350	283-328	9.17%
351-400	329-373	10.59%
401-450	374-416	12.01%
451-500	417-460	13.43%

B. For transmission reservation purposes, average losses shall be used, and shall be 8% for deliveries at the Arrowhead Substation and 0% for deliveries at the Square Butte Substation.